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Secretary of State
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INFORMATION ABOUT ADMINISTRATIVE RULES

General Information

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

Background on Oregon Administrative Rules

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

OAR Citations

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

Understanding an Administrative Rule’s “History”

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

Locating Current Versions of Administrative Rules

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

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

Locating Administrative Rule Publications

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

Filing Administrative Rules and Notices

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

Administrative Rules Coordinators and Delegation of Signing Authority

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

Publication Authority

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

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

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OTHER NOTICES

REQUEST FOR COMMENTS PROPOSED PROSPECTIVE PURCHASER AGREEMENT FOR 75 W. MARINE, LLC, ASTORIA

COMMENTS DUE: 5 p.m., Monday, May 1, 2017

PROJECT LOCATION: 75 W. Marine Dr., Astoria, OR

PROPOSAL: The Department of Environmental Quality seeks comments on its proposed consent judgment for a prospective purchaser agreement with 75 W. Marine, LLC for the property located at 75 W. Marine Dr. in Astoria (former Wild Willie's Carwash). 75 W. Marine, LLC is acquiring the property from the current owner and plans to return the property to productive use.

The property was historically used for fueling and as a car wash. Currently, the property is vacant. 75 W. Marine, LLC has agreed within one year of acquisition to pave and landscape the property to meet City of Astoria code requirements, connect landscape features that may result in infiltration (if any) to the stormwater system to ensure no infiltration, and return the site to productive use, including food carts, parking, or other uses allowed by zoning. In addition, if a structure for human occupation is constructed, 75 W. Marine, LLC must complete required vapor assessment or implement engineering controls, follow a management plan if any subsurface soil excavation or water extraction is completed on the property, and agree to site restrictions, if necessary.

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 75 W. Marine, 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 75 W. Marine, LLC with third party liability protection.

HOW TO COMMENT: Send comments to DEQ Project Manager Rob Hood at 700 NE Multnomah St., Suite 600, Portland, OR 97232 or hood.robert@deq.state.or.us. For more information contact the project manager at 503-229-5617.

Find information about requesting a review of DEQ project files at: Request DEQ project file review.

File review application form.

Access site summary information and other documents in the DEQ Leaking Underground Storage Tank (LUST) Cleanup database, then enter 0 in the LUST Number boxes and click "Lookup" at the bottom of the page. Next, click the link labeled LUST# 04-91-0338 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=04-91-0338&SourceIdType=12>.

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 prospective purchaser agreement for the site.

ACCESSIBILITY INFORMATION: DEQ is committed to accommodating people with disabilities. Please notify DEQ of any special physical or language accommodations or if you need information in large print, Braille or another format. To make these arrangements, 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. People with hearing impairments may call 711.

PUBLIC NOTICE PROPOSED CONDITIONAL NO FURTHER ACTION DETERMINATION, MID-COAST MARINE SITE IN COOS BAY, OREGON

COMMENTS DUE: 5 p.m., Monday, May 1, 2017

PROJECT LOCATION: 530 Whitty Street, Coos Bay, Oregon

PROPOSAL: The Oregon Department of Environmental Quality invites comments on its proposal to issue a conditional No Further Action determination for the Mid-Coast Marine Site.

HIGHLIGHTS: The Mid-Coast Marine Site covers approximately 2 acres on the north bank of Isthmus Slough near river mile 15. The site was used as a shipyard from 1953 to 1999. Activities associated with site operations included shipbuilding, welding, sandblasting and painting. Wastes generated during these operations included paint chips, paint residue containing heavy metals and tri-n-butyl tin, waste paint, paint thinner and petroleum.

Numerous investigations and cleanup actions were conducted from 1989 to 2015 by DEQ and the United States Environmental Protection Agency. Site investigations documented contamination in upland soil and Isthmus Slough sediment. Contamination was related to ship maintenance activities, including sand blast operations conducted over the shoreline and shallow tidal flats. Contaminants included tri-n-butyl tin and metals such as copper, nickel and zinc.

Because responsible parties were unable to complete a cleanup, DEQ assumed the lead in site investigation and cleanup under terms of a 1998 Deferral Agreement with EPA. Under the agreement, EPA agreed to defer listing of the Mid-Coast Marine site on the National Priority List (also known as Superfund) provided DEQ complete appropriate cleanup actions.

In 1999 DEQ removed approximately 370 tons of debris, 12 drums of waste liquid and 1,800 tons of surface soil containing sandblast grit from the site upland. In 2000 DEQ dredged contaminated sediment from the Isthmus Slough adjacent to the site. Shallow bedrock and metal and concrete debris on the sediment surface made it impossible to completely remove all contaminated sediment. In all, 2,790 cubic yards of contaminated sediment were removed. Due to limited funds DEQ was unable to complete additional risk assessment immediately after the sediment removal.

In February 2001, Jerry White purchased the site property under a Prospective Purchaser Agreement with DEQ. The agreement stipulated that the new owner would maintain the gravel cap over the DEQ soil removal area, stabilize the shoreline, and place a protective cap on contaminated sediment in the former marine way. Based on recent testing results DEQ is not requiring a sediment cap. Mr. White is currently in the process of obtaining a permit for restoration of the seawall and shoreline area from the U.S. Army Corps of Engineers and Oregon Division of State Lands. The requirements of the agreement with Mr. White would not be affected by this proposed Conditional No Further Action determination.

In 2014 DEQ initiated additional work at the site, including sediment, pore water, shellfish tissue, and bioassay testing and risk assessment. While sediment testing showed persistent levels of tri-n-butyl tin and metals in sediment, contaminants were not detected in shellfish samples, and bioassay samples indicated that the sediment did not adversely affect sediment dwelling organisms.

Based on these results DEQ concludes the site is protective of human health and the environment, and proposes to issue a conditional no further action determination for the site. DEQ has obtained EPA concurrence that the site has met Deferral Agreement requirements and is protective of human health and the environment.

HOW TO COMMENT: Send comments to DEQ Project Manager Mark Pugh at 700 NE Multnomah St., Suite No. 600, Portland, OR 97232 or pugh.mark@deq.state.or.us. For more information contact the project manager at 503-229-5587.

Find information about requesting a review of DEQ project files

Find the File Review Application form.

To access site summary information and other documents visit the DEQ Environmental Cleanup Site Information Database, select "Search complete ECSI database", then enter 1906 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled 1906 in the Site ID/Info column. Alternatively, you may go directly to the Mid-Coast Marine website documents page.

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 prior to issuance of the conditional no further action determination.

OTHER NOTICES

ACCESSIBILITY INFORMATION: Documents can be provided upon request in an alternate format for individuals with disabilities or in a language other than English for people with limited English skills. To request a document in another format or language, call DEQ in Portland at 503-229-5696, or toll-free in Oregon at 1-800-452-4011, ext. 5696; or email deqinfo@deq.state.or.us.

REQUEST FOR COMMENTS PROPOSED NO FURTHER ACTION FOR 3009 NE KILLINGSWORTH STREET, PORTLAND, OREGON

COMMENTS DUE: 5 p.m., Sunday April 30, 2017
PROJECT LOCATION: 3009 NE Killingsworth St., Portland, OR.
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 lot at 3009 NE Killingsworth was formerly known as Bighouse Automotive. The site was developed in 1939 and continued in commercial use as an automotive facility until recently when the site was sold and is currently being redeveloped. Some contaminated soil was discovered and appropriately managed during redevelopment under a soil management plan. Residual concentrations of hazardous substances do not pose 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. For more information contact Paul Seidel at 503-229-5614.

Find information about requesting a review of DEQ project files at: <https://www.oregon.gov/deq/about-us/Pages/Requesting-Public-Records-FAQ.aspx>

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/ecsiquery.asp?listtype=lis&listtitle=Environmental+Cleanup+Site%20Information+Database>

Enter ECSI#6052 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled ECSI #6052 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?SourceIdType=11&SourceId=6052&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 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. 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. People with hearing impairments may call 711.

PUBLIC NOTICE PROPOSED NO FURTHER ACTION FOR FORMER MIDWAY TRUCK STOP

PROJECT LOCATION: 241 Bear Creek Road, Curtin, Oregon
PROPOSAL: The Oregon Department of Environmental Quality is recommending no further action for cleanup and assessment for the contamination on the property at the former Midway Truck Stop in Curtin.

HIGHLIGHTS: The Site is a former petroleum service station that operated from 1956 to 1990 which consisted of retail and commercial vehicle fueling operations. Gasoline and diesel contamination in soil and groundwater was identified in 1991 which was caused by historic releases of petroleum products from several above-ground

storage tanks and associated dispensing equipment. Assessment of the extent and magnitude of contaminants in soil and groundwater was conducted from 1991 to 2009. Fueling operations stopped in 1990 and storage and dispensing equipment was removed in 2006.

Soil contamination was found on the northern portion of the property to a depth of about 10 feet. Groundwater contamination was found beneath the northern portion of the property and under several residences and one commercial property north of the property. Since 2004, DEQ has been providing clean water to four residences that had relied on groundwater for their domestic water supply. Groundwater has levels of methyl tert-butyl ether at just below, and occasionally above, DEQ's level of concern for long-term health effects.

In 2008, DEQ and the new property owner entered into a Prospective Purchaser Agreement which required the new owner to conduct several cleanup activities. These included among other things, excavation of contaminated soil, installation of groundwater monitoring wells, and completion of a deed restriction that restricts certain land uses in the contaminated area.

The property owner completed the excavation of contaminated soil in 2008, which significantly reduced risk to human health on the property, as well as reduced the source affecting groundwater contamination. The property owner also installed several monitoring wells to assess groundwater contamination and is in the process of completing the deed restriction.

DEQ prepared a report summarizing the site history, assessment and cleanup activities conducted at the site, and is recommending No Further Action for assessment or cleanup of contamination at the property. Impacts to groundwater north of the property are still under investigation and cleanup by DEQ.

DEQ conducted a public comment period soliciting comments in 2008 regarding the proposed remedial activities which have now been completed by the property owner. No additional comment is being requested. Once the deed restriction has been recorded in the county records, DEQ will provide a No Further Action Letter to the property owner.

HOW TO GET MORE INFORMATION: Site summary information and other documents are available on DEQ's Environmental Cleanup Site Information database. Go to <http://www.deq.state.or.us/lq/ecsi/ecsiquery.asp>, then enter 1863 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled 1863 in the Site ID/Info column.

You can also contact the DEQ Project Manager Bryn Thoms at thoms.bryn@deq.state.or.us or 541-687-7424.

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 1-800-452-4011, email at deqinfo@deq.state.or.us, or 711 for people with hearing impairments.

REQUEST FOR COMMENTS PROPOSED SETTLEMENT REGARDING THE FORMER YAMHILL STATION SOIL AND GROUNDWATER CONTAMINATION YAMHILL, OREGON

COMMENTS DUE: May 1, 2017

PROJECT LOCATION: The former Yamhill Station is at 210 S. Maple St. in Yamhill, Yamhill County, Oregon. The groundwater contamination is generally located southwest of the property.

PROPOSAL: The Oregon Department of Environmental Quality is proposing to enter a settlement with potentially liable parties, John Pitfido, Joanne Pitfido, JAP Inc. and Yamhill Station LLC (the Pitfidos) for reimbursement of investigation, cleanup and oversight costs associated with the Yamhill Station soil and groundwater contamination. The settlement would be in the form of a consent judgment pursuant to Oregon Revised Statutes 465.325. The settlement would require the Pitfidos to pay DEQ up to \$100,000 to reimburse DEQ for the cost of investigating the release, installing a groundwater treatment system, implementing interim removal action measures and developing a risk-based proposal to reuse the property. In return, the Pitfidos would be released from liability to the state and

OTHER NOTICES

other parties regarding the matters addressed by the settlement. The public is invited to comment on the proposal from April 1, to May 1 2017.

HIGHLIGHTS: The property is currently vacant and has a gravel and soil surface with limited areas of pavement. The Senz and Yamhill gas stations operated on the property. Petroleum contamination from gasoline and diesel storage has been observed on the property since at least December 1988 when DEQ received a complaint that gasoline had been observed in a stormwater system southwest of the property. Gasoline was observed in a storm drain at the intersection of Second and Olive Streets, which is over 250 feet from the underground storage tanks operated, at the time, by the Senz station. The underground storage tanks were removed in 1995 and replaced with above-ground storage tanks.

In 2006 gasoline was again found in the stormwater system southwest of the property and at the Yamhill Maintenance Yard (over 700 feet south of the Yamhill gas station). More than 4,000 gallons of gasoline was estimated to have leaked from the system. In 2007 and 2008, DEQ began removal of gasoline and some of the most heavily contaminated groundwater from the site and expanded the investigation to determine the extent of contamination. DEQ conducted some of this work using state Orphan Program funds and Federal American Recovery and Reinvestment Act funding, due to the limited ability of the current and past property owners to pay for the necessary investigation and cleanup. DEQ's Underground Storage Tanks Program has funded extensive investigation, cleanup, monitoring, and risk assessment at the site. DEQ has spent over \$600,000 investigating and cleaning up the pollution found in the soil, groundwater, stormwater and air.

HOW TO COMMENT: The project file may be reviewed by appointment at DEQ's Salem office at 4026 Fairview Industrial Drive SE, Salem, OR 97302. To schedule an appointment to review the file or to ask questions, please contact Jim Glass at 503-378-5044. Summary information and copies of the documents referenced above are available in DEQ's Leaking Underground Storage Tanks database on the Internet www.deq.state.or.us/lq/tanks/lust/lustpubliclookup.asp. Then enter 36-88-4062 in the LUST Number box and click "Lookup" at the bottom of the page. Next, click the link labeled 36-88-4062 in the "Log Number" column. Send written comments to Jim Glass, at the address listed above or glass.jim@deq.state.or.us. Comments must be received by 5 p.m., Monday, May 1, 2017

DEQ will hold a public meeting if it receives a written request by 10 or more people or by a group with a membership of 10 or more people.

NEXT STEP: DEQ will consider all public comments received by the date and time stated above before making a final decision about the proposed settlement. DEQ will issue a public notice of DEQ's final decision in this publication.

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

REQUEST FOR COMMENTS PROPOSED REMEDIAL ACTION FOR THE TROH LEGACY LANDFILL

COMMENTS DUE: 5 p.m., Sunday April 30, 2017 29, 2016

PROJECT LOCATION: 10010 Southeast Vradenburg Road., Happy Valley OR.

PROPOSAL: DEQ proposes placement of a clean soil cap over the landfill surface to eliminate potential for wildlife exposure to lead in the existing landfill surface that exceeds acceptable risk levels.

HIGHLIGHTS: The landfill at 10010 Southeast Vradenburg Road is known as the Troh legacy landfill. The site was operated as a construction and demolition debris landfill from 1966 to 1971. Investigations of site environmental media began in 1971 when DEQ

completed a Preliminary Assessment for the US Environmental Protection Agency. Environmental investigations have been performed between 2013 and 2016, characterizing the nature and extent of contamination. A remedial action is now proposed to address residual risks at the site resulting for lead contaminated soil.

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. For more information contact Paul Seidel at 503-229-5614.

Find information about requesting a review of DEQ project files at: <https://www.oregon.gov/deq/about-us/Pages/Requesting-Public-Records-FAQ.aspx>

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/ecsiquery.asp?listtype=lis&listtitle=Environmental+Cleanup+Site%20Information+Database>

Enter ECSI#5257 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled ECSI #5257 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.aspx?SourceIdType=11&SourceId=5257&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 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. 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. People with hearing impairments may call 711.

PUBLIC NOTICE

PROPOSED CERTIFICATE OF COMPLETION FOR INDUSTRIAL PROPERTIES IN NORTH PORTLAND

COMMENTS DUE: 5 p.m. Monday, May 1, 2017

PROJECT LOCATION: 11920 N. Burgard Street, Portland, Oregon; 9707 and 9645 North Columbia Blvd, Portland, Oregon

PROPOSAL: The Department of Environmental Quality seeks comment on its proposed decision to issue a certificate of completion to Union Carbide Corporation, Elkem Metals Company and Bors Inc. (also known as Rivergate Scrap Metals, Inc.) for remedial actions performed under a Consent Judgment at the former Union Carbide facility. The site comprises properties at 11920 North Burgard Street, 9707 North Columbia Blvd., and 9645 North Columbia Blvd., in Portland, Oregon. On Aug. 3, 2009, the Multnomah County Circuit Court entered a judgment to resolve a complaint by the State of Oregon against Union Carbide Corporation, Elkem Metals Company and Bors Incorporated doing business as Rivergate Scrap Metals, Inc., (Case No. 0907-09302).

HIGHLIGHTS: The Union Carbide site (ECSI No. 176) comprises three distinct properties in a heavily industrial area of north Portland. From 1942 to 1981 Union Carbide operated a calcium carbide and ferroalloy processing business at the property. Wet scrubbers for air pollution control were installed at the property in 1953. Waste sludges generated from the wet scrubbers were treated using lime or caustic soda, thickened, chlorinated and discharged to unlined settling ponds. Pond No. 1 on the 9707 N. Columbia Blvd. property was constructed in the mid-1950s and used until 1971. Pond No. 2 on the 9645 N. Columbia Blvd. property was constructed in 1971 and used until 1981. A third pond was constructed in the southeast portion of the 11920 N. Burgard Street property in the 1970s. The settling ponds on the 9707 and 9645 N. Columbia Blvd. properties were filled in place without the prior removal of sludge in the late 1980s.

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In January 2000, Union Carbide entered into a Consent Order to conduct a Remedial Investigation and Feasibility Study for the 11920 N. Burgard Street property. Remedial investigations of the property included sampling of soil/sludge from the settling ponds, sampling of Columbia Slough sediment and pore water (2002) and a groundwater investigation and associated monitoring (2001-2005). Interim remedial actions completed at the site consisted of the construction of a reinforced 12-inch thick concrete cap at the 9645 N. Columbia Blvd. property, the removal of soil contaminated with petroleum hydrocarbons (1998) and polychlorinated biphenyls (1999) and capping of Pond No. 3 with a gravel and crushed asphalt cap (2005). In June 2008, a Remedial Investigation and Risk Assessment identified sludges in the unlined ponds at the 9707 and 9645 N. Columbia Blvd. properties as causing unacceptable human health risks from direct contact. Chemicals of concern identified in the Remedial Investigation included benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, dibenzo(a,h)anthracene, arsenic and lead for soil and benzo(a)pyrene for groundwater.

Following approval of a Feasibility Study in January 2009, DEQ issued a Record of Decision for the site in May 2009. The selected remedial actions consisted of the use and continued maintenance of the existing caps on the 9645 N. Columbia Blvd. and 11920 N. Burgard Street properties, installation and maintenance of an engineered cap at the 9707 N. Columbia Blvd. property, groundwater monitoring, implementation of storm water source control measures and institutional controls. A Consent Judgment for implementation of the Record of Decision was entered by Multnomah County Circuit Court in August 2009.

Four main remedial actions were noted in the Record of Decision or in the Consent Judgment that were required to be addressed before the project could be closed.

- Installation of a permanent cap to prevent infiltration of surface water.
- Control of storm water across the site.
- Conduct ground water monitoring.
- Abandonment all onsite and offsite wells

A thick, sealed concrete cap was installed over the entirety of the site in 2009. It was engineered to channel storm water away from site activities. Ground water monitoring was conducted at least semi-annually until 2013 when results showed either decreasing or static concentrations. All site associated wells were abandoned in 2014.

Following review of available reports and requirements of the Consent Judgment, DEQ has determined that remedial conditions presented in Attachment D had been met and permission was granted for the removal of all remaining monitoring wells. DEQ is requesting comments on the proposed issuance of a Certificate of Completion for the site.

The proposed certificate of completion provides Union Carbide Corporation, Elkem Metals Company and Bors Inc. with a covenant not to sue from the State of Oregon under ORS 465.200 to 465.545 and 465.990, regarding existing hazardous substance releases at or from the property. The proposed certificate of completion also provides the Defendants with protection from contribution claims by third parties.

HOW TO COMMENT: Email comments to DEQ Project Manager Kenneth Cameron or mail to 700 NE Multnomah St., Ste 600 in Portland, OR 97232-4100. For more information contact the project manager at 503-229-5251.

Find information about requesting a review of DEQ project files: <http://www.oregon.gov/deq/about-us/Pages/Requesting-Public-Records-FAQ.aspx>

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, select "Search complete ECSI database" then enter 176 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled 176 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.aspx?SourceIdType=11&SourceId=176&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 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, or 711 for people with hearing impairments.

PUBLIC NOTICE

PROPOSED NO FURTHER ACTION FOR FORMER BARNES BUTTE MERCURY MINE

PROJECT LOCATION: Former Barnes Butte Mercury Mine, Prineville, Oregon

PROPOSAL: The Oregon Department of Environmental Quality is recommending no further action for cleanup and assessment for residual contamination at the former Barnes Butte Mercury Mine in Prineville.

HIGHLIGHTS: The site is a portion of the former mercury mine, referred to as Barnes Butte, which operated during the 1940s. The former Barnes Butte Mercury Mine was located on both BLM land and a private parcel that the City of Prineville is planning to turn into recreational public land. Mining impacts to the private parcel have been assessed and DEQ is proposing that the site will be safe to use for recreational activities. The portion of the former mine that is located on BLM land has already been assessed and determined to be safe for recreational use.

Historic mining activities consisted of ore removal, crushing, and roasting. Spent ore (tailings) was disposed of on-site and also on the BLM property. Contamination of shallow soil is a result of disposal of tailings and deposition of mercury-contaminated dust and furnace exhaust. Shallow soil at the site is contaminated with mercury, a toxic heavy metal that affects the central nervous system.

Assessment activities consisting of soil sampling and analysis for mercury was conducted from 2003 to 2016 on the neighboring BLM property. In 2015, BLM removed 475 cubic yards of contaminated soil. Another 260 cubic yards of contaminated soil was placed in an on-site repository on the BLM property and covered with clean soil.

In 2016, the property owner hired a consultant to assess soil conditions. The consultant identified mercury in the soil at levels in between recreational and residential screening values. This means the site does not pose a risk to recreational users of the site but is not appropriate for residential use. The site is currently zoned residential as part of a larger development proposed by Brooks Resources. Because of the contamination, the City is planning to place a deed restriction on the parcel that would restrict residential use of the site while allowing recreational uses.

The environmental consultant also prepared a report summarizing the site history and assessment activities conducted at the site and prepared a focused human health risk assessment. Based on the assessment and the restriction on residential use, the consultant requested that DEQ issue a No Further Action determination for the site. DEQ agrees and is recommending No Further Action for assessment or cleanup of contamination at the site.

DEQ is soliciting comments and will hold a two-week public comment period beginning April 1, 2017. Submit comments by 5 p.m. on April 14, 2017. Comments should be sent to Bryn Thoms at thoms.bryn@deq.state.or.us or by mail to 165 East 7th Ave, Suite 100, Eugene, OR 97401. Once DEQ has addressed comments, DEQ will provide a No Further Action Letter to the property owner and update the Environmental Cleanup Site Inventory (ECSI).

HOW TO GET MORE INFORMATION: Site summary information, as well as Farallon's report are available on DEQ's ECSI database. Go to <http://www.deq.state.or.us/lq/ECSI/ecsiquery.asp>, then enter 2566 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled 2566 in the Site ID/Info column.

OTHER NOTICES

You can also contact the DEQ Project Manager Bryn Thoms at thoms.bryn@deq.state.or.us or 541-687-7424 for additional information.

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 1-800-452-4011, email at deqinfo@deq.state.or.us, or 711 for people with hearing impairments.

REQUEST FOR COMMENTS PROPOSED PROSPECTIVE PURCHASER AGREEMENT FOR CITY OF ROSES RECYCLING

COMMENTS DUE: 5 p.m., Monday, May 1, 2017

PROJECT LOCATION: 4530 NE 138th Avenue, Portland, OR

PROPOSAL: The Department of Environmental Quality seeks comments on its proposed consent judgment for a prospective purchaser agreement with City of Roses Recycling (City of Roses) concerning its acquisition of real property located at 4530 NE 138th Avenue, OR (Property).

City of Roses intends to redevelop the property for use as recovery and salvage facility. The facility's former use was as a recycling center with various materials management, distribution and recycling related businesses having operated on site. Site investigations between 2000 and 2016 have sampled soil, groundwater, stormwater and soil vapor. Contamination is largely absent with few exceptions. These exceptions include soil in the central area of the site where some impacts from copper, lead, PAHs and PCBs were detected.

Under this PPA, City of Roses agrees to perform an evaluation and assessment of existing data and complete on-site remedial actions potentially required in the central site area to assure protection of public health and the environment. City of Roses also will pay DEQ \$10,000 to resolve any potential liability for off-site contamination.

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 City of Roses 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 City of Roses with third party liability protection.

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. For more information contact Paul Seidel at 503-229-5614.

Request DEQ project file review.

File review (records request) 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# 4392 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled [ECSI # 4392 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=4392&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 May 1, 2017. DEQ will enter a consent judgment with City of Roses for completion of the scope for work specified in the PPA. After completion of the scope of work, DEQ would provide public notice and issue a certificate of completion for the work.

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. 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.*

Board of Examiners for Engineering and Land Surveying Chapter 820

Rule Caption: To adopt the Board's 2017-2019 budgeted expenditures and amend rule related to structural registration requirements.

Stat. Auth.: ORS 182.462, 670.310, 672.155 & 672.255

Stats. Implemented: ORS 672.002 to 672.325

Proposed Amendments: 820-080-1000, 820-010-4000

Last Date for Comment: 5-9-17, Close of Business

Summary: The amendment to OAR 820-080-1000 revises the language to establish the amount of \$3,230,000 as the intended limit for payment of expenditures of the Board during the 2017-2019 biennium.

The amendment to OAR 820-010-4000 includes the additional dates and titles of California structural engineer examinations to be considered as qualifying for the structural designation with the Board.

Rules Coordinator: Jenn Gilbert

Address: Board of Examiners for Engineering and Land Surveying, 670 Hawthorne Ave. SE, Suite 220, Salem, OR 97301

Telephone: (503) 934-2107

Board of Licensed Professional Counselors and Therapists Chapter 833

Rule Caption: Approval of the California Marriage and Family Therapist Written Clinical Examination.

Date:	Time:	Location:
5-11-17	10 a.m.	3218 Pringle Rd. SE Salem, OR 97302

Hearing Officer: LaRee' Felton

Stat. Auth.: ORS 675.705-675.835

Stats. Implemented: ORS 675.715, 675.735, 675.785

Proposed Amendments: OAR 833-040-0041

Proposed Repeals: OAR 833-040-0041(T)

Last Date for Comment: 5-11-17, 5 p.m.

Summary: The proposed amendment adds the State of California Board of Behavioral Sciences' Marriage and Family Therapist Writ-

ten Clinical Examination as an approved competency examination for licensure as a Licensed Marriage and Family Therapist (LMFT) in Oregon.

Rules Coordinator: LaRee' Felton

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

Telephone: (503) 373-1196

Board of Massage Therapists Chapter 334

Rule Caption: Clarify language in Rules for CE, application, Classes and update budget for 2017-2019 Biennium.

Date:	Time:	Location:
5-3-17	9 a.m.	728 Hawthorne Ave. NE Salem, OR 97301

Hearing Officer: Kate Coffey

Stat. Auth.: ORS 687.001, 687.041, 687.051, 687.121, 687.071

Other Auth.: ORS 183, ORS 182.456-182.472

Stats. Implemented: ORS 687.011, 687.121, 687.031, 687.041, 687.051, 687.071

Proposed Amendments: 334-001-0012, 334-010-0005, 334-010-0046, 334-010-0050

Last Date for Comment: 5-3-17, 9 a.m.

Summary: Application: All application information for initial licensure must be received by the board within 12 months. Class certification: modify the language to read approve since a governing body does not accredit. Continue Education: Clarify the CE language in OAR 334-010-0050(7) to allow the rollover of Ethics taken in excess of the required 4 hours. Budget: update the Oregon Board of Massage Therapists Budget for 2017-2019 Biennium to 1,910,000.

Rules Coordinator: Ekaette Udosenata

Address: Board of Massage Therapists, 728 Hawthorne Ave. NE, Salem, OR 97301

Telephone: (503) 365-8657

Board of Psychologist Examiners Chapter 858

Rule Caption: Code of professional conduct for licensees, residents and applicants.

Stat. Auth.: ORS 675.010-675.150

Stats. Implemented: ORS 675.110

Proposed Amendments: 858-010-0075

Last Date for Comment: 5-2-17, 5 p.m.

Summary: The proposed amendment adopts the most recent version of the American Psychological Association's "Ethical Principles of Psychologists and Code of Conduct," effective January 1, 2010 with amendment as of January 1, 2017, as the code of professional conduct applicable to all licensees, residents and applicants of the Board.

Rules Coordinator: LaRee' Felton

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

Telephone: (503) 373-1196

Citizens' Initiative Review Commission Chapter 710

Rule Caption: Amendment of rules related to the 2017-2019 budget and administration for Citizens' Initiative Review Commission

Date:	Time:	Location:
5-30-17	10 a.m.	506 SW Mill St., URB 611 Portland, OR 97201

Hearing Officer: Sarah Giles

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

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

Proposed Amendments: 710-005-0005

Last Date for Comment: 5-30-17, Close of Hearing

Summary: The Citizens' Initiative Review Commission hereby adopts by reference the Citizens' Initiative Review Commission

NOTICES OF PROPOSED RULEMAKING

2015-2017 Biennium Budget of \$243,250 covering the period from July 1, 2017 through June 30, 2019. The Chair of the Commission, in consultation with the Commission, will amend budgeted accounts as necessary within the approved budget of \$243,250 for the effective operation of the Commission. The Commission will not exceed the approved 2017-2019 Biennium Budget without amending this rule and holding a public hearing thereon as required, by ORS 182.462(1). The budget can be found on the Commission's website.

Rules Coordinator: Sarah Giles

Address: Citizens' Initiative Review Commission, Policy Consensus Initiative, PO Box 1762, Portland, OR 97207

Telephone: (503) 725-5248

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Department of Agriculture Chapter 603

Rule Caption: Housekeeping updates to the list of approved terrestrial invertebrates.

Stat. Auth.: ORS 570.205, 570.210, 570.215

Stats. Implemented: ORS 570.215

Proposed Amendments: 603-052-1320

Last Date for Comment: 4-15-17, 5 p.m.

Summary: The Monarch butterfly, *Danaus plexippus*, is currently still listed on the approved list, but is not allowed for import and release to allow biogeographical research related to determining why wild monarch populations in Oregon are declining.

In order to avoid confusion in the permitting process we recommend removing the Monarch butterfly from the approved list.

Rules Coordinator: Sue Gooch

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

Telephone: (503) 986-4583

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Department of Agriculture, Oregon Processed Vegetable Commission Chapter 647

Rule Caption: Amend rules related to assessment rates Amend rules related to term limits of Commissioners

Date:	Time:	Location:
4-20-17	7 p.m.	1320 Capitol Street NE Salem, OR

Hearing Officer: Ernie Pearmine

Stat. Auth.: ORS 576.051-576.595

Stats. Implemented: ORS 576.051-576.595

Proposed Amendments: 647-010-0010, 647-015-0010

Last Date for Comment: 4-20-17, Close of Hearing

Summary: The proposed rule amendments to OAR 647-010-0010 set the assessment rates for the six processed vegetable crops governed by the commission.

The proposed rule amendments to OAR 647-015-0010 change the limit on Commissioner terms from two year to three years.

Rules Coordinator: Misty Slagle

Address: Department of Agriculture, Processed Vegetable Commission, 6745 SW Hampton, Suite 101, Portland, OR 97223

Telephone: (503) 924-1181

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Department of Agriculture, Oregon Sweet Cherry Commission Chapter 669

Rule Caption: Standardize the due date for assessments on all sweet cherries.

Date:	Time:	Location:
5-22-17	10 a.m.	2990 Experiment Station Dr. Hood River, OR

Hearing Officer: Dana Branson

Stat. Auth.: ORS 576.304(2), ORS 576.325(2)(a)(b) & (4)(c), ORS 576.335

Other Auth.: ORS 183, ORS 576, OAR 669-001-0000

Stats. Implemented: ORS 576.325 & ORS 576.355

Proposed Amendments: 669-010-0025

Last Date for Comment: 5-3-17, Close of Business

Summary: This amendment will revise the due dates for Fresh Market, Brined, Frozen and Canned sweet cherry assessments to standardize from two due dates to one simplified due date.

Rules Coordinator: Dana Branson

Address: Department of Agriculture, Sweet Cherry Commission, 2667 Reed Rd., Hood River, OR 97031-9609

Telephone: (541) 386-5761

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Department of Energy Chapter 330

Rule Caption: Amending criminal records check and fitness determination rules.

Date:	Time:	Location:
4-27-17	10 a.m.	Oregon Department of Energy 550 Capitol NE Salem, OR 97301

Hearing Officer: Elizabeth Ross

Stat. Auth.: ORS 181A.195, 469.055

Stats. Implemented: ORS 181A.195, 469.055

Proposed Amendments: 330-007-0200, 330-007-0210, 330-007-0240, 330-007-0320, 330-007-0330

Proposed Repeals: 330-007-0220, 330-007-0230, 330-007-0250, 330-007-0260, 330-007-0270, 330-007-0280, 330-007-0290, 330-007-0300, 330-007-0310

Last Date for Comment: 4-27-17, 5 p.m.

Summary: The Oregon Department of Energy proposes amendments to the Criminal Records Check and Fitness Determination rules to comply with and remove duplicative language found in uniform rules adopted by the Department of Administrative Services (OAR 125-007) and to document Oregon Department of Energy procedure.

The Oregon Department of Energy plans for the rules to be effective upon filing. The Oregon Department of Energy requests public comment on these draft rules. A call-in number is available for the public hearing, please see website for details and other materials: <http://www.oregon.gov/energy/Get-Involved/Pages/Rulemaking.aspx>.

Rules Coordinator: Elizabeth Ross

Address: Department of Energy, 550 Capitol St. NE, 1st Floor, Salem, OR 97301

Telephone: (503) 378-8534

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Department of Environmental Quality Chapter 340

Rule Caption: Regional Haze Plan: 5-year Progress Report and other changes to the State Implementation Plan

Date:	Time:	Location:
4-20-17	10 a.m.	700 NE Multnomah St. Portland, OR 97232 6th Floor – Rm. 610

Hearing Officer: Rachel Sakata

Stat. Auth.: ORS 468.020, 468A.025, 468A.065, 468A.310

Stats. Implemented: ORS 468A.025, 468A.065, 468A.310

Proposed Amendments: 340-200-0040, 340-200-0050, 340-202-0090, 340-222-0060

Last Date for Comment: 4-24-17, 4 p.m.

Summary: Short summary

DEQ proposes the Oregon Environmental Quality Commission approve the Regional Haze Plan Progress Report update for incorporation into the Oregon Clean Air Act State Implementation Plan and submittal to the U. S. Environmental Protection Agency for its approval under the federal Clean Air Act. DEQ also proposes unrelated minor rule changes that will remove rules from the State Implementation Plan that were accidentally submitted as SIP revisions and update state rules to reflect EPA's recently revised ozone standard.

Brief history

NOTICES OF PROPOSED RULEMAKING

The federal Regional Haze rule requires states to address visibility protection for regional haze in Class I Areas in each state. In Oregon there are 12 mandatory federal Class I areas, including Crater Lake National Park and 11 wilderness areas. The US EPA requires states to adopt regional haze plans that will improve Class 1 area visibility on the haziest days, the worst 20 percent, and ensure no degradation on the clearest days over the next 60 years. The goal of the regional haze rule is to return visibility in Class I areas to natural background levels by the year 2064.

The EQC adopted the first regional haze plan in 2009. The plan included a comprehensive review of visibility conditions in each of Oregon's 12 Class I areas, with a projection of statewide emissions and visibility conditions in 2018, a summary of DEQ's BART (Best Available Retrofit Technology) evaluation of the PGE Boardman coal-fired power plant and other sources potentially subject to BART, and a reasonable progress demonstration for the best and worst visibility days, related to the 2018 milestone benchmark. In 2010, DEQ updated the Regional Haze Plan to incorporate rules that included new emission controls for PGE Boardman.

Under the federal Regional Haze Rule, states are required to develop 5-year progress reports showing the latest visibility analysis and the current status for meeting reasonable progress milestones since the last submission of the plan. This progress report summarizes changes in monitoring and emissions data since the plan was last adopted in 2010 and evaluates the adequacy of the current State Implementation Plan to meet the progress goals.

Additionally, DEQ is proposing unrelated rule changes as minor corrections to the State Implementation Plan. In 2015, when DEQ adopted rules to update its permitting program rules, it inadvertently incorporated rules as SIP revisions when they should not have been included. This rulemaking corrects that action by removing them from the SIP. Also in 2016, EPA finalized federal standards for ozone, lowering the standard from 0.075 ppm to 0.070 ppm. This proposed rulemaking would make state rules consistent with federal rules.

Regulated parties

The Regional Haze Plan Progress Report affects federal land managers. Federal land managers will have to continue to adhere to the smoke management plan and visibility requirements in the Regional Haze Plan update

There are no regulated parties affected by the proposed rules.

Request for other options

During the public comment period, DEQ requests public comment on whether to consider other options for achieving the rules' substantive goals while reducing the rules' negative economic impact on business.

For the Regional Haze Plan Progress Report, DEQ also consulted and obtained comment from federal land managers during the development of the progress report. DEQ requests public comment on any part of the report.

Rules Coordinator: Meyer Goldstein

Address: Department of Environmental Quality, 700 NE Multnomah St., 6th Floor, Portland, OR 97232

Telephone: (503) 229-6478

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**Department of Forestry
Chapter 629**

Rule Caption: Amends Fire Prevention Rules and Requirements for Industrial Operations

Date:	Time:	Location:
4-17-17	6 p.m.	Tillamook Rm., Bldg. C 2600 State St. Salem, OR 97310

Hearing Officer: Tom Fields

Stat. Auth.: ORS 477.001, ORS 477.013, ORS 477.565, ORS 477.615, ORS 477.625, ORS 477.640, ORS 477.645, ORS 477.650, ORS 477.655, ORS 477.665, ORS 526.016 and ORS 526.041

Stats. Implemented: ORS Chapter 477

Proposed Amendments: 629-041-0005, 629-043-0005, 629-043-0015, 629-043-0020, 629-043-0025, 629-043-0026, 629-043-0030, 629-043-0036, 629-043-0040

Proposed Ren. & Amends: 629-043-0010 to 629-043-0023

Last Date for Comment: 4-19-17, 5 p.m.

Summary: The proposed rules reflect clarification, updates and changes to fire prevention rules and requirements for industrial operations based on changing technology and logging practices. The proposal also addresses inconsistencies (and brings into alignment) with similar rules in other chapters. The proposed rules will increase requirements in some areas, while reducing requirements in other areas. Effected rules include changes to water supply and delivery, fire tools and extinguishers, Watchman (Firewatch) Service, operation area prevention and power saws.

Water Supply: Increase requirement from minimum of 500 feet of hose to "enough hose" to reach areas worked that day. The proposal also eliminates the water supply requirement when the only activity remaining is for self-loading, as long as the self-loading of trucks is done in a clear area free of flammable vegetation.

Fire tools and extinguishers: Increase requirement from 2 1/2 lb. ABC fire extinguisher to 2A:10BC (5 lb.) extinguisher to bring into alignment with OR-OSHA rules. Fire extinguishers will also be required to have a pressure gauge or other measurement of the contents of the extinguisher. The proposal would also reduce the fire tools requirement for operations of four or less workers, still requiring a shovel and fire extinguisher, but eliminating the need for a fire tools box.

Other changes include requiring that battery shut-off switches be used on equipment when the operation shuts down or moving the equipment to an area free of flammable vegetation; and power saws for non-industrial operations must meet the same requirements as those of industrial operations.

Written comments must be received by 5:00 p.m., April 19, 2017. Submissions should be addressed to Sabrina Perez, Rules Coordinator, Oregon Department of Forestry, 2600 State Street, Salem, OR 97310, sent via email to sabrina.perez@oregon.gov

Rules Coordinator: Sabrina Perez

Address: Department of Forestry, 2600 State St., Salem, OR 97310

Telephone: (503) 945-7210

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Rule Caption: Aligning Bald Eagle Rules with current Federal and State delisted protection regulations

Date:	Time:	Location:
4-19-17	4:30 p.m.	3200 Delap Rd. Klamath Falls, Oregon 97601
4-27-17	4:30 p.m.	1758 NE Airport Rd. Roseburg, Oregon 97470
5-2-17	4:30 p.m.	801 Gales Creek Rd. Forest Grove, Oregon 97116

Hearing Officer: Randy Baley, Greg Wagenblast

Stat. Auth.: ORS 527.710, 527.630(3), 527.670, 527.714, 526.016(4)

Stats. Implemented: ORS 527.630, 527.670, 527.674, 527.710, 527.714, 527.715

Proposed Amendments: 629-665-0130

Proposed Amendments: 629-600-0100, 629-665-0100, 629-665-0120, 629-665-0200, 629-665-0210

Proposed Repeals: 629-665-0220, 629-665-0230, 629-665-0240

Last Date for Comment: 5-15-17, 5 p.m.

Summary: The Oregon Department of Forestry (ODF) has rescinded, revised and added proposed rule language for resource protection requirements on Bald Eagles. The bald eagle has been removed from both the federal and Oregon endangered species lists. When a threatened or endangered species is delisted by the Oregon Fish and Wildlife Commission and/or the U.S. Fish and Wildlife Service (USFWS), the Board of Forestry must determine whether continued rules for protection of the species' resource sites are warranted. If the Board determines that continued protection rules are warranted, then

NOTICES OF PROPOSED RULEMAKING

rules shall be promulgated under the appropriate statutory authority. If the Board determines that continued protection rules are not warranted, existing rules must be repealed.

The proposed rule changes include rescinding OAR 629-665-0230 for Bald Eagle Roosting Sites and OAR 629-665-0240 for Bald Eagle Foraging Perches. The nesting rules for the bald eagle have been modified and moved into 629-665-0100 for Species Using Sensitive Bird Nesting, Roosting and Watering Sites.

Review of this proposed rulemaking package may be accessed on the Department's web page at <http://www.oregon.gov/ODF/AboutODF/Pages/ProposedLawsRules.aspx> or at the office of the State Forester and are available upon request. Associated supporting materials presented at the July 2016 and March 2017 Board of Forestry meetings are available online. They may be accessed through the Board of Forestry website: www.oregonforestry.gov.

Three open houses and public hearings regarding this rulemaking process will be held in Forest Grove, Roseburg and Klamath Falls in late April and early May 2017. Notice of the meetings and hearings will be promoted via flyers, email, media releases and our website prior to the meeting dates.

Written comments must be received by 5:00 p.m. on May 15th, 2017. Submissions should be addressed to Private Forest Bald Eagle Rulemaking, Oregon Department of Forestry, 2600 State Street, Salem, Oregon 97310; or send to PRIVATEFORESTS.PUBLICCOMMENT@oregon.gov or via fax (503) 945-7490.

Comments received by 5:00 p.m. on May 15th, 2017 will be compiled and incorporated into information presented to the Board of Forestry for their review. From this information and the prior work with this rulemaking process, the Board of Forestry will decide whether to approve this proposed rulemaking package. The Department is planning to present this information at the July 2017 Board of Forestry meeting. The Department will propose an effective date of September 1, 2017.

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

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Department of Justice
Chapter 137

Rule Caption: Updates to Crime Victims' Compensation and new rules for Post Conviction Compensation.

Date: 4-19-17 **Time:** 10:30 a.m. **Location:** 1162 Court St. NE
Salem OR 97301

Hearing Officer: Rebecca Shaw

Stat. Auth.: ORS 147

Stats. Implemented: ORS 147

Proposed Adoptions: 137-076-0017, 137-076-0019

Proposed Amendments: 137-076-0005, 137-076-0010, 137-076-0016, 137-076-0020, 137-076-0025, 137-076-0030, 137-076-0032, 137-076-0034, 137-076-0037, 137-076-0040, 137-076-0043, 137-076-0045, 137-076-0055, 137-076-0056, 137-076-0065, 137-076-0070, 137-080-0005, 137-080-0010, 137-080-0015, 137-080-0025, 137-080-0030

Proposed Repeals: 137-076-0018, 137-076-0050, 137-076-0060, 137-080-0020

Last Date for Comment: 4-19-17, Close of Business

Summary: Administrative Rule language for Crime Victims' Compensation is outdated and changes are necessary to reflect many current practices. Updates also include new rules for Post Conviction Compensation per ORS 147.035.

Rules Coordinator: Carol Riches

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

Telephone: (503) 378-5987

Department of Revenue
Chapter 150

Rule Caption: Changes to rules: Small claims procedure at Tax Court's Magistrate Division, interest start date

Date: 4-25-17 **Time:** 9 a.m. **Location:** Fishbowl Conf. Rm
Revenue Bldg.
955 Center St. NE
Salem, OR 97301

Hearing Officer: Roy Suarez

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 305.222, 314.415

Proposed Amendments: 150-305-0150, 150-314-0240

Last Date for Comment: 4-25-17, 5 p.m.

Summary: 150-305-0150 - Amend to delete references to the defunct small claims procedure at the Magistrate Division of the Oregon Tax Court.

150-314-0240 - Amend to clarify the interest start date for personal, corporate, and estate tax refunds.

Rules Coordinator: Lois Williams

Address: Department of Revenue, 955 Center St. NE, Salem, OR 97301

Telephone: (503) 945-8029

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Rule Caption: Marijuana Tax: Rules pertaining to administration of transit taxes also apply to local marijuana taxes.

Date: 4-25-17 **Time:** 9 a.m. **Location:** Fishbowl Conf. Rm.
Revenue Bldg.
955 Center St. NE
Salem, OR 97301

Hearing Officer: Roy Suarez

Stat. Auth.: ORS 305.100, 305.620, 475B.345

Stats. Implemented: ORS 305.620, 475B.345

Proposed Amendments: 150-305-0360

Last Date for Comment: 4-25-17, 5 p.m.

Summary: 150-305-0360 - 2016 legislation authorized the Department of Revenue to enter into intergovernmental agreements with localities to administer local marijuana taxes. This rule change is needed to clarify that the provisions of ORS 305.620 apply to both transit and local marijuana taxes.

Rules Coordinator: Lois Williams

Address: Department of Revenue, 955 Center St. NE, Salem, OR 97301

Telephone: (503) 945-8029

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Rule Caption: Personal Income Tax General - Updating Language

Date: 4-25-17 **Time:** 9 a.m. **Location:** Fishbowl Conf. Rm.
Revenue Bldg.
955 Center St. NE
Salem, OR 97301

Hearing Officer: Roy Suarez

Stat. Auth.: ORS 305.100, 316.102

Stats. Implemented: ORS 316.048, 316.102, 316.122, 316.162, 316.567

Proposed Amendments: 150-316-0060, 150-316-0120, 150-316-0150, 150-316-0235, 150-316-0470

Last Date for Comment: 4-25-17, 5 p.m.

Summary: 150-316-0060 - Taxable Income of Resident. Replacing outdated language relating to spouses in a marriage.

150-316-0120 - Credit for Political Contributions. Replacing outdated language relating to spouses in a marriage.

150-316-0150 - Separate or Joint Federal Returns for Spouses in a Marriage. Replacing outdated language relating to spouses in a marriage.

150-316-0235 - Withholding: Basis of Amount Withheld. Replacing outdated language relating to spouses in a marriage.

NOTICES OF PROPOSED RULEMAKING

150-316-0470 - Allocation of Joint Estimated Tax Payments. Replacing outdated language relating to spouses in a marriage.

Rules Coordinator: Lois Williams

Address: Department of Revenue, 955 Center St. NE, Salem, OR 97301

Telephone: (503) 945-8029

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Rule Caption: Property Tax: Updating Language relating to spouses in a marriage; correcting section references

Date:	Time:	Location:
4-25-17	9 a.m.	Fishbowl Conf. Rm. Revenue Bldg. 955 Center St. NE Salem, OR 97301

Hearing Officer: Roy Suarez

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 308.875, 308.377, 308A.256, 321.358, 321.805

Proposed Amendments: 150-308-0760, 150-308-1140, 150-321-0340, 150-321-0810

Last Date for Comment: 4-25-17, 5 p.m.

Summary: 150-308-0760 - Manufactured Structure Classified as Real or Personal Property. Replacing outdated language relating to spouses in a marriage.

150-308-1140 - Qualified Specially Assessed Homesite Valuation. Replacing outdated language relating to spouses in a marriage.

150-321-0340 - Minimum Stocking and Acreage Requirements for Designation as Forestland in Western Oregon. Correcting section references.

150-321-0810 - Minimum Stocking and Acreage Requirements for Designation as Forestland in Eastern Oregon. Correcting section references.

Rules Coordinator: Lois Williams

Address: Department of Revenue, 955 Center St. NE, Salem, OR 97301

Telephone: (503) 945-8029

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Rule Caption: Personal Income Tax Credits: Substantiation Required, Repealing outdated state surplus (kicker) example, and obsolete rules.

Date:	Time:	Location:
4-25-17	9 a.m.	Fishbowl Conf. Rm. Revenue Bldg. 955 Center St. NE Salem, OR 97301

Hearing Officer: Roy Suarez

Stat. Auth.: ORS 305.100, 316.587

Stats. Implemented: ORS 314.220, 315.274, 316.095, 316.153, 316.587, 316.818, 316.832, 316.863

Proposed Amendments: 150-316-0615, 150-316-0493

Proposed Repeals: 150-314-0020, 150-315-0130, 150-315-0132, 150-316-0105, 150-316-0107, 150-316-0220, 150-316-0620, 150-316-0645

Last Date for Comment: 4-25-17, 5 p.m.

Summary: 150-316-0615 - Substantiation Required. Combining identical substantiation requirements pertaining to ORS 316.818 and 316.832 into one rule for clarity.

150-316-0493 - Required Installments for Estimated Tax. To remove an obsolete provision and example that references surplus refund payments (also known as kicker checks).

150-314-0020 - Refund; Method of Claiming. ORS 314.220 was repealed in 2005. The accompanying rule is no longer necessary since the statute has been repealed.

150-315-0130 - Computation of Oregon Credit for Qualified Adoption Expenses. ORS 315.274 was repealed in 2011. The accompanying rule is no longer necessary since the statute and credit have been repealed.

150-315-0132 - Oregon Adoption Credit Prorated For Part-Year and Nonresidents. ORS 315.274 was repealed in 2011. The accom-

panying rule is no longer necessary since the statute and credit have been repealed.

150-316-0105 - Sewer Connection Credit. ORS 316.095 was repealed in 2011. The accompanying rule is no longer necessary since the statute and credit have been repealed.

150-317-0107 - Sewer Connection Credit: Substantiation for Bancroft Bonding. The accompanying rule is no longer necessary since the statute and credit have been repealed.

150-316-0220 - Credit of Involuntary Move of a Mobile Home. ORS 316.153 was repealed in 2007. The accompanying rule is no longer necessary since the statute and credit have been repealed.

150-316-0620 - Substantiation Required. Combining identical substantiation requirements pertaining to ORS 316.818 and 316.832 into one rule for clarity.

150-316-0645 - Individual Pension and Retirement Plans. ORS 316.836 was repealed in 1997. The accompanying rule is no longer necessary since the statute has been repealed.

Rules Coordinator: Lois Williams

Address: Department of Revenue, 955 Center St. NE, Salem, OR 97301

Telephone: (503) 945-8029

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

Rule Caption: Physical Description, Including Sex, on Driver License, Driver Permit or Identification Card

Date:	Time:	Location:
5-2-17	6 p.m.	Eugene Public Library Tykeson Rm . 100 W 10th Ave. Eugene OR
5-10-17	6 p.m.	Multnomah Bldg., Rm. 315 501 SE Hawthorne Blvd. Portland OR

Hearing Officer: Liz Woods

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

Stats. Implemented: ORS 802.200, 807.050, 807.110, 807.150, 807.160, 807.280 and 807.400

Proposed Adoptions: 735-062-0013

Last Date for Comment: 5-12-17, 4 p.m.

Summary: ORS 807.110 states that a driver license will contain a brief description of the person for purposes of identification. In accordance with national standards, Oregon's description has contained an indicator of the person's sex, "M" for male or "F" for female. Within the past year, an Oregon circuit court issued an order stating that a particular individual's sex is non-binary. By policy, DMV has accepted court orders as proof of sex-change to change the sex designation of a person on a driver license, driver permit, identification card and DMV record. However, DMV was unable to issue a card or capture in records an indicator that would signify non-binary as the computer system has no indicator for a third sex designation.

Therefore, DMV started this rule-making in conjunction with updating systems so that an "X" in the field for sex will indicate that the sex is not specified. DMV proposes to adopt OAR 735-062-0013 to explain what information is captured as a descriptor in DMV records, which of those descriptors appear on the front of the card, how that information is provided to DMV, and the process to change such information.

Rules Coordinator: Lauri Kunze

Address: Department of Transportation, Driver and Motor Vehicle Services Division, 355 Capitol St. NE, MS 51, Salem, OR 97301

Telephone: (503) 986-3171

NOTICES OF PROPOSED RULEMAKING

Department of Transportation, Highway Division Chapter 734

Rule Caption: Self-Issuance Program for variance permits
Stat. Auth.: ORS 184.616, 184.619, 818.200, 823.011
Stats. Implemented: ORS 818.200, 818.220
Proposed Adoptions: 734-072-0007
Proposed Amendments: 734-072-0005, 734-072-0010, 734-072-0011, 734-072-0015, 734-072-0020, 734-072-0022, 734-072-0023, 734-072-0025, 734-072-0030
Last Date for Comment: 4-21-17, 4 p.m.
Summary: Division 72 rules establish programs as authorized by ORS 818.220 for telephonic application, self-issuance and electronic issuance of variance permits. The purpose of this rulemaking is to specify the requirements for a motor carrier to qualify for the self-issuance program certification and recertification. In addition, the rulemaking specifies insurance requirements for intrastate motor carriers. The programs saves time, travel and speeds delivery of permits directly to the motor carrier's place of business.
Rules Coordinator: Lauri Kunze
Address: Department of Transportation, Highway Division, 355 Capitol St. NE, MS 51, Salem, OR 97301
Telephone: (503) 986-3171

Department of Transportation, Motor Carrier Transportation Division Chapter 740

Rule Caption: IFTA Inadequate Records Assessment
Stat. Auth.: ORS 184.616, 184.619, 823.011, 825.555
Stats. Implemented: ORS 825.490, 825.494, 825.555
Proposed Amendments: 740-200-0045
Last Date for Comment: 4-21-17, 4 p.m.
Summary: The proposed amendments are necessary to ensure Oregon remains current with International Fuel Tax Agreement (IFTA). IFTA Procedures Manual requires an additional assessment be imposed when a licensee fails to maintain or provide records adequate to support reported fuel tax. Associated materials are applicable to Oregon-based motor carriers who participate in IFTA as a way to report and pay fuel tax to other jurisdictions. The revision to OAR 740-200-0045 reflects the most recent version of IFTA and associated material as the procedures and guidelines for Oregon-based IFTA participants. Amendment is necessary to ensure Oregon remains current with the international IFTA standards.
Rules Coordinator: Lauri Kunze
Address: Department of Transportation, Motor Carrier Transportation Division, 355 Capitol St. NE, MS 51, Salem, OR 97301
Telephone: (503) 986-3171

Landscape Architect Board Chapter 804

Rule Caption: Amend Board Budget and Fee Rules to Adopt 2017-2019 Operating Budget
Date: 4-21-17
Time: 10 a.m.
Location: Association Center
707 13th St. SE
Salem, OR 97301
Hearing Officer: Christine Valentine
Stat. Auth.: 804-001-0002: ORS 671.415, 182.462, 670.310
804-040-0000: ORS 182.466(4), 670.310, 671.365, 671.415
Stats. Implemented: 804-001-0002: ORS 671.415, 182.462; 804-040-0000: ORS 671.325, 671.345, 671.365, 671.376
Proposed Amendments: 804-001-0002, 804-040-0000
Last Date for Comment: 4-21-17, Close of Business
Summary: Amend the expenditure limit in the budget rule to reflect the Board's proposed 2017-2019 budget. Adjust select registration and renewal fees in the fee rule in order to increase new revenues as a means to provide sufficient operating revenues for 2017-2019 and

to best ensure the continued financial solvency of the Board. The proposed fee increases would be the first increases to registration and renewal fees since 2005. The Board selected the proposed fee increases in consideration of anticipated expenditures for maintaining status quo operations in the 2017-2019 budget and beyond.

Rules Coordinator: Christine Valentine
Address: Landscape Architect Board, 707 13th St. SE, Suite 114, Salem, OR 97301
Telephone: (503) 589-0093

Oregon Department of Aviation Chapter 738

Rule Caption: Temporary Exemption from Registration of Manned Aircraft
Date: 4-20-17
Time: 1:30 p.m.
Location: Evergreen Aviation
500 NE Capt. MK Smith Way
McMinnville OR

Hearing Officer: Staff
Stat. Auth.: ORS 835.035, 835.112, 837.005
Stats. Implemented: ORS 835.035, 835.112
Proposed Amendments: 738-080-0030
Last Date for Comment: 4-21-17, Close of Business
Summary: As currently written a letter requesting Temporary Exemption from Registration of Manned Aircraft is due on March 1 for each calendar year an exemption is claimed. State aircraft registration is due one year from the original date of registration and is renewed each year on that anniversary date. This rule change seeks to align the due date for requesting a Temporary Exemption from Registration of Manned Aircraft with the original registration date of the aircraft and not with the calendar year. The purpose of this rule change is to reduce duplication of efforts and staff costs associated with reconciling two separate systems.

Criteria for a Temporary Exemption from Registration of Manned Aircraft is based on the aircraft not being physically capable of operation and flight and that the aircraft is not capable of forward motion on the ground or in flight. Preventive maintenance does not qualify for Temporary Exemption and is described in Federal Aviation Regulations, PART 43, Appendix A (c) for guidance on "preventive maintenance."

Rules Coordinator: Lauri Kunze
Address: Oregon Department of Aviation, 3040 25th St. SE, Salem, OR 97302-1125
Telephone: (503) 986-3171

Oregon Department of Education Chapter 581

Rule Caption: Form and Protocol for Sports Physical Examinations
Date: 4-21-17
Time: 9:30 a.m.
Location: 255 Capitol St. NE
Salem OR, Rm. 400A

Hearing Officer: Emily Nazarov
Stat. Auth.: ORS 326.051
Stats. Implemented: ORS 336.479
Proposed Amendments: 581-021-0041
Last Date for Comment: 4-27-17, 10 a.m.
Summary: In 2001, ORS 336.479 was passed regulating the process and content for physical examination prior to participation in extracurricular sports by student in grades 7 through 12. Each school district is directed to require students who participate in extracurricular sports to have physical examination prior to participation. The physical examination must be conducted by a physician, naturopathic physician, physician assistant, nurse practitioner or chiropractic physician who has clinical training and experience in detecting cardiopulmonary diseases and defects. Recently, the OSAA SMAC conducted a process to review and revise the form and protocol to reflect current best practices.

NOTICES OF PROPOSED RULEMAKING

Rules Coordinator: Cindy Hunt
Address: Oregon Department of Education, 255 Capitol St. NE,
Salem, OR 97310
Telephone: (503) 947-5651

Rule Caption: District Curriculum
Date: 4-21-17 **Time:** 9:30 a.m. **Location:** 255 Capitol St. NE
Salem OR, Rm. 400A

Hearing Officer: Emily Nazarov
Stat. Auth.: ORS 326.051
Stats. Implemented: ORS 329.045
Proposed Amendments: 581-022-1210
Last Date for Comment: 4-27-17, 10 a.m.
Summary: Oregon's Comprehensive Guidance and Counseling Framework was originally adopted in 2003, and the school counseling student standards were embedded. This amendment adds the school counseling student standards for Comprehensive School Counseling to the Common Curriculum Goals and academic content standards for the planned K-12 instructional program, and aligns with the work currently underway to adopt standards in all other content areas.

Rules Coordinator: Cindy Hunt
Address: Oregon Department of Education, 255 Capitol St. NE,
Salem, OR 97310
Telephone: (503) 947-5651

Oregon Film and Video Office Chapter 951

Rule Caption: Update Rules for Oregon Production Investment Fund ("OPIF")
Stat. Auth.: ORS 284.367 & 284.368
Stats. Implemented: ORS 284.367 & 284.368
Proposed Amendments: Rules in 951-002
Last Date for Comment: 4-28-17, 12 p.m.
Summary: Updated rules to provide guidance for the administration of the Oregon Production Investment Fund film and television production rebates as authorized by ORS 284.367 to 284.368 more specifically to add interactive games and post production only projects to Qualifying Productions.
Rules Coordinator: Nathan Cherrington
Address: Oregon Film and Video Office, 123 NE 3rd Ave., Suite 210, Portland, OR 97232
Telephone: (971) 254-4020

Rule Caption: Creates proposed rules for the "regional" Oregon Production Investment Fund ("rOPIF").
Stat. Auth.: ORS 284.368(4)
Stats. Implemented: ORS 284.368(4)
Proposed Adoptions: Rules in 951-007
Last Date for Comment: 4-28-17, 12 p.m.
Summary: To provide guidance for the administration of the portion of the Oregon Production Investment Fund that is to be used for film and television production expense reimbursement for regional production work as authorized by ORS 284.368(4).
Rules Coordinator: Nathan Cherrington
Address: Oregon Film and Video Office, 123 NE 3rd Ave., Suite 210, Portland, OR 97232
Telephone: (971) 254-4020

Oregon Health Authority, Health Policy and Analytics Chapter 409

Rule Caption: Amending Appendix G to OAR 409-025-0120, to All Payer All Claims data reporting program rules.
Date: 4-17-17 **Time:** 2 p.m. **Location:** 500 Summer St NE, Rm. 456
Salem, OR 97301

Hearing Officer: Zarie Haverkate
Stat. Auth.: ORS 442.466
Stats. Implemented: ORS 442.464 & 442.466
Proposed Amendments: 409-025-0120
Last Date for Comment: 4-19-17, 5 p.m.
Summary: The Oregon Health Authority proposes to amend Appendix G: Annual Supplemental Provider Level APM Summary within OAR 409-025-0120 in order to update language and align data collection requirements with program needs, OHA priorities, and statutory requirements. Other than the proposed changes in Appendix G, the Authority does not plan to make any changes to the text of the rule at this time.
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

Oregon Health Authority, Health Systems Division: Medical Assistance Programs Chapter 410

Rule Caption: Income Eligibility Guidelines for MAGI Medicaid/CHIP
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: 4-20-17, 5 p.m.
Summary: Every year the Federal Poverty Levels (FPL) are adjusted and published to the Federal Register. A number of the MAGI Medicaid/CHIP programs' financial 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 Systems Division: Medical Assistance Programs, 500 Summer St. NE, 3rd Floor, Salem, OR 97301
Telephone: (503) 945-6430

Oregon Health Authority, Public Health Division Chapter 333

Rule Caption: Marijuana Labeling and Testing; Medical Marijuana Growers, Processors, Dispensaries and Cards
Date: 4-27-17 **Time:** 11 a.m. **Location:** Atrium Bldg.
99 W 10th Ave., Sloat Rm.
Eugene, OR 97401
4-28-17 10 a.m. Portland State Office Bldg.
800 NE Oregon St., Rm. 1A
Portland, OR 97232

Hearing Officer: Jana Fussell
Stat. Auth.: ORS 438.605, 438.610, 438.615 & 438.620, 475B.025, 475B.420-475B.428, 475B.435, 475B.438, 475B.440, 475B.450, 475B.525, 475B.555, 475B.605, 475B.625
Stats. Implemented: ORS 438.605, 438.610, 438.615 & 438.620, 475B.210, 475B.295, 475B.420-475B.428, 475B.435, 475B.438,

NOTICES OF PROPOSED RULEMAKING

475B.440, 475B.443, 475B.450, 475B.555, 475B.560, 475B.605, 475B.625, 475B.635

Proposed Adoptions: 333-007-0500, 333-007-2000, 333-008-2210

Proposed Amendments: 333-007-0090, 333-007-0200, 333-007-0210, 333-007-0220, 333-007-0300, 333-007-0310, 333-007-0315, 333-007-0320, 333-007-0330, 333-007-0340, 333-007-0345, 333-007-0350, 333-007-0360, 333-007-0370, 333-007-0390, 333-007-0400, 333-007-0410, 333-007-0420, 333-007-0430, 333-007-0440, 333-007-0450, 333-007-0480, 333-008-0033, 333-008-0550, 333-008-0570, 333-008-0600, 333-008-1020, 333-008-1030, 333-008-1070, 333-008-1200, 333-008-1205, 333-008-1230, 333-008-1245, 333-008-1248, 333-008-1620, 333-008-1630, 333-008-1690, 333-008-1760, 333-008-1810, 333-008-1830, 333-008-2180, 333-064-0100, 333-064-0110

Proposed Repeals: 333-007-0090(T), 333-007-0310(T), 333-007-0315(T), 333-007-0320(T), 333-007-0350(T), 333-007-0360(T), 333-007-0410(T), 333-007-0430(T), 333-007-0440(T), 333-007-0450(T), 333-007-0480(T), 333-007-0490, 333-007-2000(T), 333-008-0650(T), 333-008-1200(T), 333-008-1220, 333-008-1230(T), 333-008-1500, 333-008-1501, 333-008-1505, 333-008-9900, 333-008-9910, 333-064-0100(T), 333-064-0110(T)

Last Date for Comment: 4-30-17, 5 p.m.

Summary: The Oregon Health Authority (OHA), Public Health Division is proposing to permanently adopt and amend rules in chapter 333, divisions 7 and 64 related to marijuana labeling, and marijuana laboratory sampling and testing; and permanently adopt, amend and repeal rules in chapter 333, division 8 pertaining to medical marijuana growers, processors, dispensaries and patient cards.

ORS 475B.555 directs the Oregon Health Authority (OHA), in consultation with the Oregon Liquor Control Commission (OLCC) and the Oregon Department of Agriculture (ODA), to protect public safety by establishing rules on marijuana laboratory sampling and testing, and marijuana labeling. In order to protect public health and safety, these rules propose to adopt additional requirements for ordered tests, amend certain standards for the sampling and testing of marijuana items, including testing for pesticides, proposed changes to how control studies are conducted, propose to allow for remediation of marijuana items under certain circumstances, propose to permit OHA or OLCC to request that marijuana items be tested for heavy metals, and propose to specifically allow for quality control or research and development testing. In addition, the rules amend the sampling procedures for testing marijuana items and the reporting of test results. These rules also allow for THC and CBD labeling to be expressed as a range or as an average of the values calculated. Other changes to chapter 333, division 7 and 64 include, but are not limited to:

- Clarify that a cannabinoid product intended for human consumption, which is not specifically categorized in the concentration and serving size limits found in Table 1 and 2, must meet the concentration and serving size limits for a cannabinoid edible.

- Clarify language and add requirements for registrants and licensees regarding ordering laboratory tests.

- Include requirements for testing usable marijuana intended for processing into a cannabinoid product.

- Allow for random testing for pesticides for cannabinoid concentrates and extracts and provides testing requirements following failed pesticide tests.

- Minor changes to the control study rule, in particular what happens when a sample from a control study fails.

- Decreasing the minimum number of samples needed for future testing for potency for cannabinoid products once it has passed a control study.

- Clarify language related to requirements for batches failing control studies.

- Amend certain sampling requirements for batches passing control studies.

- Allow for remediation of cannabinoid concentrates and extracts that fail for pesticides under certain circumstances.

- Allow for remediation of usable marijuana that failed for pyrethrin and piperonyl butoxide pesticide analytes under certain circumstances.

- Clarify requirements and options for batches of marijuana items that fail testing.

- Include the testing of heavy metals as a part of registrant and licensee audit and random testing.

- Adopt rules for quality control and research and development testing.

- Adopt a rule that allows at a minimum 20% of batches from OLCC licensees to be tested for pesticides.

- Amend rules adding requirements for laboratories related to sampling, setting limits of quantification and non-compliance testing.

- Adopting a rule pertaining to marijuana test result reporting requirements for laboratories.

Changes to chapter 333, division 8 of the Oregon Administrative Rules are necessary to implement SB 1511 (Oregon Laws 2016, chapter 83); and certain housekeeping measures are necessary for rules governing growers, dispensaries and processors. Revisions to these rules include, but are not limited to:

- Adopt language that states scales used by a person responsible for a grow site must be licensed by the Oregon Dept. of Agriculture (ODA).

- Adopt requirements for designation of plants at medical marijuana grow sites.

- Adopt language that allows OHA to share information with ODA when a violation of Oregon's pesticide law has occurred.

- Include rule references and clarify language regarding labeling, packaging, and testing for a person responsible for a grow site.

- Adopt language that indicates a dispensary or processor may not request a refund of the registration fee if a 60-day letter has been issued.

- Adopt and clarify requirements regarding new and renewal applications for dispensaries and processors.

- Adopt changes to circumstances when the Authority may refund dispensary and processor application fees.

- Clarify language around products intended for human consumption must be made and handled in a manner consistent with ODA statutes.

- Include language that states nicotine product may not be sold in a dispensary.

- Removing previous and nonapplicable rules regarding labeling, signage, and limited marijuana retail sales from registered dispensaries.

- Allow for the transfer of marijuana from a licensed producer to a medical marijuana dispensary or registered processor.

- Adopt rules for a penalty matrix for levels of rule violations by registrants.

Rules Coordinator: Brittany Hall

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 Liquor Control Commission
Chapter 845

Rule Caption: The repeal removes the requirement for licensees to affix a label to each tap handle.

Date:	Time:	Location:
4-19-17	10 a.m.	9079 SE McLoughlin Blvd. Portland, Oregon 97222

Hearing Officer: Bryant Haley

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

Stats. Implemented: ORS 471.445

Proposed Repeals: 845-006-0443

Last Date for Comment: 5-3-17, 5 p.m.

NOTICES OF PROPOSED RULEMAKING

Summary: 845-006-0443 requires licensees selling malt beverages, via a draft system, to affix a label to each tap handle. As the brewing industry has evolved in Oregon, tap houses, breweries and other licensees selling malt beverages use multiple methods to list the current malt beverages on tap. This includes the use of spreadsheets, chalk boards and even LED monitors that track how much malt beverage is left in each keg.

Rules Coordinator: Bryant Haley

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

Telephone: (503) 872-5136

Rule Caption: The amendments repeal the prohibition on advertising price reductions on alcoholic beverages outside the premises.

Date:	Time:	Location:
4-19-17	5 p.m.	9079 SE McLoughlin Blvd. Portland, Oregon 97222

Hearing Officer: Bryant Haley

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

Stats. Implemented: ORS 471.730(7)

Proposed Amendments: 845-007-0020

Last Date for Comment: 5-3-17, 11 a.m.

Summary: Previously, the Commission has restricted licensees from advertising price reductions for alcohol sold for on-premises consumption, often referred to as happy hour. This restriction has proven difficult to enforce, as non-licensees can freely publish this information via multiple platforms (e.g. print & social media). Staff is proposing to remove the price reduction prohibitions while maintaining prohibitions on advertising that could encourage excessive or rapid consumption.

Rules Coordinator: Bryant Haley

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

Telephone: (503) 872-5136

Oregon Public Employees Retirement System Chapter 459

Rule Caption: Establishes authority to satisfy insolvent employer's liability to the fund through the contingency reserve account.

Date:	Time:	Location:
4-25-17	3 p.m.	Boardroom, PERS 11410 SW 68th Parkway Tigard, OR 97223

Hearing Officer: Daniel Rivas

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

Stats. Implemented: ORS 238.670

Proposed Adoptions: 459-009-0400

Last Date for Comment: 5-3-17, 5 p.m.

Summary: Over the years a number of PERS employers have, under various circumstances, ceased to exist as on-going entities. Some employers have left behind unpaid PERS invoices and unfunded actuarial liabilities with no assets and no successors either by operation of law or contractual agreement to satisfy these financial obligations.

The unpaid invoices and the unfunded actuarial liabilities of these employers have an immediate and continuing negative impact on their former employees who are PERS members and on other current and active PERS employers. In the case of unpaid invoices, the outstanding balance would otherwise be contributed on behalf of the former employees to fund their pension and IAP accounts and to accrue earnings. In the case of unfunded actuarial liabilities, other active PERS employers would end up picking up the tab with a collective increase in their employer contribution rate to account for the shortfall in contributions.

ORS 238.670(1)(a) specifically grants the board the authority to use money in the Reserve Account established under ORS 238.670(1) to "prevent any deficit in the fund by reason of the insolvency of a participating public employer." This proposed new admin-

istrative rule sets out a clear definitional standard on what qualifies as an insolvent employer, and if PERS finds an employer to be insolvent, it may come before the board to ask the board to exercise its discretion to use money under ORS 238.670(1) to satisfy unpaid invoices and unfunded actuarial liabilities that the insolvent employer may have left behind.

Rules Coordinator: Daniel Rivas

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

Telephone: (503) 603-7713

Rule Caption: Clarify administration of forfeiture and restoration of service rights.

Date:	Time:	Location:
4-25-17	3 p.m.	Boardroom, PERS, 11410 SW 68th Parkway Tigard, OR 97223

Hearing Officer: Daniel Rivas

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.008, 238.095, 238.105, 238.115, 238.125, 238.265, 2003 OL Ch. 276

Proposed Amendments: 459-011-0050

Last Date for Comment: 5-3-17, 5 p.m.

Summary: Clarify when the 5 year clock begins from the date of last separation from employment, what types of membership forfeiture may be restored under ORS 238.105 and 238.115, and provide clarification on forfeiture administration.

Rules Coordinator: Daniel Rivas

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

Telephone: (503) 603-7713

Oregon State Lottery Chapter 177

Rule Caption: Amends Keno game rules to add new game option Keno Bulls-Eye with additional prizes

Date:	Time:	Location:
4-17-17	9 a.m.	Oregon State Lottery 500 Airport Rd. SE Salem Oregon 97301

Hearing Officer: Staff

Stat. Auth.: ORS Chapter 461

Other Auth.: Oregon Constitution, Article XV, Section 4(4)

Stats. Implemented: ORS 461.210, 461.220, 461.230, 461.240, and 461.250

Proposed Adoptions: 177-099-0105

Proposed Amendments: 177-099-0000, 177-099-0020, 177-099-0030, 177-099-0050, 177-099-0095, 177-099-0100

Last Date for Comment: 4-17-17, 9:30 a.m.

Summary: The Oregon Lottery has filed a Notice of Proposed Rule-making Hearing to adopt one new Keno rule and amend certain other Keno game rules to authorize a new game feature called Keno Bulls-Eye.

The Keno Bulls-Eye option will cost an additional dollar per dollar wagered, add another way to win when playing Keno or Special Keno, and will have its own prize structure.

Rules Coordinator: Mark W. Hohlt

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

Telephone: (503) 540-1417

NOTICES OF PROPOSED RULEMAKING

Public Utility Commission Chapter 860

Rule Caption: In the Matter of Revisions to Division 033 Rules.

Date:	Time:	Location:
4-17-17	9:30 a.m.	Public Utility Commission Hearing Rm. 201 High St. SE Salem, OR 97301

Hearing Officer: Chief ALJ Grant

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

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

Proposed Amendments: 860-033-0005, 860-033-0030, 860-033-0046, 860-033-0050, 860-033-0110, 860-033-0530

Proposed Repeals: 860-033-0005(T), 860-033-0030(T), 860-033-0046(T), 860-033-0050(T)

Last Date for Comment: 4-24-17, 5 p.m.

Summary: The proposed rules modify OPUC's Division 033 rules to (a) conform to the changes to the federal requirements related to the provision of telecommunications subsidies to low-income customers and (b) clarify eligibility for the Telecommunication Device Access Program.

The Commission encourages participants to file written comments as early as practicable in the proceedings so that other participants have the opportunity to consider and respond to the comments before the deadline. Please reference Docket No. AR 612 on comments and attach them to an e-mail to the Commission's Filing Center at PUC.FilingCenter@state.or.us.

Interested persons may review all filings online at <http://apps.puc.state.or.us/edockets/docket.asp?DocketID=20654>. For guidelines on filing and participation, please see OAR 860-001-0140 through 860-001-0160 and 860-001-0200 through 860-001-0250 found online at http://arcweb.sos.state.or.us/pages/rules/oars_800/oar_860/860_001.html.

Participants wishing to monitor the hearing by telephone must contact Diane Davis at diane.davis@state.or.us or (503) 378-4372 by close of business 4/21/17, to request a dial-in number. The Commission strongly encourages those planning to present oral comment at the hearing to attend in person.

Rules Coordinator: Diane Davis

Address: Public Utility Commission of Oregon, PO Box 1088, Salem, OR 97308-1088

Telephone: (503) 378-4372

ADMINISTRATIVE RULES

Board of Nursing Chapter 851

Rule Caption: To clarify certification requirements for faculty teaching at the graduate level.

Adm. Order No.: BN 1-2017

Filed with Sec. of State: 2-22-2017

Certified to be Effective: 3-1-17

Notice Publication Date: 2-1-2017

Rules Amended: 851-050-0001

Subject: This amendment to the rules will make a temporary rule change permanent for the Nurse Practitioner Program Educators. This change will provide flexibility for Nurse Practitioners with either state or national certification to teach in NP educational programs in Oregon. Previously, licensees were limited to national certification requirements.

Rules Coordinator: Peggy A. Lightfoot—(971) 673-0638

851-050-0001

Standards for Nurse Practitioner Programs

The Board's standards for all nurse practitioner programs for initial applicants are as follows:

(1) The nurse practitioner program shall be a minimum of one academic year in length; however, programs completed before January 1, 1986 and post-Masters programs completed for the purpose of changing category of nurse practitioner certification may be less than one academic year in length if the program otherwise meets all requirements.

(2) Faculty who teach within the nurse practitioner program shall be educationally and clinically prepared in the same specialty area(s) as the theory and clinical areas they teach and shall include advanced practice nurses.

(3) The curriculum content shall contain theory and clinical experience in the nurse practitioner population focus specified in OAR 851-050-0005(6) for which application is being made, preparing the graduate to meet all competencies within the scope including physical assessment, pharmacology, pathophysiology, differential diagnosis and clinical management.

(4) The number of contact hours of clinical experience shall be equal to or greater than the number of contact hours of nurse practitioner theory. The clinical experience must consist of full scope preparation in the population focus for which application is being made.

(5) Post-graduate Nurse Practitioner programs which prepare an individual for dual role or population focus certification must meet all competencies designated for the Nurse Practitioner role including supervised clinical hours of no less than 500 hours for each role or population focus.

(6) Programs must provide documentation that students meet the program's curriculum requirements in effect at the time of enrollment.

(7) Written program materials shall accurately reflect the mission, philosophy, purposes, and objectives of the program.

(8) Programs shall demonstrate appropriate course sequencing and requirements for matriculation into the program, including completion of all pre-licensure nursing curriculum requirements before advancement into nurse practitioner clinical coursework.

(9) Preceptors shall meet clinical and licensure qualifications for the state in which they practice.

(10) Distance and asynchronous learning programs shall meet all standards of OAR 851-050-0001.

(11) All courses required for completion of the nurse practitioner program must be at the graduate level, if completed after January 1, 1986.

(12) Nurse practitioner programs outside of the United States must meet all standards of OAR 851-050-0001. Such programs shall be determined by Board approved or directed credentials review to be equivalent to graduate nurse practitioner programs offered in the United States which prepare the nurse practitioner for practice within the advanced nursing specialty scope. Nationally recognized nursing accreditation standards or guidelines may be applied by the Board at the Board's discretion, in accordance with the Oregon Office of Degree Authorization regulations.

(13) The Board's additional requirements for Oregon based Nurse Practitioner programs are as follows. The Dean or Director of the Nursing school which provides one or more Nurse Practitioner programs/tracks shall ensure that one or more qualified faculty are appointed and have defined position responsibility to address the administrative functions of the program/track. Administrative functions include budget and resource preparation, curricular design, oversight of program implementation and

evaluation. The appointed faculty and preceptor(s) in the program shall meet the following requirements:

Nurse Practitioner Program Faculty, Administration and Preceptors

(a) Nurse Practitioner Program Administrator who has overall responsibility for one or more NP tracks shall meet the following requirements:

(A) A current active unencumbered Oregon Nurse Practitioner state certificate;

(B) National certification as a Nurse Practitioner in at least one population focus area;

(C) A doctoral degree in a health-related field;

(D) Educational preparation or experience in teaching and learning principles for adult education, including curriculum development and administration and at least two years of current clinical experience which meets Oregon's practice requirements;

(E) In a multi-track program, where only one Program Administrator is appointed by the Dean or Director of the school, there must be evidence of additional program administrators or lead Nurse Practitioner faculty to provide oversight for student supervision who are nationally certified in that specific program's population focus.

(b) The Nurse Practitioner Program Educator shall meet the following requirements:

(A) A current active unencumbered Oregon Nurse Practitioner state certificate;

(B) An earned doctoral degree in nursing; or

(C) A masters degree with a major in nursing and an appropriate advanced practice nurse credential; and

(D) Two years of clinical experience as a Nurse Practitioner; and

(E) Current knowledge, competence, and state certification as a Nurse Practitioner in the population foci consistent with teaching responsibilities; or National Board Certification and a minimum of 400 practice hours in the past 2 years in the population foci consistent with teaching responsibilities.

(F) Adjunct clinical faculty employed solely to supervise clinical nursing experiences of students shall meet all the faculty requirements.

(G) Inter-professional educators who teach non-clinical nursing courses shall have advanced preparation appropriate to the area of content.

(c) Clinical Preceptors in the Nurse Practitioner program shall meet the following requirements:

(A) Student preceptor ratio shall be appropriate to accomplishment of learning objectives, to provide for patient safety, and to the complexity of the clinical situation;

(B) Oregon licensure or certification appropriate to the health professional area of practice;

(C) Functions and responsibilities for the preceptor shall be clearly documented in a written agreement between the agency, the preceptor, and the clinical program

(D) Initial experiences in the clinical practicum and a majority of the clinical experiences shall be under the supervision of clinical preceptors who are licensed advanced practice registered nurses.

(d) Nurse Practitioner Educator responsibilities shall include:

(A) Making arrangements with agency personnel in advance of the clinical experience which provides and verifies student supervision, preceptor orientation, and faculty defined objectives;

(B) Monitoring student assignments, making periodic site visits to the agency, evaluating students' performance on a regular basis with input from the student and preceptor, and availability for direct supervision during students' scheduled clinical time;

(C) Providing direct supervision by a qualified faculty or experienced licensed clinical supervisor as required for patient safety and student skill attainment.

(e) Nurse Practitioner Program Administrator responsibilities shall include:

(A) Ensuring appropriate student faculty ratios to meet program goals and objectives;

(B) Provision of leadership and accountability for the administration, planning, implementation and evaluation of the program;

(C) Preparation and administration of the program budget;

(D) Facilitation of faculty recruitment, development, performance review, promotion and retention;

(E) Assurance that cooperative agreements with clinical practice sites are current.

Program Accreditation Required and Board Notification Process

(f) Currently accredited programs that prepare nurse practitioners for state certification under these rules and requirements shall submit to the Board:

(A) A copy of their most recent program self-evaluation reports;

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10; BN 10-2013, f. 12-3-13, cert. ef. 1-1-14; BN 6-2016(Temp), f. & cert. ef. 9-13-16 thru 3-5-17; BN 1-2017, f. 2-22-17, cert. ef. 3-1-17

(B) Current accreditation and survey reports from all nursing accrediting agencies; and

(C) Interim reports submitted to the national nursing accreditation agency.

(D) These documents must be submitted to the Board upon receipt to or release from the accrediting agency.

(g) Programs which prepare nurse practitioners for state certification under development or pre-accreditation review shall submit the following for review by the Board:

(A) Copies of the curricula within 30 days of sending the information to the accrediting agency;

(B) Copies of self-evaluation reports and any interim reports provided to all national nursing accreditation agencies, at the time of notification from the accrediting agency that the program has not been fully accredited;

(C) Verification of accreditation from all accrediting agencies within 30 days of receipt by the program;

(D) Annual reports which enable the monitoring of continued compliance with Board requirements.

(h) Grounds for denial of graduate nurse practitioner applicants for initial certification include failure of the Oregon based Nurse Practitioner program to:

(A) Maintain accreditation status through a US Department of Education recognized national accrediting body;

(B) Submit curricula, self-evaluation reports, interim reports or notice of accreditation reports as required by the Board;

(i) Students who graduate from a program which was accredited at the time of their completion shall be considered to have graduated from an accredited program regardless of the current program status for the purpose of licensure.

Approval of a New Nurse Practitioner Educational Program

(j) Any university or college wishing to establish a Nurse Practitioner education program must make application to the Board on forms supplied by the Board no later than one year before proposed enrollment of students.

(k) The following information must be included with the initial application along with supporting documentation:

(A) Purpose for establishing the nursing education program;

(B) Community needs and studies made as the basis for establishing a nursing education program;

(C) Type of program including clear identification of proposed licensure role and population foci for graduates;

(D) Accreditation status, relationship of educational program to parent institution;

(E) Financial provision for the educational program;

(F) Potential student enrollment;

(G) Provision for qualified faculty;

(H) Proposed clinical facilities and other physical facilities;

(I) Proposed time schedule for initiating the program. If initial approval is denied, the applicant may request a hearing before the Board and the provisions of the Administrative Procedures Act shall apply.

Survey of Nurse Practitioner Programs, Survey Criteria

(l) Board representatives will conduct in person visits to nursing programs for the following purposes:

(A) Review of application for initial program approval;

(B) Initial and continuing full approval of an educational program;

(C) Receipt by the Board of cause for review including but not limited to:

(i) Significant curricular change which includes addition of a new state certification recognized population focus or role;

(ii) Evidence that graduates fail to meet national certification criteria;

(iii) Violation of Board standards.

(D) If approval is denied or withdrawn, the applicant may request a hearing before the Board and the provisions of the Administrative Procedures Act shall apply.

(m) Board representatives will contact nursing programs to schedule site visits:

(A) Within 60 days of receipt of an application for initial program approval;

(B) Upon receipt of national accreditation report for existing programs; one year after implementation of new programs, every 3-5 years for continuing approval;

(C) Within 30 days of receipt of a complaint.

(D) For purposes of reviewing a major curriculum change.

Stat. Auth.: ORS 678.380, 678.150

Stats. Implemented: ORS 678.380, 678.150

Hist.: NB 3-1990, f. & cert. ef. 4-2-90; NB 8-1993, f. & cert. ef. 8-23-93; BN 10-2003, f. & cert. ef. 10-2-03; BN 13-2006, f. & cert. ef. 10-5-06; BN 9-2009, f. 12-17-09, cert. ef. 1-1-

Rule Caption: Regarding CRNA scope, licensure, education, and primary source verification of CRNA certification.

Adm. Order No.: BN 2-2017

Filed with Sec. of State: 2-23-2017

Certified to be Effective: 3-1-17

Notice Publication Date: 2-1-2017

Rules Adopted: 851-052-0050, 851-052-0060

Rules Amended: 851-052-0000, 851-052-0010, 851-052-0020, 851-052-0030, 851-052-0040, 851-052-0100

Subject: Consistently using the term “client,” “competence,” and “diagnosis” within Oregon Nurse Practice Act.

Removing definitions defined in ORS 678.245.

Defining medical services provided by CRNAs.

Amending rules necessary to establish the scope of the CRNA, educational and competency requirements, as well as the procedure for maintenance of licensure.

Defines educational program approval process for CRNA programs in Oregon.

Defines office-based care standards for CRNAs in Oregon.

Requires CRNA applicants to provide “primary source verification” of their national certification on initial and renewal CRNA applications for licensing.

The change will assist the implementation of statewide “common credentialing” initiative as well as provide electronic verification of certification which will increase efficiency of licensing processing and decrease agency costs associated with scanning and storage of paper certifications.

Rules Coordinator: Peggy A. Lightfoot—(971) 673-0638

851-052-0000

Definitions

(1) “Analgesia” means a neurologic or pharmacologic state in which painful stimuli are moderated such that, although still perceived, they are no longer painful.

(2) “Anesthesia” means a drug-induced state that causes insensitivity to pain and often loss of consciousness, especially as artificially induced by the administration of gases or the injection of drugs. The client’s ability to independently maintain ventilator function is often impaired and may require assistance in maintaining patent airway. Cardiovascular function may also be impaired.

(3) “Anesthesia care” means the CRNA’s independent or collaborative performance of any act involving the treatment of a client presenting for a procedure including, but not limited to, sole or concurrent use of sedation, analgesia or anesthesia.

(4) “Anesthesia plan” means a plan of intervention by a CRNA for services and anesthesia care within the CRNA scope of practice.

(5) “Approved accrediting body” means a national organization deemed by the U.S. Department of Education to accredit nurse anesthesia programs.

(6) “Approved certifying body” means a national organization which engages in certification or recertification of nurse anesthetists and is recognized by the Board for purpose of validating such certification.

(7) “Certified registered nurse anesthetist” or “(CRNA)” means an Advanced Practice Registered Nurse licensed by the Board as a CRNA to practice in an expanded specialty role within the practice of nursing. The title, CRNA, shall not be used unless the Board licenses the individual as such.

(8) “Client” means an individual, family, or group who is receiving anesthesia care from a CRNA.

(9) “Collaboration” means a process involving two or more parties working together, each responsible for his or her own particular area of expertise.

(10) “Competence” means demonstrating specified levels of knowledge, technical skill, ethical principle and clinical reason relevant to the practice role, prevailing standards, and client safety. This occurs at the entry into practice and throughout one’s career.

(11) “Consultation” means communication with another health care provider for the purpose of exchanging information or advice to provide client care.

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(12) "Diagnosis" means identification of actual or potential health problems or the need for intervention based on analysis of data collected.

(13) "Non-Oregon Based Graduate Program" means an academic program, not located in Oregon, recognized by the United States Department of Education or the Council of Higher Education Accreditation that offers a graduate degree to students in preparation for becoming an Advanced Practice Registered Nurse.

(14) "Other medical services" means the services conventionally recognized and agreed to be part of the practice of anesthesia.

(15) "Sedation" means a drug-induced state that may cause a depression of consciousness along a continuum that may include the client's inability to adequately maintain ventilation.

Stat. Auth.: ORS 678.245 & 678.285

Stats. Implemented: ORS 678.245 & 678.285

Hist.: BN 9-1998, f. 7-16-98, cert. ef. 9-1-98; BN 2-2017, f. 2-23-17, cert. ef. 3-1-17

851-052-0010

Scope and Practice Standards

(1) Advanced practice nursing by the CRNA shall consist of a combination of knowledge and skills acquired in basic and advanced nursing foundational education that includes expertise in sedation, analgesia, and anesthesia management of clients.

(2) The CRNA is responsible for professional maintenance of practice that includes performing anesthesia care consistent with educational, experiential and continued competence.

(3) Scope of practice involves client populations of individual or family health across the lifespan in diverse settings. The client's health status may range from healthy through all recognized levels of acuity, including immediate, severe or life-threatening illnesses or injuries.

(4) The role of the CRNA will continue to expand in response to societal demand and new knowledge gained through research, education, and expertise.

(5) The CRNA has the professional responsibility for initiating consultation, collaboration, referral or a transfer of client care when deemed prudent.

(6) Scope of practice includes advanced assessment, diagnosis and administration of anesthesia care, including, but not limited to:

(a) Determining the readiness, preparation and evaluation for a client undergoing a procedure;

(b) Formulating an anesthesia plan for the client;

(c) Establishing a client record;

(d) Implementing and adjusting the client's anesthesia plan based on physiologic status;

(e) Using advanced monitoring or other diagnostic technology to support physiologic status;

(f) Providing necessary or routine post-anesthesia care to facilitate emergence, recovery and discharge from anesthesia care area or facility;

(g) Performing analgesia, sedative or anesthetic management for a client requiring relief of acute or chronic pain;

(h) Utilizing ultrasound, fluoroscopy and other technologies in accordance with other applicable rules and regulations for diagnosis, care delivery or improvement of client safety or comfort; and

(i) Consulting for or engaging in other medical services (ORS 678.245(8)).

(7) The CRNA's authority of pharmacologic management in connection with the delivery of anesthesia care includes:

(a) The ability to select, order and administer to clients controlled and non-controlled drugs;

(b) Optional prescriptive authority as outlined in ORS 678.281(1-3) with application to Board complete with practice requirements; and

(c) Practice with adherence to standards for authority to prescribe as applicable and as outlined in 851-056-0012 and 851-056-0016.

Stat. Auth.: ORS 678.285

Stats. Implemented: ORS 678.255, 678.265, 678.275 & 678.285

Hist.: BN 9-1998, f. 7-16-98, cert. ef. 9-1-98; BN 2-2017, f. 2-23-17, cert. ef. 3-1-17

851-052-0020

Licensure

(1) An applicant for initial licensure as a CRNA shall:

(a) Submit to the Board the required fee(s) as specified in 851-002-0030;

(b) Provide verification of unencumbered licensure or eligibility for unencumbered licensure as a Registered Nurse in Oregon;

(c) Submit a completed application for CRNA licensure; and

(d) Provide primary source verification of CRNA certification or recertification from an approved certifying body.

(2) A minimum of a Master's degree is required from an accredited CRNA educational program if education commenced after December 31, 2000.

(3) Revocation, suspension, or any other encumbrance of a Registered Nurse license, or any special authority to practice anesthesia care, in another state, territory of the United States, or any foreign jurisdiction may be grounds for denial of CRNA licensure in Oregon.

(4) The Board retains the authority to conduct a random audit of a CRNA applicant or CRNA licensee to verify current certification, education or continuing education. Upon request of the Board, licensee shall submit documentation of compliance.

Stat. Auth.: ORS 678.285

Stats. Implemented: ORS 678.285

Hist.: BN 9-1998, f. 7-16-98, cert. ef. 9-1-98; BN 7-2013, f. 5-6-13, cert. ef. 6-1-13; BN 2-2017, f. 2-23-17, cert. ef. 3-1-17

851-052-0030

License Renewal, Reactivation, or Re-entry

(1) An applicant for renewal or reactivation of the CRNA license shall:

(a) Submit to the Board the following:

(A) Required fee(s) as specified in 851-002-0030 and

(B) Completed renewal or reactivation application;

(b) Provide primary source verification of CRNA certification or recertification from an approved certifying body; and

(c) Hold an active Oregon Registered Nurse license.

(2) An applicant for CRNA re-entry limited license must:

(a) Hold an active unencumbered Oregon Registered Nurse license;

(b) Complete a limited CRNA license application for re-entry; and

(c) Provide evidence of acceptance into a CRNA re-entry program approved by the Board by:

(A) Completion of the re-entry program is required within 12 calendar months; or

(B) Explanation of need for a one-time only 12 month extension of the limited CRNA license upon Board approval.

(3) The Board retains the authority to conduct a random audit of a CRNA applicant or CRNA licensee to verify current certification, education or continuing education. Upon request of the Board, licensee shall submit documentation of compliance.

Stat. Auth.: ORS 678.285

Stats. Implemented: ORS 678.285

Hist.: BN 9-1998, f. 7-16-98, cert. ef. 9-1-98; BN 5-2005, f. & cert. ef. 6-30-05; BN 7-2013, f. 5-6-13, cert. ef. 6-1-13; BN 2-2017, f. 2-23-17, cert. ef. 3-1-17

851-052-0040

Clinical Practicum in Oregon for Student Nurse Anesthetist or CRNA Enrolled in a Non-Oregon Based Graduate Program

(1) A student enrolled in a Non-Oregon Based Graduate Program must meet the following criteria:

(a) Hold a current, unencumbered Registered Nurse license in Oregon;

(b) Practice with a preceptor who holds a current, unencumbered professional license in

Oregon that meets educational standards and requirements recognized by the accrediting body; and

(c) Be enrolled in a program that is accredited by an approved accrediting body and recognized by a national nursing organization.

(2) A licensed CRNA enrolled in a Non-Oregon Based Graduate Program for purposes of obtaining a different type of APRN license that requires a clinical practicum must meet the above criteria in (1)(a-c).

Stat. Auth.: ORS 678.285

Stats. Implemented: ORS 678.285

Hist.: BN 9-1998, f. 7-16-98, cert. ef. 9-1-98; BN 7-2012, f. 5-7-12, cert. ef. 6-1-12; BN 15-2012(temp), f. & cert. ef. 11-15-12 thru 5-1-13; BN 4-2013, f. 2-28-13, cert. ef. 4-1-13; BN 2-2017, f. 2-23-17, cert. ef. 3-1-17

851-052-0050

Oregon-based Nurse Anesthesia Educational Programs

(1) The Board retains the authority to approve Oregon Based Nurse Anesthesia Programs and such approval may be based upon the approved accrediting body report.

(2) Any institution or consortium of accredited institutions that has established or wishes to establish a nurse anesthesia program in Oregon must comply with all requirements for full accreditation by an approved accrediting body.

(3) The OSBN may require additional standards above and beyond those required by the approved accrediting body.

(4) The OSBN has the authority to survey any complaint involving an Oregon-based nurse anesthesia program, in addition to, but not necessarily

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in lieu of, the accrediting body, especially when those instances may impact public safety.

(5) Complaints made to the OSBN regarding a program shall be communicated to the approved accrediting body.

Stat. Auth.: ORS 678.150 & 678.285

Stats. Implemented: 678.285

Hist.: BN 2-2017, f. 2-23-17, cert. ef. 3-1-17

851-052-0060

Office-based Care Standards

The CRNA shall comply with all applicable state and federal rules and regulations relating to the office-based practice where anesthesia care is being performed and has the responsibility to:

(1) Consider, evaluate and document client selection criteria determined by the type of procedure an individual client needs;

(2) Verify anesthesia-related monitors and equipment are maintained to current health care standards, including providing a backup electrical source;

(3) Ensure that there are adequate numbers of personnel to support the planned procedure;

(4) Adhere to professional standards of care for monitoring patient during procedure;

(5) Appropriately plan for treatment of possible complications, including:

(a) Emergency supplies to be immediately available including emergency drugs, airway management supplies, and cardio-pulmonary resuscitation equipment;

(b) Appropriate policies and procedures;

(c) Agreements for transportation of client to a higher level of care in the case of an emergency; and

(6) Coordinate recovery and discharge of clients from office and provide instructions for follow-up care if necessary.

Stat. Auth.: ORS 678.285

Stats. Implemented: ORS 678.278

Hist.: BN 2-2017, f. 2-23-17, cert. ef. 3-1-17

851-052-0100

Disciplinary Action on CRNA License

The Board may deny, suspend, enforce disciplinary action on or revoke the license of a CRNA for:

(1) The causes identified in ORS 678.111(1)(a-j);

(2) Conduct derogatory to the nurse standard of practice as identified in 851-045-0070;

(3) Conduct derogatory to prescribing authority as identified in 851-056-0016; or

(4) Failure to practice within defined scope and by prevailing standards related to Registered Nurse and CRNA practice.

Stat. Auth.: ORS 678.111 & 678.150

Stats. Implemented: ORS 678.111

Hist.: BN 9-1998, f. 7-16-98, cert. ef. 9-1-98; BN 2-2017, f. 2-23-17, cert. ef. 3-1-17

Board of Optometry

Chapter 852

Rule Caption: Adoption of the Board's 2017–19 operating budget.

Adm. Order No.: OPT 4-2017

Filed with Sec. of State: 3-14-2017

Certified to be Effective: 7-1-17

Notice Publication Date: 12-1-2016

Rules Amended: 852-005-0005

Subject: The Oregon Board of Optometry hereby adopts by reference the Oregon Board of Optometry 2017–19 Biennium Budget of \$656,980 in revenues and \$773,044 in expenses covering the period from July 1, 2017 through June 30, 2019.

Rules Coordinator: Shelley Sneed—(503) 399-0662, ext. 3

852-005-0005

Budget

The Oregon Board of Optometry hereby adopts by reference the Oregon Board of Optometry 2017–19 Biennium Budget of \$656,980 in revenues and \$773,044 in expenses covering the period from July 1, 2017 through June 30, 2019. The Executive Director of the Board will amend budgeted accounts as necessary within the approved budget for the effective operation of the Board. The Board will not exceed the approved 2017–19 Biennium budget without amending this rule, notifying holders of licenses, and holding a public hearing thereon as required by ORS Chapter

182.462(1) & (2). Copies of the budget are available from the Board's office and are also posted on the Board's website.

Stat. Auth.: ORS 683 & 182

Stats. Implemented: ORS 182.462(1) & (2)

Hist.: OPT 1-1999, f. 6-4-99, cert. ef. 7-1-99; OPT 1-2001, f. 6-18-01, cert. ef. 7-1-01; OPT 1-2003, f. 6-12-03, cert. ef. 7-1-03; OPT 3-2005, f. 6-29-05, cert. ef. 7-1-05; OPT 1-2007, f. 5-21-07, cert. ef. 7-1-07; OPT 1-2009, f. 6-10-09, cert. ef. 7-1-09; OPT 1-2011, f. 6-24-11, cert. ef. 7-1-11; 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 1-2015, f. 6-25-15, cert. ef. 7-1-15; OPT 3-2016, f. & cert. ef. 9-27-16; OPT 2-2017, f. 2-14-17, cert. ef. 7-1-17; OPT 4-2017, f. 3-14-17, cert. ef. 7-1-17

Rule Caption: Updates Board rules for public records fees and adding fees for returned checks.

Adm. Order No.: OPT 5-2017

Filed with Sec. of State: 3-14-2017

Certified to be Effective: 3-14-17

Notice Publication Date: 12-1-2016

Rules Amended: 852-010-0080

Subject: Updates Board rules for public records fees and returned checks.

Rules Coordinator: Shelley Sneed—(503) 399-0662, ext. 3

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.

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(h) Return check fees or other costs associated with a returned payment to the agency will be reimbursed by the licensee, as well as a \$25 agency processing fee.

(6) Public Records Fees

(a) Photocopies of records \$.25 per page

(b) Email/electronic document fee \$5.00

(c) Staff time for records research and production after the first 15 minutes of agency staff time: Clerical time \$20.00 per hour, Executive \$50.00 per hour and AAG time is based on actual cost billed.

(d) Actual postage and other mailing costs.

(e) Actual cost of CD, disk, thumb drive or other storage device provided by agency.

(7) 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; OPT 2-2016, f. & cert. ef. 4-8-16; OPT 3-2017, f. & cert. ef. 2-14-17; OPT 5-2017, f. & cert. ef. 3-14-17

Rule Caption: Updates agency rules for business ownership, criminal records and recent graduates.

Adm. Order No.: OPT 6-2017

Filed with Sec. of State: 3-14-2017

Certified to be Effective: 3-14-17

Notice Publication Date: 12-1-2016

Rules Amended: 852-020-0045, 852-050-0001, 852-050-0025, 852-060-0025, 852-070-0010

Subject: 1) Clarifies the legal requirements for owning an optometry practice and the Board's authority to take action for an illegally structured/operated business.

2) Clarifies what work recent optometry graduates can do without a license.

3) Grants 1 hour of CE credit for taking and passing the Oregon law exam.

4) Updates the Board's background check rules to reflect new statewide rules adopted by the Oregon Department of Administrative Services (DAS). The rule changes are necessary due to House Bill 3168 (2013) and House Bill 2250 (2015). The bills gave DAS the authority to adopt statewide administrative rules for criminal records checks and require other agencies to repeal or amend their existing rules that may conflict with the statewide rules.

Rules Coordinator: Shelley Sneed—(503) 399-0662, ext. 3

852-020-0045

Requirements for Business Entity Organization

The following provisions apply to Oregon optometry practices, as defined in ORS 683.010, organizing or operating as a business entity and are in addition to the provisions for a professional corporation, limited liability company and partnership outlined in ORS Chapters 58, 63, 67, and 70.

(1) Definitions. As used in these administrative rules, unless the context requires otherwise:

(a) "Business entity" means:

(A) A professional corporation organized under ORS Chapter 58, predecessor law or comparable law of another jurisdiction;

(B) A limited liability company organized under ORS Chapter 63 or comparable law of another jurisdiction;

(C) A partnership organized in Oregon after January 1, 1998, or that is registered as a limited liability partnership, or that has elected to be governed by ORS Chapter 67 or comparable law of another jurisdiction; or

(D) A limited partnership organized under ORS Chapter 70, predecessor law or comparable law of another jurisdiction.

(b) "Majority ownership interest" means more than 50 percent of:

(A) The issued voting stock of a professional corporation;

(B) The members of a limited liability company; or

(C) Participation in the profits of a partnership.

(c) "Organizational document" means:

(A) The articles of incorporation of a professional corporation, or comparable document of another jurisdiction;

(B) The articles of organization of a limited liability company, or comparable document of another jurisdiction;

(C) The partnership agreement and, for a limited liability partnership, its registration, or comparable document(s) of another jurisdiction; or

(D) A certificate of limited partnership, or comparable document of another jurisdiction.

(d) "Owner" means a voting shareholder of a professional corporation, member of a limited liability company, or partner of a partnership.

(e) "Principal" means a person who is a director of a professional corporation, manager of a limited liability company, or general partner of a limited partnership.

(2) Requirements for business entities organized to practice optometry:

(a) The majority ownership interest must be held by optometric physicians licensed in this state to practice optometry:

(A) A majority of the principals must be optometric physicians who are licensed in this state to practice optometry;

(B) All officers except the secretary and treasurer, if any, must be optometric physicians who are licensed in this state to practice optometry. Any two or more offices may be held by the same person;

(b) A professional corporation may be a shareholder of a professional corporation organized for the purpose of practicing optometry solely for the purpose of effecting a reorganization as defined in the Internal Revenue Code;

(c) The Oregon Board of Optometry has the discretion to allow business entities to apply for a waiver of the majority ownership requirement provided full disclosure of business ownership is provided to the Board, a plan and timetable is presented for a transition to meet the requirements of this rule, and the Board finds that the health and welfare of the patient is the first priority of the optometric physicians and business entity; and

(d) Upon a finding that a holder or owner of an optometric practice has failed to comply with the provisions of this rule or the regulations prescribed by the Board pursuant to the practice of optometry, the Oregon Board of Optometry may consider the failure to comply with this rule as a violation of this rule which may subject a holder or owner to discipline pursuant to ORS 683.140.

Stat. Auth.: ORS 58, 63, 683

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

Hist.: OPT 1-2010, f. & cert. ef. 9-20-10; OPT 3-2011, f. 6-24-11, cert. ef. 7-1-11; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 1-2017, f. & cert. ef. 2-14-17; OPT 6-2017, f. & cert. ef. 3-14-17

852-050-0001

License Required

(1) Unless otherwise exempted by Oregon law, all persons practicing optometry in the state of Oregon must possess a valid, unrevoked, active status Oregon license.

(a) Optometry school graduates who have not been granted an Oregon optometry license are prohibited from the practice of optometry. When working in optometry prior to licensure, graduates may perform the work of unlicensed technicians under the supervision of a licensed optometrist, but cannot be referred to in any terms that imply being a doctor.

(2) Doctors of optometry who are not practicing in Oregon may hold an inactive status license.

(3) Those granted an inactive status license by the Board are exempt from ORS 683.100 and OAR 852-50-0016, which require the licensee to report each Oregon practice location to the Board:

(a) Inactive licensees are required to maintain a current mailing address and phone number of record with the Board. Upon written request, the Board will hold the phone number of record of an inactive licensee confidential if it is a personal number not associated with a business entity; and

(b) Inactive licensees failing to notify the Board in writing of any changes to their address or phone number of record before the change are subject to the fee listed in OAR 852-010-0080.

Stat. Auth.: ORS 683

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

Hist.: OP 3-1993, f. & cert. ef. 10-27-93; OPT 3-1998, f. 6-10-98, cert. ef. 7-1-98; 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 1-2017, f. & cert. ef. 2-14-17; OPT 6-2017, f. & cert. ef. 3-14-17

852-050-0025

State Criminal Records Check and Fitness Determination

(1) The purpose of this rule 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.

ADMINISTRATIVE RULES

(2) The Board may require legible fingerprints for the purpose of a criminal records check and fitness determination of all applicants and licensees including:

- (a) Applicants for a license;
- (b) Licensees applying to reactivate a license;
- (c) Licensees applying to reinstate a license,
- (d) Licenses applying to renew a license
- (e) Licensees renewing a license; and
- (f) Licensees under investigation.

(3) Criminal records checks and fitness determinations are conducted according to ORS 181A.170 to 181A.215, 670.280 and OAR 125-007-0200 to 127-007-0310.

(a) The Board will request the Oregon Department of State Police to conduct state and nationwide criminal records checks. Any original fingerprint cards will subsequently be destroyed.

(b) All background checks must include available state and national data, unless obtaining one or the other is an acceptable alternative to the Board.

(c) The applicant or licensee must disclose all arrests, charges, and convictions regardless of the outcome or date of occurrence. Disclosure includes any military or set aside criminal records.

(d) The Board may require additional information from the applicant or licensee, such as, but not limited to, proof of identity, previous names, residential history or additional criminal, judicial or other background information.

(4) If the applicant or licensee has potentially disqualifying criminal offender information, the Board will consider the following factors in making the fitness determination:

- (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;
- (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 recommendation of an employer;
- (e) Any false statements or omissions made by the applicant or licensee; and
- (f) Any other pertinent information obtained as part of an investigation.

(5) The Board will make a fitness determination consistent with the outcomes provided in OAR 125-007-0260.

(a) A fitness determination approval does not guarantee the granting or renewal of a license.

(b) A restricted or conditional approval may necessitate probation, conditions, limitation, or other restrictions on licensure.

(c) A denial prohibits the applicant from being granted a license or prohibits the licensee from holding a license.

(d) An incomplete fitness determination results if the applicant or licensee refuses to consent to the criminal history check, refuses to be fingerprinted or respond to written correspondence, or discontinues the criminal records process for any reason. Incomplete fitness determinations may not be appealed.

(6) Criminal offender information is confidential. Dissemination of information received under ORS 181.534 is only to people with a demonstrated and legitimate need to know the information. The information is part of the investigation of an applicant or licensee and as such is confidential pursuant to 676.175(1).

(7) The Board will permit the individual for whom a fingerprint-based criminal records check was conducted to inspect the individual's own state and national criminal offender records and, if requested by the subject individual, provide the individual with a copy of the individual's own state and national criminal offender records.

(8) An applicant or licensee may appeal a final fitness determination pursuant to OAR 125-007-0300. Challenges to the accuracy or complete-

ness of criminal history information must be made in accordance with OAR 125-007-0300(7).

(9) The applicant or licensee must pay a criminal records check fee for the cost of acquiring and furnishing the criminal offender information per OAR 852-010-0080(5)(g).

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; OPT 2-2016, f. & cert. ef. 4-8-16; OPT 1-2017, f. & cert. ef. 2-14-17; OPT 6-2017, f. & cert. ef. 3-14-17

852-060-0025

Disciplinary Action

(1) When disciplining an optometric physician or any other person, the Oregon Board of Optometry may do any of the following:

- (a) Deny an initial license;
- (b) Suspend, refuse to renew or revoke a license;
- (c) Impose probation on any licensee;
- (d) Limit the practice of any licensee; and
- (e) Take other disciplinary action as the Board in its discretion finds proper, including the assessment of the costs of the disciplinary proceedings as a civil penalty, the assessment of a civil penalty not to exceed \$10,000 for each violation, or both.

(2) The Board may discipline any optometric physician or person, where appropriate, for the following causes:

(a) Conviction of a felony or misdemeanor where such an offense bears a demonstrable relationship to the duties of an optometric physician. The record of conviction, or a copy thereof certified by the clerk of the court or by the judge in whose court the conviction is held, is conclusive evidence of such conviction;

- (b) Practicing optometry without a license;
- (c) Securing a license by practicing fraud or deceit upon the Board;
- (d) Unprofessional conduct;
- (e) Gross ignorance or inefficiency in the practice of optometry;
- (f) Failing to comply with the requirements of continuing education;
- (g) Obtaining any fee by fraud or misrepresentation;
- (h) Employing directly or indirectly any suspended or unlicensed optometrist to perform any work covered by ORS 683.010 to 683.335;
- (i) Advertising optometric services or treatment or advice in which untruthful, improbable, misleading or deceitful statements are made;
- (j) Habitual, excessive or unlawful use of intoxicants, drugs or controlled substances;

- (k) Permitting another person to use the optometrist's license;
- (l) Using advertisements that do not indicate that a licensed optometrist is practicing at the advertised location or locations or advertising optometric services without having a licensed optometrist at the location or locations;

(m) Advertising professional methods or professional superiority;

(n) Violating the federal Controlled Substances Act;

(o) Prescribing controlled substances without a legitimate optometric purpose, or without following accepted procedures for examination of patients or for record keeping;

(p) Failing to report to the Board within 10 calendar days any adverse action taken against the optometrist or person by another licensing jurisdiction, health regulatory board, peer review body, health care institution, professional optometric society or association, governmental agency, law enforcement agency or court for acts similar to conduct that would constitute grounds for disciplinary action as described in this section;

(q) Having been disciplined by any health regulatory board of another state based on acts similar to acts described in this section. A certified copy of the record of disciplinary action is considered conclusive evidence of the action;

- (r) Any violation of the provisions of ORS 683.010 to 683.335; or
- (s) Practicing optometry in a location not reported to the Board.
- (t) Failing to report the suspected prohibited or unprofessional conduct of another health care licensee to the appropriate board within 10 working days as required in ORS 676.150 and 683.340.

(u) Operating a business that violates the requirements of OAR 852-020-0045.

(3) The Board must report all disciplinary action taken by the Board to the National Practitioner Data Bank.

Stat. Auth.: ORS 683, 182

Stats. Implemented: ORS 683.140, 683.180, 683.270, 683.990 & 182.466

Hist.: OE 2, f. 12-5-57; OE 14, f. 2-20-73, ef. 3-1-73; OE 1-1979, f. & ef. 3-8-79; 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 2-1992, f. & cert. ef. 10-21-92; OPT 1-2001, f. 6-18-01, cert. ef. 7-1-01; OPT 1-2003, f. 6-12-03, cert. ef. 7-1-03; Renumbered from 852-010-0025, OPT 4-2005, f. & cert. ef. 12-8-05; OPT 1-2013,

ADMINISTRATIVE RULES

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 1-2017, f. & cert. ef. 2-14-17; OPT 6-2017, f. & cert. ef. 3-14-17

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 (TMO). 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. One hour of law/ethics credit is granted for passing the Oregon law exam.

(4) One hour of Board approved cultural competency continuing education may be used toward satisfying the required number of non-TMO 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; OPT 1-2017, f. & cert. ef. 2-14-17; OPT 6-2017, f. & cert. ef. 3-14-17

Board of Pharmacy Chapter 855

Rule Caption: Rules deleted, amended or adopted in Divisions 007, 019, 041, 044 and 080.

Adm. Order No.: BP 1-2017

Filed with Sec. of State: 2-23-2017

Certified to be Effective: 2-23-17

Notice Publication Date: 2-1-2017

Rules Adopted: 855-019-0123, 855-041-1046

Rules Amended: 855-007-0060, 855-041-1001, 855-041-1036, 855-041-5005, 855-041-1010, 855-041-1045, 855-080-0105, 855-041-4100, 855-041-4120, 855-044-0001, 855-044-0030

Subject: Div. 007 and Div. 041 - The amended rule relates to the registration and regulation of Drug Rooms. The rules (1) describe oversight of long-term storage of state and federal emergency medications in a Drug Room (2) clarify that secondary storage areas related to Retail Pharmacies that can register as a Drug Room; and (3) allow a Drug Room to be affiliated with an Institutional Pharmacy.

Div. 019 - The rules add a no cost legislatively approved registration for liability limitations for pharmacist volunteers. A pharmacist who is registered and who provides health care services without compensation is not liable for any injury, death, or other loss

arising out of the provision of those services, unless the injury, death or other loss results from the gross negligence of the pharmacist.

855-041-1010 - The amendments add a requirement for outlets to notify the Board within 10 days of a Board licensee's termination or resignation in lieu of termination.

Div. 041 - The rules put forth the requirements for a pharmacy to lawfully participate in Drug Take Back initiatives.

Div. 041 - The rules for the Remote Dispensing Machine (RDM) allow use of new technology in licensed residential facilities.

Div. 044 - The rules incorporate new statutory language put forth by Senate Bill 1514 (2016). The rules (1) clarify that this is an Oregon specific program that allows donations and distribution of donated drugs within Oregon; and (2) prohibits a Charitable Pharmacy from accepting an FDA REMS drugs.

Complete text of the proposed rules is available on the Board's website at www.pharmacy.state.or.us.

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

855-007-0060

SNS and State Stockpile Emergency Drugs

(1) General: When drugs from the Strategic National Stockpile (SNS) are delivered to the state, the drugs may be delivered to a state Receipt, Staging and Storage center (RSS) for further distribution to Points of Dispensing (PODs) selected by OSPHD. State drugs (state stockpile) may also be delivered to the RSS.

(2) Temporary storage of drugs from SNS or state stockpile:

(a) The RSS, PODs and local health departments (LHD) are authorized to store any drugs from the SNS or state stockpile prior to and during an emergency without any registration from the Board.

(b) All such drugs must be stored in accordance with manufacturers' guidelines.

(c) This authority to possess drugs shall extend beyond the declared emergency until procedures issued by OSPHD for the return or destruction of unused drugs have been completed.

(3) A long-term drug storage area for state and federal emergency medications not otherwise registered as a drug outlet must be approved by the Board, comply with storage and security requirements, and register as a Drug Room.

Stat. Auth.: ORS 401.065, 433.441 & 689.205

Stats. Implemented: ORS 689.155

Hist.: BP 4-2008(Temp), f. 12-31-08, cert. ef. 1-5-09 thru 7-3-09; BP 1-2009, f. & cert. ef. 6-22-09; BP 4-2009, f. & cert. ef. 12-24-09; BP 1-2017, f. & cert. ef. 2-23-17

855-019-0123

Liability Limitations for Volunteers

(1) A pharmacist may register with the Board for the limitation on liability provided by ORS 676.340, which provides a licensee with specific exemptions from liability for the provision of pharmacy services without compensation under the terms of the law.

(2) A no cost registration may be issued by the Board upon receipt of a completed application. Registration requires submission of a signed form provided by the Board in accordance with ORS 676.345(2).

(3) Registration will expire at the licensee's next license renewal date and may be renewed biennially. It is the licensee's responsibility to ensure his or her active registration in this program.

(4) Nothing in this section relieves licensee from the responsibility to comply with Board regulations and still may be subject to disciplinary actions.

(5) Pharmacists providing care under the provisions of ORS 676.340 and 676.345 remain subject to the Board complaint investigation process articulated in ORS 676.175.

Stat. Auth.: ORS 676.340, 689.205

Stats. Implemented: ORS 676.340, 676.345

Hist.: BP 1-2017, f. & cert. ef. 2-23-17

855-041-1001

Definitions

(1) "Biological product" means, with respect to the prevention, treatment or cure of a disease or condition of human beings, a virus, therapeutic serum, toxin, antitoxin, vaccine, blood, blood component, blood derivative, allergenic product, protein other than a chemically synthesized polypeptide, analogous products or arsenamine or any other trivalent organic arsenic compound.

(2) "Biosimilar product" means a biological product licensed by the United States Food and Drug Administration pursuant to 42 U.S.C. 262(k)(3)(A)(i).

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(3) "Drug room" is a drug storage area registered with the Board which is secure and lockable.

(4) "Interchangeable" means, in reference to a biological product, that the United States Food and Drug Administration has determined that a biosimilar product meets the safety standards set forth in 42 U.S.C. 262(k)(4).

(5) "Reference biological product" means the biological product licensed pursuant to 42 U.S.C. 262(a) against which a biological product is evaluated in an application submitted to the United States Food and Drug Administration for licensure of a biological product as a biosimilar product or for determination that a biosimilar product is interchangeable.

Stat. Auth.: ORS 689.205 & 689.522

Stats. Implemented: ORS 689.155 & 342, 689.522

Hist.: BP 2-2014, f. & cert. ef. 1-24-14; BP 1-2017, f. & cert. ef. 2-23-17

855-041-1010

Personnel (Both Retail and Institutional Drug Outlets)

(1) Each pharmacy must have one pharmacist-in-charge employed on a regular basis at that location who shall be responsible for the daily operation of the pharmacy. The pharmacist-in-charge shall be indicated on the application for a new or relocated pharmacy and for pharmacy renewal registration.

(2) A resident pharmacy that terminates or allows a Board licensee to resign in lieu of termination must report the termination or resignation to the Board within 10 working days.

(3) A pharmacy must ensure that it is in compliance with all state and federal laws and rules governing the practice of pharmacy.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.151, 689.155, 689.305

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; 1PB 3-1986, f. & ef. 12-8-86; PB 10-1987, f. & ef. 12-8-87; PB 9-1989, f. & cert. ef. 7-20-89; PB 4-1992, f. & cert. ef. 8-25-92; PB 1-1994, f. & cert. ef. 2-2-94; PB 1-1995, f. & cert. ef. 4-27-95; PB 1-1996, f. & cert. ef. 4-5-96; BP 1-2001, f. & cert. ef. 3-5-01; BP 2-2008, f. & cert. ef. 2-20-08; Renumbered from 855-041-0020, BP 7-2012, f. & cert. ef. 12-17-12; BP 1-2017, f. & cert. ef. 2-23-17

855-041-1036

Proper Storage of Drugs

(1) A pharmacy must maintain proper storage of all drugs. This includes, but is not limited to the following:

(a) All drugs must be stored according to manufacturer's published or USP guidelines.

(b) All drugs must be stored in appropriate conditions of temperature, light, humidity, sanitation, ventilation, and space.

(c) Appropriate storage conditions must be provided for, including during transfers between facilities and to patients.

(d) A pharmacy must quarantine drugs which are outdated, adulterated, misbranded or suspect. Cold Storage and Monitoring.

(2) A pharmacy must store all drugs at the proper temperature according to manufacturer's published guidelines (pursuant to FDA package insert or USP guidelines).

(a) All drug refrigeration systems must:

(A) Maintain refrigerated products between 2 to 8 °C (35 to 46 °F); frozen products between -25 to -10 °C (-13 to 14 °F); or as specified by the manufacturer.

(B) Utilize a centrally placed, accurate, and calibrated thermometer;

(C) Be dedicated to pharmaceuticals only; and

(D) Be measured continuously and documented either manually twice daily to include minimum, maximum and current temperatures; or with an automated system capable of creating a producible history of temperature readings.

(b) A pharmacy must adhere to a monitoring plan, which includes, but is not limited to:

(A) Documentation of training of all personnel;

(B) Maintenance of manufacturer recommended calibration of thermometers;

(C) Maintenance of records of temperature logs for a minimum of three years;

(D) Documentation of excursion detail, including, but not limited to, event date and name of persons(s) involved in excursion responses;

(E) Documentation of action(s) taken, including decision to quarantine product for destruction, or determination that it is safe for continued use. This documentation must include details of the information source;

(F) A written emergency action plan; and

(G) Routine preventative maintenance and evaluation of refrigeration equipment and monitoring equipment.

(3) Vaccine Drug Storage:

(a) A pharmacy that stores vaccines must comply with section two of this rule and the following:

(A) Vaccines must be stored in the temperature stable sections of the refrigerator;

(B) A centrally placed and accurate buffered probe thermometer, such as glycol or glass beads, calibrated within a plus or minus 0.5 °C variance must be utilized;

(C) Each freezer and refrigerator compartment must have its own exterior door and independent thermostat control;

(D) A system of continuous temperature monitoring with automated data logging and physical confirmation must be utilized. Documentation of the temperature of each active storage unit must be logged at least twice daily, data must be downloaded weekly, and system validations must be conducted quarterly; and

(E) Must adhere to a written quality assurance process to avoid temperature excursions.

(4) A retail drug outlet may store drugs in another location that is registered as a Drug Room and meets all Pharmacy drug storage and security requirements.

Stat. Auth.: ORS 689.205, 689.325

Stats. Implemented: ORS 689.155

Hist.: BP 3-2015, f. 7-1-15, cert. ef. 1-1-16; BP 1-2017, f. & cert. ef. 2-23-17

855-041-1045

Returned Drugs and Devices

(1) Pharmacists, pharmacies, pharmacy technicians, and certified pharmacy technicians may only accept the return of controlled substances upon receiving a waiver from the Board of Pharmacy.

(2) Pharmacists, pharmacies, pharmacy technicians, and certified pharmacy technicians may accept the return of drugs or devices as defined by ORS 689.005 once the drugs or devices have been removed from the pharmacy only if:

(a) The drugs or devices are accepted for destruction or disposal and;

(b) The drugs or devices were dispensed in error, were defective, adulterated, misbranded, dispensed beyond their expiration date, were unable to be delivered to the patient, or are subject of a drug or device recall; or

(c) After consultation, a pharmacist determines that, in the pharmacist's professional judgment, harm could result to the public or a patient if the drugs or devices were not accepted for return.

(3) Notwithstanding section 2 of this rule, drugs or devices previously dispensed or distributed may be returned and redispensed or redistributed provided all the following conditions are met:

(a) The drug is in an unopened, tamper-evident unit;

(b) The drugs or devices have remained at all times in control of a person trained and knowledgeable in the storage and administration of drugs in long term care facilities or supervised living groups using the services of a consultant pharmacist;

(c) The drug or device has not been adulterated or misbranded and has been stored under conditions meeting United States Pharmacopeia standards.

(4) Upon written request, the Board may waive any of the requirements of this rule if a waiver will further public health or safety or the health and safety of a patient. A waiver granted under this section shall only be effective when it is issued by the Board in writing.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.305

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; 1PB 1-1981(Temp), f. & ef. 4-1-81; 1PB 2-1981, f. & ef. 8-20-81; PB 5-1989, f. & cert. ef. 1-30-89; PB 8-1990, f. & cert. ef. 12-5-90; BP 2-2006, f. & cert. ef. 6-9-06; Renumbered from 855-041-0080, BP 7-2012, f. & cert. ef. 12-17-12; BP 1-2017, f. & cert. ef. 2-23-17

855-041-1046

Secure and Responsible Drug Disposal

(1) A pharmacy registered with the DEA as an authorized collector may collect controlled and non-controlled drugs for destruction in accordance with all applicable federal laws.

(2) A pharmacy that operates a drug take-back collection program shall notify the Board in writing prior to initiating the program and shall establish and enforce policies and procedures, including but not limited to:

(a) Provision of secure location of the collection receptacle, which must be accessible to the public and cannot be placed behind the pharmacy counter; and

(b) Provision of adequate security measures, including proper installation and maintenance of collection receptacle, tracking of liners, and key accountability; and

(c) Personnel training and accountability.

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(3) Pharmacy personnel shall not count, sort, inventory, or otherwise handle drugs collected.

(4) A pharmacy shall not dispose of quarantined, recalled or outdated drugs from pharmacy stock in a collection receptacle.

(5) A pharmacy shall maintain disposal records for a minimum of 3 years.

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.305
Hist.: BP 1-2017, f. & cert. ef. 2-23-17

855-041-4100

Definitions

(1) "Automated Pharmacy System" (APS) means a mechanical system that performs operations or activities, including but not limited to, those related to the storage, packaging, dispensing, or distribution of medications, but not including compounding or administration, and that collects, controls, and maintains all transaction information.

(2) "Remote Dispensing Facility" (RDF) means a facility where drugs are prepared for administration and where requisite pharmacist supervision is provided remotely as approved by the Board.

(3) "Remote Dispensing Machine" (RDM) means a component of an Automated Pharmacy System that contains drugs for dispensing.

(4) "Responsible Pharmacy" means the licensed pharmacy that is responsible for the APS, and RDM.

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.155
Hist.: BP 2-2005, f. 2-14-05, cert. ef. 3-1-05; BP 9-2010(Temp), f. & cert. ef. 7-9-10 thru 12-24-10; Administrative correction 1-25-11; BP 3-2011, f. & cert. ef. 4-18-11; Renumbered from 855-041-0600, BP 7-2012, f. & cert. ef. 12-17-12; BP 1-2017, f. & cert. ef. 2-23-17

855-041-4120

Drug Delivery and Control

(1) Each RDM must be registered with the Board, under the control of and connected via computer with a Responsible Pharmacy, but not located in a pharmacy. RDMs must be used only in settings with an established program of pharmaceutical care that ensures prescription orders are reviewed by a pharmacist before release to the patient. The Responsible Pharmacy must establish the policies and procedures necessary to fulfill the requirements of all applicable state and federal laws and regulations.

(2) The following must be conspicuously displayed at the site of the RDM:

- (a) RDM license;
- (b) DEA registration if required;
- (c) A certified copy of the Responsible Pharmacy license; and
- (d) A certified copy of the Pharmacist-In-Charge license.

(3) Documentation as to type of equipment, serial numbers, content, policies and procedures, and location shall be maintained in the pharmacy for review by the board. Such documentation must include, but is not limited to:

- (a) Location of RDM(s);
- (b) Manufacturer's name and model for each RDM;
- (c) Description of how the RDM is used;
- (d) Quality assurance procedures to determine continued appropriate use of the automated device; and

(e) Policies and procedures for training of appropriate personnel, system operation, safety, security, accuracy, patient confidentiality, oral counseling by a pharmacist or pharmacist-intern, access, and malfunction.

(4) Policies and procedures addressing the operation of the RDM must be maintained in the pharmacy responsible for the APS and at the location at which the RDM has been installed.

(5) All events involving the contents of the RDM must be recorded electronically. Records must be maintained by the pharmacy for a minimum of three years and must be readily available to the Board. Such records shall include:

- (a) Identity of RDM accessed;
- (b) Identification of the individual accessing the RDM;
- (c) Type of transaction;
- (d) Date and time of transaction;
- (e) Name, strength, dosage form, and quantity of the drug accessed;
- (f) Name of the patient for whom the drug was ordered;
- (g) Name of the prescribing practitioner
- (h) Such additional information as the pharmacist-in-charge may deem necessary; and

(6) Only an Oregon Licensed Pharmacist or Technician may have access to the RDM, except that a Registered Nurse, upon approval by the Board, may have access to the RDM.

(7) Only an Oregon licensed Pharmacist or Technician may stock medications in the RDM, except that a Registered Nurse, upon approval by the Board, may stock medications in the RDM.

(8) All containers of medications stored in the RDM shall be packaged and labeled in accordance with state and federal laws and regulations, including OAR 855-041-1130.

(9) All aspects of handling controlled substances shall meet the requirements of all state and federal laws and regulations.

(10) Oral counseling, as required by OAR 855-019-0230, shall be provided by the pharmacist at the time of dispensing by a two-way audio and video hookup with the Responsible Pharmacy.

(11) The Automated Pharmacy Systems shall provide a mechanism for securing and accounting for wasted, discarded or unused medications in accordance with existing state and federal laws and regulations.

(12) The RDM must be clearly marked with the name, address, and phone number of the Responsible Pharmacy and Pharmacist-In-Charge.

(13) A Responsible Pharmacy located outside of Oregon that operates a RDM in Oregon must be currently licensed and in good standing in Oregon. The Pharmacist-In-Charge must also be currently licensed and in good-standing both in Oregon and in the state in which the Responsible Pharmacy is located.

(14) A Responsible Pharmacy may apply for the use of an RDM in a licensed residential facility that it provides services to, but only when the facility provides 24 hour nursing care.

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.205
Hist.: BP 2-2005, f. 2-14-05, cert. ef. 3-1-05; Renumbered from 855-041-0620, BP 7-2012, f. & cert. ef. 12-17-12; BP 1-2017, f. & cert. ef. 2-23-17

855-041-5005

Definitions

For purposes of these rules, OAR 855-041-5000 through 855-041-9999 the following definitions apply:

(1) "Institutional Facility" means a hospital or other health care facility which is an inpatient care facility referred to in ORS 442.015, which includes long-term care facilities and special inpatient care facilities, and such facility is licensed by the appropriate state agency. For the purpose of this rule, an Institutional Facility is a Residential Drug Outlet.

(2) "Institutional Pharmacy" means a pharmacy where medications are dispensed to other health care professionals for administration to institutionalized patients served by an institutional facility, and which is:

- (a) Located within the institutional facility;
- (b) Located outside the facility but provides pharmaceutical services to institutionalized patients; and

(c) For the purpose of this rule, an Institutional Pharmacy is a Residential Pharmacy.

(3) "Drug Room" means a secure and lockable location within a facility that does not have a pharmacy and is a Board approved location associated with a licensed institutional pharmacy.

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.151, 689.155, 689.305
Hist.: 1PB 2-1980, f. & ef. 4-3-80; PB 8-1990, f. & cert. ef. 12-5-90; Renumbered from 855-041-0105 by BP 1-2012, f. 4-26-12, cert. ef. 5-1-12; BP 1-2017, f. & cert. ef. 2-23-17

855-044-0001

Purpose

The purpose of the program is to provide a process to make donated prescription drugs available to needy or uninsured individuals and those with limited access to pharmaceuticals. Under the rules in this Division, a Charitable Pharmacy that is registered with the Oregon Board of Pharmacy (Board) may accept drugs for donation and distribution within this state when the pharmacist can reasonably be assured of the purity and integrity of the drug. The program may not include categories of drugs specified by the Board as excluded from the program.

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.772 & 689.774
Hist.: BP 6-2010, f. & cert. ef. 6-29-10; BP 1-2017, f. & cert. ef. 2-23-17

855-044-0030

Drug Donation

(1) A charitable pharmacy may not accept:

- (a) Any controlled substance or any kit, package or blister pack that contains any controlled substance;
- (b) A non-prescription drug;
- (c) A drug in a container or package that does not contain a product identification label (PIL), except that a drug in a manufacturer's original container or a manufacturer's blister pack does not need to bear a PIL;
- (d) An FDA REMS (Risk Evaluation and Mitigation Strategy) drug;

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- (e) A drug donated from another state.
- (2) A charitable pharmacy may accept:
 - (a) A prescription drug received in original, sealed, tamper-evident packaging that displays the lot number and expiration date of the drug; and
 - (b) Sealed single unit dose packages received in opened packages containing multiple single unit doses.
 - (3) The following are examples of acceptable packaging:
 - (a) Manufacturer's original container;
 - (b) Single-dose blister packs in sealed outer package;
 - (c) Single-dose blister packs in opened outer package;
 - (d) Tamper-evident hospice kit containing manufacturer's original containers.
 - (4) Donated drugs that do not meet the above criteria or are judged by the pharmacist to be unsafe for re-dispensing must be stored separately from the drug supply until they can be destroyed.
 - (5) A charitable pharmacy may accept a drug from:
 - (a) An individual;
 - (b) A long-term care facility;
 - (c) A pharmacy;
 - (d) A practitioner who has been given dispensing privileges by their licensing board and is acting within their scope of practice;
 - (e) Another registered charitable pharmacy;
 - (f) A medical clinic;
 - (g) A drug manufacturer or wholesaler;
 - (h) A Medication Assistance Program (MAP) such as those supported by drug manufacturers.
 - (6) The donor must certify on a Donor Form provided by the Board that the donated drug has been properly stored, in accordance with manufacturer's recommendations, and has never been opened, used, adulterated or misbranded.
 - (7) Upon written request, the Board may waive any of the requirements of this rule if a waiver will further public health and safety. A waiver granted under this section shall only be effective when it is issued in writing.

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.772 & 689.774
Hist.: BP 6-2010, f. & cert. ef. 6-29-10; BP 1-2017, f. & cert. ef. 2-23-17

855-080-0105

Disposal of Drugs

- (1) Drugs that are outdated, damaged, deteriorated, misbranded, or adulterated shall be quarantined and physically separated from other drugs until they are destroyed or returned to their supplier.
- (2) Controlled substances which are expired, deteriorated or unwanted shall be disposed of in conformance with 21 CFR 1317.
- (3) Expired, deteriorated, discontinued, or unwanted controlled substances in a long-term care facility shall be destroyed and the destruction jointly witnessed on the premises by any two of the following:
 - (a) The consultant pharmacist or registered nurse designee.
 - (b) The Director of Nursing Services or supervising nurse designee
 - (c) The administrator of the facility or an administrative designee
 - (d) A Registered Nurse employed by the facility
- (4) The destruction shall be documented and signed by the witnesses and the document retained at the facility for a period of at least three years. Copies of the document shall be sent to the consultant pharmacist. Any destruction of controlled substances deviating from this procedure must be approved by the Board prior to implementation.
- (5) Upon written request, the Board may waive any of the requirements of this rule if a waiver will further public health or safety or the health and safety of a patient. A waiver granted under this section shall only be effective when it is issued by the Board in writing.

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.305
Hist.: 1PB 2-1984, f. & ef. 3-7-84; PB 1-1989, f. & cert. ef. 1-3-89; PB 1-1990, f. & cert. ef. 1-23-90; PB 1-1992, f. & cert. ef. 1-31-92 (and corrected 2-7-92); PB 1-1996, f. & cert. ef. 4-5-96; BP 4-2006, f. 6-9-06, cert. ef. 7-1-06; BP 8-2010, f. & cert. ef. 6-29-10; BP 1-2017, f. & cert. ef. 2-23-17

Board of Psychologist Examiners
Chapter 858

Rule Caption: Criminal record checks and fitness determinations for licensure.

Adm. Order No.: BPE 1-2017

Filed with Sec. of State: 2-16-2017

Certified to be Effective: 2-16-17

Notice Publication Date: 11-1-2016

Rules Amended: 858-010-0034

Subject: This amendment modifies the Board's rule regarding criminal records checks and fitness determinations. It updates criminal records check procedures and implements the statewide uniform fitness determination process and criminal records administrative rules. This includes factors the Board considers as part of fitness determination, how a subject individual may appeal an adverse determination, confidentiality of criminal offender information, and consequence for failure to comply per law.

Rules Coordinator: LaRee' Felton—(503) 373-1196

858-010-0034

Criminal Records Checks and Fitness Determinations

(1) The purpose of this rule is to provide for the reasonable screening of licensees and applicants for licensure to determine if they have a history of criminal behavior and are not fit to hold a license that is issued by the Board.

(2) The following persons ("subject individuals") must take the steps necessary to complete a nationwide criminal records check under ORS 181A.195:

(a) All applicants for a psychologist or psychologist associate license; and

(b) Licensees under investigation by the Board, when the Board has a rational reason to determine if the licensee has a history of criminal behavior.

(3) To complete a criminal records check, each subject individual must:

(a) Respond completely and truthfully to all of the Board's character and fitness questions;

(b) Provide fingerprints pursuant to ORS 181A.170 (additional fingerprints may be required if the initial fingerprints are rejected);

(c) Provide personal information necessary to obtain the criminal records check pursuant to OAR 125-007-0220; and

(d) Pay to the Board the actual cost of acquiring and furnishing the criminal offender information.

(4) Any original fingerprint cards will subsequently be destroyed in accordance with ORS 181A.195.

(5) The Board will make a final fitness determination based on criminal offender information and any other pertinent information obtained by the Board, including any false statements or omissions made by the subject individual, and other factors pursuant to ORS 181A.195(10)(d) and OAR 125-007-0260 to 125-007-0270. The Board may make a fitness determination conditional upon the subject individual's acceptance of probation, conditions, limitations, or other restrictions upon licensure.

(6) If a subject individual refuses to consent to the criminal records check or refuses to be fingerprinted, the Board will deny the licensure application or revoke the license.

(7) Criminal offender information is confidential and will not be disseminated by the Board except to persons with a demonstrated and legitimate need to know the information, including:

(a) The Board will permit the subject individual to inspect their own state and national criminal offender records and, if requested, provide the subject individual with a copy of their own state and national criminal offender records.

(b) Criminal records information may be used as exhibits during a contested case hearing process.

(8) A subject individual may appeal an adverse final fitness determination pursuant to OAR 125-007-0300. Challenges to the accuracy or completeness of criminal records information must be made to the reporting agency and not to the Board or through the contested case process.

(9) If the subject individual successfully contests the accuracy or completeness of criminal records information, the Board will conduct a new criminal records check and re-evaluate the fitness determination.

Stat. Auth.: ORS 181A.195, 676.303, 675.070
Stats. Implemented: ORS 181A.170, 181A.195, 181A.215, 670.280, 676.303, 675.070
Hist.: BPE 1-2010, f. & cert. ef. 1-8-10; BPE 2-2010, f. & cert. ef. 9-28-10; BPE 1-2017, f. & cert. ef. 2-16-17

Bureau of Labor and Industries
Chapter 839

Rule Caption: Amends the prevailing rates of wages for the period beginning April 1, 2017

Adm. Order No.: BLI 1-2017

Filed with Sec. of State: 3-15-2017

ADMINISTRATIVE RULES

Certified to be Effective: 4-1-17

Notice Publication Date: 3-1-2017

Rules Amended: 839-025-0700

Subject: The amended rule amends the prevailing rates of wage as determined by the Commissioner of the Bureau of Labor and Industries for the period beginning April 1, 2017.

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

839-025-0700

Prevailing Wage Rate Determination/Amendments to Determination

(1) Pursuant to ORS 279C.815, the Commissioner of the Bureau of Labor and Industries has determined that the wage rates stated in the publication of the Bureau of Labor and Industries entitled *Prevailing Wage Rates on Public Works Contracts in Oregon* dated January 1, 2017, are the prevailing rates of wage for workers upon public works in each trade or occupation in the locality where work is performed for the period beginning January 1, 2017, and the effective dates of the applicable special wage determination and rates amendments: Amendments to Oregon Determination 2017-01 (effective April 1, 2017).

(2) Copies of *Prevailing Wage Rates on Public Works Contracts in Oregon* dated January 1, 2017, are available from any office of the Wage and Hour Division of the Bureau of Labor and Industries. The offices are located in Eugene, Portland and Salem. Copies are also available on the bureau's webpage at www.oregon.gov/boli or may be obtained from the Prevailing Wage Rate Coordinator, Prevailing Wage Rate Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 NE Oregon Street #1045, Portland, Oregon 97232; (971) 673-0839.

Stat. Auth.: ORS 279C.815, 651.060

Stats. Implemented: ORS 279C.815

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

f. 9-30-13, cert. ef. 10-1-13; BLI 5-2013, f. 12-16-13, cert. ef. 1-1-14; BLI 3-2014, f. & cert. ef. 4-2-14; BLI 8-2014, f. 6-13-14, cert. ef. 7-1-14; BLI 11-2014, f. 9-24-14, cert. ef. 10-1-14; BLI 15-2014, f. 12-9-14, cert. ef. 1-1-15; BLI 3-2015, f. 3-13-15, cert. ef. 4-1-15; BLI 7-2015, f. 6-15-15, cert. ef. 7-1-15; BLI 13-2015, f. 9-3-15, cert. ef. 10-1-15; BLI 17-2015, f. 12-10-15, cert. ef. 1-1-16; BLI 1-2016, f. 3-25-16, cert. ef. 4-1-16; BLI 3-2016, f. 6-10-16, cert. ef. 7-1-16; BLI 5-2016, f. & cert. ef. 8-16-16; BLI 7-2016, f. 9-13-16, cert. ef. 10-1-16; BLI 8-2016, f. & cert. ef. 10-7-16; BLI 11-2016, f. 12-16-16, cert. ef. 1-1-17; BLI 1-2017, f. 3-15-17, cert. ef. 4-1-17

Columbia River Gorge Commission Chapter 350

Rule Caption: Adoption of Legal Descriptions for Urban Areas Designated in CRGNSA Act, 16 U.S.C. § 544b(e)

Adm. Order No.: CRGC 1-2017

Filed with Sec. of State: 2-27-2017

Certified to be Effective: 4-1-17

Notice Publication Date: 1-1-2017

Rules Adopted: 350-010-0000, 350-010-0010, 350-010-0020, 350-010-0030, 350-010-0040, 350-010-0050

Rules Repealed: 350-081-0017

Subject: This rule adopts legal descriptions for the urban areas designated in the Columbia River Gorge National Scenic Area, 16 U.S.C. § 544b(e). The rule does not change the National Scenic Area Act—it is, in effect, an interpretation of the National Scenic Area Act. The rule will provide greater certainty for landowners and land managers about the precise location of the urban areas. Where the legal descriptions differ from a prior interpretation of an urban area boundary, the legal description supersedes the prior interpretation. Existing uses based on a prior interpretation will be managed in accordance with the existing uses provisions of the Commission's management plan and county land use ordinances administering the plan. The rule does not change any urban area boundary; changes to urban area boundaries may only occur in accordance with 16 U.S.C. § 544b(f) (commonly referred to as "4(f)").

Rules Coordinator: Nancy A. Andring—(509) 493-3323, ext. 221

350-010-0000

Purpose

(1) This division adopts a Legal Description of each of the thirteen urban areas designated in the Columbia River Gorge National Scenic Area Act ("National Scenic Area Act" or "Act"). This division may be expanded in the future to include legal descriptions of the exterior boundary of the National Scenic Area and of the boundaries of the special management areas designated in the Act.

(2) The maps that Congress enacted as part of the National Scenic Area Act in 1986 were not drawn to cartographic or surveying standards. Congress did not provide any legal description of other documentation accompanying the maps. Different maps enacted in section 4(e) and sections 4(a) and 4(c) of the National Scenic Area Act differ and conflict. Subsequently, in 1987, the U.S. Forest Service prepared new maps addressing many of the issues with the maps that Congress enacted. The U.S. Forest Service did not provide any legal description, and provided only limited documentation accompanying the maps. The Commission, U.S. Forest Service, and others have used the 1987 maps almost exclusively for administration of the National Scenic Area Act. The Commission has experienced many situations in which the maps that Congress enacted were drawn to a scale that is too coarse for precision decision making at a parcel level. In addition, improvements in geographic information systems and locational technology have made the identification of precise boundaries more readily available; thus landowners and others involved in land planning expect more precise identification of boundaries established by the National Scenic Area Act.

(3) This rule promotes the efficient and reasonable administration of the National Scenic Act and affords interested persons notice of the Commission's interpretation of the maps referenced in section 4(e) of the National Scenic Area Act. This rule shall be applied to carry out these objectives.

Stat. Auth.: ORS 196.150; RCW 34.97.015; 16 U.S.C. 544b(e)

Stats. Implemented: ORS 196.150; RCW 34.97.015; 16 U.S.C. 544b(e)

Hist.: CRGC 1-2017, f. 2-27-17, cert. ef. 4-1-17

350-010-0010

Authority

Section 4(e) of the National Scenic Area Act specifies that the boundaries of urban areas are "generally depicted" on maps that Congress enact-

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ed as part of the National Scenic Area Act. The Columbia River Gorge Commission, U.S. Forest Service, and Gorge counties need precise legal descriptions to develop and administer the Management Plan and land use ordinances for the National Scenic Area pursuant to sections 6, 7, and 8 of the Act, and the Commission needs precise legal descriptions before making minor revisions to the boundaries pursuant to section 4(f). The Commission and U.S. Forest Service therefore have inherent authority to interpret the generally depicted boundaries, consistent with congressional intent, to administer the Act.

Stat. Auth.: ORS 196.150; RCW 34.97.015; 16 U.S.C. 544b(e)
Stats. Implemented: ORS 196.150; RCW 34.97.015; 16 U.S.C. 544b(e)
Hist.: CRGC 1-2017, f. 2-27-17, cert. ef. 4-1-17

350-010-0020

Definitions

In this rule, unless the context or subject matter requires otherwise:

(1) "Cities" means incorporated cities within the Columbia River Gorge National Scenic Area: Cascade Locks, Hood River, Mosier and The Dalles in Oregon; and White Salmon, Bingen, Stevenson, and North Bonneville in Washington.

(2) "Commission" means the Columbia River Gorge Commission.

(3) "Counties" means Multnomah, Hood River and Wasco counties in Oregon; and Clark, Skamania and Klickitat counties in Washington.

(4) "Legal Description" or "Legal Descriptions," when capitalized, means the legal descriptions adopted in section 030(1) below and contained in the appendix to this rule. When not capitalized, the term, "legal description" or "legal descriptions" does not mean the Legal Descriptions adopted in section 030(1).

Stat. Auth.: ORS 196.150; RCW 34.97.015; 16 U.S.C. 544b(e)
Stats. Implemented: ORS 196.150; RCW 34.97.015; 16 U.S.C. 544b(e)
Hist.: CRGC 1-2017, f. 2-27-17, cert. ef. 4-1-17

350-010-0030

Adoption and Use of Legal Descriptions and Maps

(1) The Commission adopts the Legal Descriptions contained in the appendix to this rule.

(2) The Commission, counties, cities, landowners, and other interested persons shall use the Legal Descriptions for all planning, decisions, and other actions requiring reliance on the location of a boundary of an urban area.

(3) The Legal Descriptions have not been monumented or otherwise marked on the ground, except that specific angle points and courses may reference monuments and precise features that existed at the time the Commission adopted the Legal Descriptions. Landowners that want to monument or otherwise mark the Legal Descriptions on their property shall use a licensed surveyor to do so. The Commission will not rely on monuments or markings unless a licensed surveyor has placed them.

Stat. Auth.: ORS 196.150; RCW 34.97.015; 16 U.S.C. 544b(e)
Stats. Implemented: ORS 196.150; RCW 34.97.015; 16 U.S.C. 544b(e)
Hist.: CRGC 1-2017, f. 2-27-17, cert. ef. 4-1-17

350-010-0040

Resolving Prior Interpretations

The Commission, Commission staff, U.S. Forest Service staff, and surveyors have made prior interpretations of the maps that Congress enacted. These prior interpretations may differ from the Legal Descriptions. The Legal Descriptions shall prevail in the event of a difference. Land use claims involving any difference shall be resolved in accordance with the Existing Uses provisions in the applicable county or Commission land use ordinance corresponding to the Existing Uses provisions in Section 7 of the Management Plan.

Stat. Auth.: ORS 196.150; RCW 34.97.015; 16 U.S.C. 544b(e)
Stats. Implemented: ORS 196.150; RCW 34.97.015; 16 U.S.C. 544b(e)
Hist.: CRGC 1-2017, f. 2-27-17, cert. ef. 4-1-17

350-010-0050

Natural and Human Management Processes Do Not Affect Urban Area Boundaries

(1) The location of an urban area boundary does not shift in response to natural processes that occur over a long period of time, such as accretion and reliction of rivers and streams or ordinary high water, or as a result of major sudden event, such as an avulsion, flooding, landslide, or earthquake. The urban area boundary remains at the location described prior to the event.

(2) The location of an urban area boundary does not shift in response to management of the normal pool elevation behind Bonneville and The Dalles dams. The normal pool elevation is as defined by dam operations on November 17, 1986.

(3) The location of an urban area boundary does not shift in response to relocation or realignment of linear features, including but not limited to roads and highways, railroads, pipelines, or powerlines, or their associated rights-of-way or easements. A Legal Description that uses a linear feature means the linear feature as it existed on November 17, 1986, or as otherwise noted in the Legal Description.

(4) The location of an urban area boundary does not shift in response to changes in land management boundaries, including, but not limited to, municipal boundaries and approved urban growth boundaries. A Legal Description that refers to a land management boundary means the land management boundary as it existed on November 17, 1986, or as otherwise described in the Legal Description.

Stat. Auth.: ORS 196.150; RCW 34.97.015; 16 U.S.C. 544b(e)
Stats. Implemented: ORS 196.150; RCW 34.97.015; 16 U.S.C. 544b(e)
Hist.: CRGC 1-2017, f. 2-27-17, cert. ef. 4-1-17

Department of Agriculture Chapter 603

Rule Caption: Extends March 15 deadline to April 15 due to inclement weather conditions in Malheur County.

Adm. Order No.: DOA 6-2017(Temp)

Filed with Sec. of State: 2-17-2017

Certified to be Effective: 2-17-17 thru 8-15-17

Notice Publication Date:

Rules Amended: 603-052-0360

Subject: Extends the deadline to April 15 of OAR 603-052-0360 due to the inclement conditions in Malheur County. The March 15 deadline to dispose of culls and onion debris will be postponed until April 15 or until conditions allow growers to return into the fields to bury culls and onion debris as required by the onion control order.

Rules Coordinator: Sue Gooch—(503) 986-4583

603-052-0360

Control Area: Onion Maggot — Malheur County

(1) A control area is established within the boundaries of Malheur County for the protection of the onion industry by the eradication or control of the insect pest known as the onion maggot. This control area order is based on IPM principles first recognized and used by Malheur County growers in 1957.

(2) The following methods of eradication and control are declared to be the proper methods used in this control area order:

(a) All cull or waste onions in Malheur County shall be disposed of by a method approved by this control order prior to April 15; for onions sorted after that date until July 1, the resulting cull and waste onions shall be disposed of within one week after such sorting;

(b) Disposal of cull or waste onions shall be accomplished only as set forth below:

(A) Disposal by covering in a dump site approved by the Oregon Department of Environmental Quality (DEQ). Culls and onion debris shall be dumped and covered by at least 12 inches of onion-free soil by March 15 each year;

(B) Disposal by animal feeding. Culls and onion debris shall be completely removed from feeding areas by April 15 and buried under 12 inches of onion-free soil. Onions tramped into the soil so they cannot be removed shall be plowed to a depth of 12 inches;

(C) Disposal by chopping or shredding. Chopped or shredded onion debris that is incapable of sprouting may be returned to the field at a tonnage rate no higher than the DEQ-approved rate of 80 tons per acre and plowed to a depth where no onion parts are exposed on the surface;

(D) Composting. All onion debris shall be incorporated into the compost bed and completely covered by 12 inches of onion-free soil;

(E) Disposal of residue in onion producing fields. Commercial onion fields where sort out bulbs are left at harvest shall be disked to destroy the bulbs and shall be plowed to a depth of at least 12 inches by March 15 each year. Seed bulbs shall be disposed of in the same manner following the last harvest. The owner of the field is ultimately responsible for compliance with this rule;

(F) If inclement weather prevents plowing, the culls will be treated with an EPA-labeled insecticide currently listed in the PNW Insect Control Handbook at prescribed intervals until proper disposal occurs.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415

Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415

Hist.: AD 590, f. 9-10-58, ef. 9-28-58; AD 784(8-64), f. 4-29-64, ef. 5-15-64; AD 4-1995, f. & cert. ef. 4-5-95; DOA 3-1999, f. & cert. ef. 1-29-99; DOA 1-2006, f. & cert. ef. 1-13-06;

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DOA 2-2007, f. & cert. ef. 1-30-07; DOA 7-2008, f. & cert. ef. 2-8-08; DOA 3-2009, f. & cert. ef. 2-13-09; DOA 6-2017(Temp), f. & cert. ef. 2-17-17 thru 8-15-17

Rule Caption: Temporary rules for sampling and testing industrial hemp products and commodities intended for human consumption.

Adm. Order No.: DOA 7-2017(Temp)

Filed with Sec. of State: 3-14-2017

Certified to be Effective: 3-15-17 thru 9-10-17

Notice Publication Date:

Rules Adopted: 603-048-2300, 603-048-2305, 603-048-2310, 603-048-2315, 603-048-2320, 603-048-2330, 603-048-2340, 603-048-2350, 603-048-2380, 603-048-2450, 603-048-2480, 603-048-2440

Rules Amended: 603-048-0010, 603-048-0500, 603-048-0650, 603-048-0800, 603-048-1000, 603-048-0100, 603-048-0200, 603-048-0300, 603-048-0400, 603-048-0600, 603-048-0700, 603-048-0900

Subject: Explains and provides procedures for registered handlers to obtain testing of an industrial hemp commodity or product intended for human consumption as required by Oregon Laws 2016, Chapter 71, Section 9. Provides guidelines and protocols for registered handlers to test so that the commodity or product is tested to ensure it complies with requirements adopted by Oregon Health Authority under ORS 475B.555(1)(a) and (b) and (2) for testing marijuana items. Establishes procedures for determining batch sizes for sampling and testing industrial hemp commodities and products intended for human consumption.

Rules Coordinator: Sue Gooch—(503) 986-4583

603-048-0010

Definitions

The following definitions apply to OAR 603-048-0010 through 603-048-2480 unless the context requires otherwise.

(1) "Agricultural hemp seed" means Cannabis seed:

(a) That is sold to or intended to be sold to registered growers for planting; or

(b) That remains in an unprocessed or partially processed condition that is capable of germination.

(2) "Agricultural hemp seed producer" means a registered grower or handler that produces agricultural hemp seed or processes industrial hemp into agricultural hemp seed.

(3) "CBD" means cannabidiol, Chemical Abstracts Service Number 13956-29-1.

(4) "Consumable" means an industrial hemp product intended for human consumption.

(5) "Crop" means industrial hemp grown under a single registration.

(6) "Department" means the Oregon Department of Agriculture.

(7) "Grower" means a person, joint venture or cooperative that produces industrial hemp.

(8) "Handler" means a person, joint venture or cooperative that receives industrial hemp for processing into commodities, products or agricultural hemp seed.

(9) "Harvest Lot":

(a) Means a quantity of industrial hemp harvested in a distinct time-frame that is:

(i) Grown in one contiguous field or growing area; or

(ii) Grown in a portion or portions of one contiguous field or one growing area.

(b) Does not include a quantity of industrial hemp comprised of industrial hemp grown in noncontiguous fields or noncontiguous growing areas.

(10) "Industrial hemp":

(a) Means all nonseed parts and varieties of the Cannabis plant, whether growing or not, that contain an average tetrahydrocannabinol concentration that does not exceed 0.3 percent on a dry weight basis.

(b) Means any Cannabis seed:

(A) That is part of a crop;

(B) That is retained by a grower for future planting;

(C) That is agricultural hemp seed;

(D) That is for processing into or for use as agricultural hemp seed; or

(E) That has been processed in a manner or to an extent that the Cannabis seed is incapable of germination.

(c) Does not mean:

(A) Industrial hemp commodities or products; or

(B) Marijuana, as that is defined in ORS 475B.015.

(11) Industrial Hemp Commodity or Product:

(a) Means an item processed by a handler containing any industrial hemp or containing any chemical compounds derived from industrial hemp, including CBD derived from industrial hemp.

(b) Includes:

(A) Hemp concentrates or extracts as defined in OAR 603-048-2310;

(B) Hemp edible as defined in OAR 603-048-2310;

(C) Hemp tincture as defined in OAR 603-048-2310;

(D) Hemp topical as defined in OAR 603-048-2310;

(E) Hemp transdermal patch as defined in OAR 603-048-2310;

(F) Industrial hemp processed through retting or other processing such that it is suitable fiber for textiles, rope, paper, hempcrete, or other building or fiber materials;

(G) Industrial hemp seed processed such that it is incapable of germination and processed such that is suitable for human consumption;

(H) Industrial hemp seed pressed or otherwise processed into oil;

(c) Does not include:

(A) Industrial hemp that has not been processed in any form;

(B) Industrial hemp that has been minimally processed, for purposes of transfer or storage including chopping, separating, or drying;

(C) Industrial hemp that has been minimally processed and meets all testing requirements for consumables under OAR 603-048-2300 to 603-048-2500 where used or intended to be used for processing into a hemp concentrate or extract as defined in OAR 603-048-2310;

(D) Agricultural hemp seed.

(12) "Intended for human consumption" means to ingest, inhale, topically apply to the skin or hair.

(13) "Laboratory" means a laboratory that is licensed by the Oregon Liquor Control Commission under ORS 475B.560 and accredited by the Oregon Health Authority under ORS 475B.565.

(14) "Produce" means the planting, cultivation, growing, or harvesting of industrial hemp.

(15) "Process" means the processing, compounding, or conversion of industrial hemp into industrial hemp commodities or products or agricultural hemp seed.

(16) "Registrant" means a grower or handler or agricultural hemp seed producer registered with the department under these rules.

Stat. Auth.: ORS 569.445, 571.300 - 571.315 & 633.511 - 633.996, OL 2016, Ch. 71

Stats. Implemented: ORS 571.300 - 571.315, OL 2016, Ch. 71

Hist.: DOA 3-2015, f. & cert. ef. 1-29-15; DOA 11-2016(Temp), f. & cert. ef. 5-3-16 thru 10-29-16; DOA 19-2016, f. & cert. ef. 10-28-16; DOA 7-2017(Temp), f. 3-14-17, cert. ef. 3-15-17 thru 9-10-17

603-048-0100

Production and Handling of Industrial Hemp and Agricultural Hemp Seed

(1) Industrial hemp is an agricultural product subject to regulation by the department.

(2) Only a grower registered with the department may produce industrial hemp. Only a handler registered with the department may process industrial hemp.

(3) Registrations are personal and may not be transferred. A registrant may not sell or transfer an industrial hemp or agricultural hemp seed production registration.

(4) A registered grower may use any propagation method, including planting seeds from, or starts, or the use of clones or cuttings, to produce industrial hemp.

(5) Any person holding a valid three-year or one-year industrial hemp license or agricultural hemp seed permit shall be considered a registrant for the purposes of these rules for the term remaining on the license or permit.

(6) The department shall make available to registered growers information that identifies registered agricultural hemp seed producers from whom growers may purchase agricultural hemp seed.

(7) A registrant may sell or transfer as follows:

(a) A registrant may only sell or transfer industrial hemp to another registrant.

(b) A registered agricultural hemp seed producer may only sell or transfer agricultural hemp seed to a registered grower, registered handler, or a registered agricultural hemp seed producer.

(c) A registered handler may sell or transfer industrial hemp commodities or products to any person.

Stat. Auth.: ORS 569.445, 571.300 - 571.315 & 633.511 - 633.996, OL 2016, Ch. 71

Stats. Implemented: ORS 571.300 - 571.315, OL 2016, Ch. 71, Sec. 2, 4 - 8

Hist.: DOA 3-2015, f. & cert. ef. 1-29-15; DOA 11-2016(Temp), f. & cert. ef. 5-3-16 thru 10-29-16; DOA 19-2016, f. & cert. ef. 10-28-16; DOA 7-2017(Temp), f. 3-14-17, cert. ef. 3-15-17 thru 9-10-17

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603-048-0200

Applications to Register or Renew Registrations

Registrations are valid for a one-year term beginning on January 1 of each calendar year. To ensure the department has sufficient time to process applications for registration, or renew a registration, any person applying for registration must apply with the department no less than 30 days prior to the date of the intended activity.

(1) Applications for registration under this section must be submitted to the department on forms provided by the department, and must be accompanied by the fee as described in OAR 603-048-0700. A person seeking to produce or process agricultural hemp seed must also apply for a separate registration as described in OAR 603-048-0300(2).

(2) An application to grow industrial hemp must include all of the following information:

- (a) The name and address of the applicant;
- (b) The name and address of the applicant's industrial hemp operation(s);

(c) The global positioning system (GPS) coordinates provided in decimal of degrees and taken at the approximate center of the growing field, or entrance of building;

(d) A map of the growing area showing clear boundaries of the production area; and

(e) If industrial hemp is cultivated in a field, the number of square feet or acres of each cultivated field;

(f) If industrial hemp is cultivated in a greenhouse or other building, the approximate dimension or square feet of the building.

(3) An application to handle industrial hemp must include all of the following information:

- (a) The name and address of the applicant;
- (b) The name and address of applicant's industrial hemp operation(s).

(4) In addition to the requirements in sections (1) to (3), all applicants for registration must acknowledge and agree that:

(a) Any information provided to the department may be publicly disclosed and may be provided to law enforcement agencies without notice to the applicant;

(b) The department may enter any field, facility or greenhouse used for the production or handling of industrial hemp or agricultural hemp seed and may take samples of industrial hemp or agricultural hemp seed as necessary for the administration of the department's laws.

(c) All fees lawfully due to the department will be timely paid.

(d) The information provided is true and correct and that applicant's signature is an attestation of that fact.

Stat. Auth.: ORS 569.445, 571.300 - 571.315 & 633.511 - 633.996, OL 2016, Ch. 71
Stats. Implemented: ORS 571.300 - 571.315, OL 2016, Ch. 71, Sec. 2, 4 - 8
Hist.: DOA 3-2015, f. & cert. ef. 1-29-15; DOA 1-2016(Temp), f. & cert. ef. 1-29-16 thru 7-26-16; DOA 11-2016(Temp), f. & cert. ef. 5-3-16 thru 10-29-16; DOA 19-2016, f. & cert. ef. 10-28-16; DOA 7-2017(Temp), f. 3-14-17, cert. ef. 3-15-17 thru 9-10-17

603-048-0300

Agricultural Hemp Seed

Registrations for growing or handling agricultural hemp seed are valid for a one-year term beginning on January 1 of each calendar year. To ensure the department has sufficient time to process applications for registration, or renew a registration, any person applying for registration must apply with the department no less than 30 days prior to the date of the intended activity.

(1) Only a grower registered with the department may produce agricultural hemp seed. Only a handler registered with the department may process agricultural hemp seed. An applicant may apply for a grower or handler registration at the same time the applicant applies for registration as an agricultural hemp seed producer.

(2) A registered grower or handler seeking to produce or process agricultural hemp seed must register with the department, on forms provided by the department, as an agricultural hemp seed producer unless:

(a) A registered grower retains agricultural hemp seed for the purpose of propagating industrial hemp for the grower's own use in future years;

(b) A registered grower produces Cannabis seeds that are incapable of germination; or

(c) A registered handler processes agricultural hemp seed in such a manner that the seeds are incapable of germination.

(3) An application to produce agricultural hemp seed must include all of the following information:

- (a) The name and address of the applicant;
- (b) The name and address of the applicant's agricultural hemp seed operation(s);

(c) The global positioning system (GPS) coordinates provided in decimal of degrees and taken at the approximate center of the growing field, or entrance of building;

(d) A map of the growing area showing clear boundaries of the production area; and

(e) If industrial hemp is produced in a field, the number of square feet or acres of each cultivated field;

(4) An application to process agricultural hemp seed must include all of the following information:

(a) The name and address of the applicant;

(b) The name and address of applicant's facility used for processing industrial hemp agricultural seed.

(5) A registered grower may retain agricultural hemp seed without registering as an agricultural hemp seed producer or complying with other seed standards set by the department under ORS 633.511 to 633.750 for the purpose of propagating industrial hemp in future years, except that a registered grower may not:

(a) Retain seed from a harvest lot for future planting when laboratory test results of the harvest lot indicate the tetrahydrocannabinol concentration exceeds 0.3 percent on a dry weight basis.

(b) Sell or transfer agricultural hemp seed for the purpose of planting without first obtaining a registration for agricultural hemp seed.

(6) An applicant for registration must acknowledge and agree that:

(a) Any information provided to the department may be publicly disclosed and may be provided to law enforcement agencies without notice to the applicant;

(b) The department may enter any field, facility or greenhouse used for the production or processing of industrial hemp and may take samples of industrial hemp as necessary for the administration of the department's laws.

(c) All fees lawfully due to the department will be timely paid.

(d) The information provided is true and correct and that applicant's signature is an attestation of that fact.

Stat. Auth.: ORS 569.445, 571.300 - 571.315 & 633.511 - 633.996, OL 2016, Ch. 71

Stats. Implemented: ORS 571.300 - 571.315, OL 2016, Ch. 71, Sec. 2, 4 - 8

Hist.: DOA 3-2015, f. & cert. ef. 1-29-15; DOA 11-2016(Temp), f. & cert. ef. 5-3-16 thru 10-29-16; DOA 19-2016, f. & cert. ef. 10-28-16; DOA 7-2017(Temp), f. 3-14-17, cert. ef. 3-15-17 thru 9-10-17

603-048-0400

Reporting Requirements

A registered grower must ensure the grower's entire crop and each harvest lot is timely sampled and tested for tetrahydrocannabinol and must ensure test results are timely reported to the department.

(1) A registrant must immediately report to the department:

(a) The theft or loss of industrial hemp;

(b) All laboratory test results for tetrahydrocannabinol, for all harvest lots.

(2) On forms provided for by department, a registrant must immediately report to the department:

(a) Changes to the name, address, or telephone number of the registration holder;

(b) Changes in the ownership of the land or facilities used to produce or process industrial hemp or agricultural hemp seed;

(c) Changes in the ownership or structure of the entity holding an industrial hemp registration or agricultural hemp seed production registration;

(d) Changes in location or the addition of a facility for processing industrial hemp prior to beginning processing at the new location; and

(e) Changes in location or the addition of a field or growing area for producing industrial hemp prior to producing at the new location.

Stat. Auth.: ORS 569.445, 571.300 - 571.315 & 633.511 - 633.996, OL 2016, Ch. 71

Stats. Implemented: ORS 571.300 - 571.315, OL 2016, Ch. 71, Sec. 2, 4 - 8

Hist.: DOA 3-2015, f. & cert. ef. 1-29-15; DOA 11-2016(Temp), f. & cert. ef. 5-3-16 thru 10-29-16; DOA 19-2016, f. & cert. ef. 10-28-16; DOA 7-2017(Temp), f. 3-14-17, cert. ef. 3-15-17 thru 9-10-17

603-048-0500

Record Keeping Requirements

Registrants must maintain records of all transfers of ownership or possession of industrial hemp for no less than three (3) years after the total disposition of each harvest lot.

(1) A registered grower must maintain records, which include:

(a) For any transfer of industrial hemp to a registered handler, the name and address of the recipient; receiving any amount of industrial hemp;

(b) Date(s) in which industrial hemp was transferred to the registered handler;

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(c) Amount of industrial hemp, in pounds, transferred to the registered handler;

(d) All records of sampling including date, approximate number of plants sampled, total sample weight, and name of sampling entity;

(e) Name of laboratory that analyzed the sample(s); and

(f) All test report records for tetrahydrocannabinol for each harvest lot, as reported by the laboratory.

(2) A registered handlers of industrial hemp must maintain records, which include:

(a) For any receipt of industrial hemp from a registered grower or handler, the name and address of the transferor;

(b) All test report records for tetrahydrocannabinol for all industrial hemp received;

(c) Date industrial hemp was received;

(d) Amount in pounds and type of industrial hemp received;

(e) A copy of the test report records indicating concentration of tetrahydrocannabinol for each harvest lot of industrial hemp received; and

(f) A copy of all test reports required by OAR 603-048-2000 for each consumable sold or transferred.

(3) A registered agricultural hemp seed producer must maintain records which include:

(a) For any transfer of agricultural hemp seed to a registered grower or handler, the name and address of the recipient;

(b) Date(s) agricultural hemp seed was transferred to the registered grower or handler;

(c) Amount of agricultural hemp seed, in pounds, transferred to the registered grower or handler;

(d) All records of sampling including date, approximate number of plants sampled, total sample weight, and name of approved sampling entity;

(e) Name of laboratory that analyzed the sample(s); and

(f) All test report records for tetrahydrocannabinol for agricultural hemp seed, as reported by the laboratory.

Stat. Auth.: ORS 569.445, 571.300 - 571.315 & 633.511 - 633.996, OL 2016, Ch. 71

Stats. Implemented: ORS 571.300 - 571.315, OL 2016, Ch. 71, Sec. 2, 4 - 8

Hist.: DOA 3-2015, f. & cert. ef. 1-29-15; DOA 11-2016(Temp), f. & cert. ef. 5-3-16 thru 10-29-16; DOA 19-2016, f. & cert. ef. 10-28-16; DOA 7-2017(Temp), f. 3-14-17, cert. ef. 3-15-17 thru 9-10-17

603-048-0600

Sampling and Testing for Tetrahydrocannabinol

(1) A registered grower must ensure that the grower's entire crop is timely sampled and tested according to these rules. At the discretion of the grower, industrial hemp grown in a contiguous field or growing area may be sampled and tested as a separate harvest lot consistent with these rules. The grower must ensure that each harvest lot is timely sampled and tested.

(2) A registered grower and agricultural hemp seed producer producing agricultural hemp seed must arrange for and ensure the sampling of a harvest lot no more than four (4) weeks prior to harvest for the purpose of ensuring that the harvest lot contains an average tetrahydrocannabinol concentration that does not exceed 0.3 percent on a dry weight basis.

(a) All sampling under these rules must be performed by the department, an entity contracted with the department to provide sampling services, or a laboratory.

(b) Sampling performed by the grower, other person with an interest in the testing outcome, or otherwise not performed by the department, department-contracted entity, or a laboratory, is insufficient to meet the requirement for testing under this rule.

(3) Sampling of a harvest lot must produce samples that are representative of the harvest lot.

(a) No more than one sample shall be taken per plant, the plant randomly chosen throughout the harvest lot's growing area;

(b) Samples shall be obtained from flowering tops when flowering tops are present; and

(c) Samples shall be cut to a length of about 20 cm and stored in a paper bag.

(4) Harvest lots shall be tested separately.

(5) Testing must be performed by a laboratory or by the department as described in subsection (6) of this rule.

(6) Until such time as laboratories are licensed by the Oregon Liquor Control Commission under ORS 475B.560 and accredited by the Oregon Health Authority pursuant to ORS 475B.565, to test for tetrahydrocannabinol concentration of industrial hemp, the department may contract with registered growers who may request sampling and laboratory testing services from the department to ascertain the average tetrahydrocannabinol content of industrial hemp. The fee for each test shall be \$350.

(7) Test results must be reported to the department, and on forms provided by the department, and include for each harvest lot:

(a) Sample date;

(b) Sample size by weight;

(c) Test date;

(d) Total tetrahydrocannabinol percentage;

(e) Field/growing location information including GPS coordinates; and

(f) Registration number.

Stat. Auth.: ORS 569.445, 571.300 - 571.315 & 633.511 - 633.996, OL 2016, Ch. 71

Stats. Implemented: ORS 571.300 - 571.315, OL 2016, Ch. 71, Sec. 2, 4 - 8

Hist.: DOA 3-2015, f. & cert. ef. 1-29-15; DOA 1-2016(Temp), f. & cert. ef. 1-29-16 thru 7-26-16; DOA 11-2016(Temp), f. & cert. ef. 5-3-16 thru 10-29-16; DOA 19-2016, f. & cert. ef. 10-28-16; DOA 7-2017(Temp), f. 3-14-17, cert. ef. 3-15-17 thru 9-10-17

603-048-0650

Industrial Hemp Inspection and Record Reviews

(1) The department, as it deems necessary in the enforcement and carrying out its laws may, during normal business hours, inspect premises, machinery, equipment and facilities of registrants and inspect, any crop during any growth phase, and take a representative composite sample for field analysis.

(2) Upon not less than three days' notice, the department may subject registrant records to inspection or audit during normal business hours. The department may make an inspection or audit for the purpose of ensuring compliance with:

(a) A provision of ORS 571.300 to 571.315 or Oregon Laws 2016, ch 71;

(b) A rule adopted under a provision of ORS 571.300 to 571.315 or Oregon Laws 2016, ch 71; or

(c) An order issued by the department pursuant to a provision of ORS 571.300 to 571.315 or Oregon Laws 2016, ch 71, or rule adopted under a provision of ORS 571.300 to 571.315 or Oregon Laws 2016, ch 71.

Stat. Auth.: ORS 561.190, 571.300 - 571.315, OL 2016, Ch. 71

Stats. Implemented: ORS 571.300 - 571.315, OL 2016, Ch. 71, Sec. 2, 4 - 8

Hist.: DOA 11-2016(Temp), f. & cert. ef. 5-3-16 thru 10-29-16; DOA 19-2016, f. & cert. ef. 10-28-16; DOA 7-2017(Temp), f. 3-14-17, cert. ef. 3-15-17 thru 9-10-17

603-048-0700

Registration Fees

The following designated annual registration fees shall be applicable to each described activity under authority of ORS 571.305:

(1) Industrial hemp grower registration \$1300.00;

(2) Industrial hemp handler registration \$1300.00; and

(3) Agricultural hemp seed producer registration \$120.00.

Stat. Auth.: ORS 561.190, 569.445, 571.300 - 571.315, 633.511 - 633.996, OL 2016, Ch. 71

Stats. Implemented: ORS 571.300 - 571.315, OL 2016, Ch. 71, Sec. 2

Hist.: DOA 3-2015, f. & cert. ef. 1-29-15; DOA 11-2016(Temp), f. & cert. ef. 5-3-16 thru 10-29-16; DOA 19-2016, f. & cert. ef. 10-28-16; DOA 2-2017(Temp), f. & cert. ef. 1-18-17 thru 7-16-17; DOA 7-2017(Temp), f. 3-14-17, cert. ef. 3-15-17 thru 9-10-17

603-048-0800

Enforcement and Civil Penalty for Industrial Hemp Law Violation

(1) In addition to any other liability or penalty provided by law, any person who violates any provision of ORS 571.300 to 571.315, Oregon Laws 2016, ch 71, a rule adopted pursuant thereto or order issued by the department under ORS 571.300 to 571.315 Oregon Laws 2016, ch 71, may be subject to a civil penalty not to exceed \$2,500 per violation.

(2) If a civil penalty is imposed, the department shall issue a written notice to the person being assessed the penalty consistent with ORS Chapter 183. Contested cases will be conducted pursuant to ORS Chapter 183. Each violation may be considered a separate and distinct offense.

(3) Subject to the provisions of ORS chapter 183, the department may revoke the registration of a grower, handler or agricultural hemp seed producer or may refuse to register or renew the registration if a grower, handler or agricultural hemp seed producer violates:

(a) A provision of ORS 571.300 to 571.315 or Oregon Laws 2016, ch 71;

(b) A rule adopted under a provision of ORS 571.300 to 571.315 or Oregon Laws 2016, ch 71;

(c) An order issued by the department for violation of a provision of ORS 571.300 to 571.315 or Oregon Laws 2016, ch 71 or any rule adopted thereunder;

(d) Any statutory law or department rule related to agricultural activities other than industrial hemp operations.

Stat. Auth.: Stat. Auth.: ORS 561.190, 569.445, 571.300 - 571.315, OL 2016, Ch. 71

Stats. Implemented: ORS 571.300 - 571.315, OL 2016, Ch. 71, Sec. 12

Hist.: DOA 3-2015, f. & cert. ef. 1-29-15; DOA 11-2016(Temp), f. & cert. ef. 5-3-16 thru 10-29-16; DOA 19-2016, f. & cert. ef. 10-28-16; DOA 7-2017(Temp), f. 3-14-17, cert. ef. 3-15-17 thru 9-10-17

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603-048-0900

Embargo of Crop

If a harvest lot contains an average tetrahydrocannabinol concentration exceeding 0.3 percent on a dry weight basis, the department may detain, seize or embargo the harvest lot as provided in ORS 561.605 to 561.620 and consistent with these rules.

(1) The department shall cause to be affixed to the harvest lot being detained, seized or embargoed a notice that the industrial hemp is being detained, seized or embargoed by the department and warning all persons that the industrial hemp may not be moved from its current location without written permission from the department.

(2) The department shall notify in writing the owner or person in possession of the harvest lot that the harvest lot is being detained, seized or embargoed by the department.

(a) If the person in possession of the harvest lot is not the owner, the department shall make a reasonable effort to notify the owner.

(b) Such notification shall state the reason for the department's action and notify the owner or person in possession of the right to a hearing as provided under ORS chapter 183.

(c) A written request for hearing on the propriety of the detention, seizure or embargo must be filed either by the owner or person in possession with the department within 10 days of receiving actual notice of the action.

(d) Any hearing shall not be held sooner than 10 days after the request for hearing has been received by the department, however if the industrial hemp subject to the department's action is perishable, or if, in the opinion of the department, other good and sufficient reason appears, the department may, at the request of the owner or person in possession of such industrial hemp, be held at an earlier date.

(e) Any hearing shall be conducted by an administrative law judge assigned from the Office of Administrative Hearings and shall be conducted pursuant to ORS chapter 183. (3) If it appears that all or part of the harvest lot detained, seized or embargoed may be reconditioned or segregated in such a way as to comply with state laws, the owner or person in possession may cause the harvest lot to be reconditioned or segregated at the owner's or person's own expense after which the department may release the reconditioned industrial hemp.

Stat. Auth.: ORS 561.190, 561.605 - 561.630, 571.300 - 571.315, OL 2016, Ch. 71

Stats. Implemented: ORS 571.300 - 571.315, OL 2016, Ch. 71, Sec. 2

Hist.: DOA 3-2015, f. & cert. ef. 1-29-15; DOA 11-2016(Temp), f. & cert. ef. 5-3-16 thru 10-29-16; DOA 19-2016, f. & cert. ef. 10-28-16; DOA 7-2017(Temp), f. 3-14-17, cert. ef. 3-15-17 thru 9-10-17

603-048-1000

Violations and Penalties

Classification of Violations

(1) Violations are flagrant violations classified as follows:

(a) Class 1 violations include:

(A) Violations of ORS 571.305(1) or OAR 603-048-0100(2);

(B) Providing false information on an application for a registration, or application to renew a registration;

(C) Falsifying, or failure to keep or provide, information and records as required by the department;

(D) Growing or handling hemp with an average Tetrahydrocannabinol concentration that exceeds 0.3 percent on a dry weight basis;

(E) Failing to provide the department with laboratory test results that verify compliance with 0.3 percent tetrahydrocannabinol threshold before handling or transfer;

(F) Failing to test a consumable in accordance with OAR 603-048-2300 through 603-048-2480 prior to sale;

(G) Failing to report failed test results of a consumable to the Department within 24 hours as required by OAR 603-048-2300

(H) Selling or attempting to sell a consumable that fails to meet testing requirements required by OAR 603-048-2000 through 603-048-2480; or

(I) Repeat violations of Class 2 or Class 3 violations.

(b) Class 2 violations are any violations in which the person acted in a faulty, careless or negligent manner:

(A) Violation of any other rule, regulation or requirement as specified in OAR 603-048.

(c) Class 3 violations are negligent violations of:

(A) OAR 603-048-0100 to 603-048-2480;

(B) Providing false information on an application for a registration, or application to renew a registration;

(C) Falsifying or failure to keep or provide, information and records as required by the department;

(D) Growing or handling hemp with an average Tetrahydrocannabinol concentration that exceeds 0.3 percent on a dry weight basis.

(2) Civil Penalty amounts for each classification:

(a) Class 1 violation, \$2,500;

(b) Class 2 violation, \$1000;

(c) Class 3 violation, \$500.

Stat. Auth.: ORS 561.190, 569.445, 571.300 - 571.315 & 633.996, Ch. 71, Sec. 2

Stats. Implemented: ORS 571.300 - 571.315, OL 2016, Ch. 71

Hist.: DOA 3-2015, f. & cert. ef. 1-29-15; DOA 11-2016(Temp), f. & cert. ef. 5-3-16 thru 10-29-16; DOA 19-2016, f. & cert. ef. 10-28-16; DOA 7-2017(Temp), f. 3-14-17, cert. ef. 3-15-17 thru 9-10-17

603-048-2300

Testing of Consumables

(1) A registered handler may not sell a consumable unless it is first tested by a laboratory as required by these rules.

(2) Violations of these rules may result in the suspension or revocation of a registrant's registration or the imposition of civil penalties, or both. Violations include:

(a) Failure to test a consumable in accordance with these rules;

(b) Sale or attempting to sell a consumable that fails to meet testing requirements required by these rules;

(c) Failure to maintain a copy of all required test reports as required by OAR 603-048-0500; and

(d) Failure to report failed test results to the Department electronically to HempTestReports@oda.state.or.us using the forms provided by the Department within 24 hours after receipt of failed result.

(3) Test results expire after one year.

(4) These rules require consumables to be sampled, tested, and reported in a manner consistent with the Authority's marijuana sampling and testing rules in OAR 333-007-0300 to 333-007-0490 and 333-064. In applying those rules:

(a) Consumables are treated as their marijuana equivalents as described in OAR 603-048-2310;

(b) References to "licensee or registrant" or "processor or processing site" should be read as "handler";

(c) References to "Authority or the Commission" should be read as "Department"; and

(d) References to "consumer or patient" should be read as "consumer" as that is defined in OAR 603-048-2310.

(5) To be sufficient to meet the requirement for testing under these rules, a handler must ensure through a testing agreement or contract with the laboratory that the laboratory:

(a) Samples consumables according to OAR 333-007-0360 and 333-064-0100;

(b) Tests consumables according to OAR 333-007-0390 to 333-007-0440 and 333-064-0100;

(c) Keeps records in accordance with OAR 333-007-0360, 333-007-0370 and 333-064-0100.

(d) Reports all failed tests to the Department electronically to HempTestReports@oda.state.or.us using the forms provided by the Department consistent with reporting requirements under OAR 333-064-0110;

(e) Provides the handler with test reports that meet the requirements in OAR 333-064-0110.

Stat. Auth.: ORS 561.190, 571.300 - 571.315; OL 2016, Ch. 71.

Stats. Implemented: ORS 571.300 - 571.315, OL 2016, Ch. 71, Sec. 9, 10, 12.

Hist.: DOA 7-2017(Temp), f. 3-14-17, cert. ef. 3-15-17 thru 9-10-17

603-048-2305

Purpose and Scope

(1) The purpose of OAR 603-048-2300 to 603-048-2480 is to establish minimum testing standards for registered handlers processing industrial hemp into consumables.

(2) These rules apply to any consumable:

(a) Processed by a handler on or after March 15, 2017 and

(b) Tested or processed by a hemp handler before March 15, 2017 but not yet sold or transferred to a consumer as of March 15, 2017

Stat. Auth.: ORS 561.190, 571.300 - 571.315; OL 2016, Ch. 71.

Stats. Implemented: ORS 571.300 - 571.315, OL 2016, Ch. 71, Sec. 9

Hist.: DOA 7-2017(Temp), f. 3-14-17, cert. ef. 3-15-17 thru 9-10-17

603-048-2310

Definitions

As used in OAR 603-048-2300 to 603-048-2480, the following definitions apply:

(1) "Authority" means the Oregon Health Authority.

(2) "Batch" means:

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(1) A quantity of usable hemp or hemp stalk from a harvest lot; or
(2) A quantity of hemp concentrate or extract or cannabinoid product from a process lot.

(3) "CBDA" means cannabidiolic acid, Chemical Abstracts Service Number 1244-58-2.

(4) "Cannabinoid" means any of the chemical compounds that are the active constituents of the cannabis plant.

(5) "Cannabinoid capsule"

(a) Means a small soluble container, usually made of gelatin that encloses a dose of a cannabinoid product, hemp concentrate, or hemp extract intended for human ingestion.

(b) For sampling and testing purposes is equivalent to a cannabinoid capsule as that is defined in OAR 333-007-0310.

(6) "Cannabinoid product"

(a) Means a hemp edible or any consumable including a hemp topical or hemp transdermal patch. Cannabinoid product does not include usable hemp or hemp stalk by itself or a cannabinoid concentrate or extract by itself.

(b) For sampling and testing purposes is equivalent to a cannabinoid product as that is defined in OAR 333-007-0310.

(7) "Chain of custody procedures" means procedures employed by laboratory personnel using a chain of custody form to record the possession of samples from the time of sampling through the retention time specified by the Department.

(8) "Consumer" means a person who purchases, receives, or otherwise uses hemp items who is not a registered handler.

(9) "Control study" means a study performed on items of unknown homogeneity to assure required uniformity of item accomplished through sampling and testing as described in OAR 603-048-2440.

(10) "Field duplicate sample" means a sample taken in an identical manner from and representative of the same hemp item being sampled that is analyzed separately, that is used for quality control only.

(11) "Food" means a raw, cooked, or processed edible substance, or ingredient used or intended for use or for sale in whole or in part for human ingestion, or chewing gum.

(12) "Hemp concentrate or extract"

(a) Means a substance obtained by separating cannabinoids from industrial hemp leaves, flowers, or stalk by a mechanical, chemical or other process.

(b) For sampling and testing purposes is equivalent to a cannabinoid concentrate or edible as that is defined in OAR 333-007-0310.

(13) "Hemp edible"

(a) Means a food or potable liquid created from industrial hemp seed or into which industrial hemp, a hemp concentrate, or a hemp extract has been incorporated.

(b) For sampling and testing purposes is equivalent to a cannabinoid edible as that is defined in OAR 333-007-0310.

(14) "Hemp item"

(a) Means usable hemp, hemp stalk, a cannabinoid product, or a hemp concentrate or extract.

(b) For sampling and testing purposes is equivalent to a marijuana item as that is defined in OAR 333-007-0310.

(15) "Hemp stalk"

(a) Means the stalk of industrial hemp intended for human consumption.

(b) For sampling and testing purposes is equivalent to usable marijuana as that is defined in OAR 333-007-0310.

(16) "Hemp tincture"

(a) Means a solution of alcohol, hemp concentrate or extract, and perhaps other ingredients intended for human consumption, and that is exempt from the Liquor Control Act under ORS 471.035.

(b) For sampling and testing purposes is equivalent to a cannabinoid tincture as that is defined in OAR 333-007-0310.

(17) "Hemp topical"

(a) Means a substance intended to be applied to skin or hair that contains a cannabinoid product, hemp concentrate or extract and for purposes of testing includes a hemp transdermal patch.

(b) For sampling and testing purposes is equivalent to a cannabinoid topical as that is defined in OAR 333-007-0310.

(18) "Hemp transdermal patch"

(a) Means an adhesive substance applied to human skin that contains a cannabinoid product, hemp concentrate or extract for absorption into the bloodstream.

(b) For sampling and testing purposes is equivalent to a cannabinoid transdermal patch as that is defined in OAR 333-007-0310.

(19) "Homogeneous" means a cannabinoid product, hemp concentrate or extract has uniform composition and properties throughout each process lot.

(20) "Marijuana testing rules" means OHA testing rules for marijuana items found in OAR chapter 333, divisions 7 and 64, and all referenced tables and exhibits.

(21) "ORELAP" means the Oregon Environmental Laboratory Accreditation Program administered by the Authority pursuant to ORS 438.605 to 438.620.

(22) "Process lot" means:

(a) Any amount of hemp concentrate or extract of the same type and processed at the same time using the same extraction methods, standard operating procedures and batches from the same or a different harvest lot; or

(b) Any amount of a cannabinoid product of the same type and processed at the same time using the same ingredients, standard operating procedures and batches from the same or a different harvest lot or process lot of hemp concentrate or extract as defined in subsection (a) of this section.

(23) "Relative percentage difference" or "RPD" means the comparison of two quantities while taking into account the size of what is being compared as calculated under OAR 333-064-0100.

(24) "Relative standard deviation" or "RSD" means the standard deviation expressed as a percentage of the mean recovery as calculated under OAR 333-064-0100.

(25) "Sample" means an amount of a hemp item collected by laboratory personnel from a handler and provided to a laboratory for testing.

(26) "Sterilization" means the removal of all microorganisms and other pathogens from a hemp item by treating it with approved chemicals or subjecting it to high heat.

(27) "Test batch" means a group of samples from a batch submitted collectively to a laboratory for testing purposes.

(28) "THC" means tetrahydrocannabinol and has the same Chemical Abstracts Service Number 1972-08-3 as delta-9 THC.

(29) "THCA" means tetrahydrocannabinolic acid, Chemical Abstracts Service Number 23978-85-0.

(30) "These rules" means OAR 603-048-2300 through 603-048-2480.

(31) "TNI" means The NELAC (National Environmental Laboratory Accreditation Conference) Institute, a voluntary organization of state and federal environmental officials and interest groups purposed primarily to establish consensus standards for accrediting environmental laboratories.

(32) "TNI EL Standards" means the adopted 2009 TNI Environmental Lab Standards (© 2009 The NELAC Institute), which describe the elements of laboratory accreditation developed and established by the consensus principles of TNI and that meet the approval requirements of TNI procedures and policies.

(33) "Unit" means a unit of sale.

(34) "Usable hemp"

(a) means the flowers and leaves of industrial hemp intended for human consumption that does not fall within meaning hemp concentrate or extract, hemp edible, or cannabinoid product.

(b) For sampling and testing purposes is equivalent to usable marijuana as that is defined in OAR 333-007-0310.

Stat. Auth.: ORS 561.190, 571.300 - 571.315; OL 2016, Ch. 71.

Stats. Implemented: ORS 571.300 - 571.315, OL 2016, Ch. 71, Sec. 9

Hist.: DOA 7-2017(Temp), f. 3-14-17, cert. ef. 3-15-17 thru 9-10-17

603-048-2315

Ordering Tests

A handler must provide a laboratory, prior to laboratory taking samples, with the following:

(1) A written request of analysis for each test the laboratory is being requested to conduct.

(2) Notification of whether the batch is being re-sampled because of a failed test and the failed test results.

(3) Certification of successful control study, if applicable, on a form prescribed by the Department.

Stat. Auth.: ORS 561.190, 571.300 - 571.315; OL 2016, Ch. 71.

Stats. Implemented: ORS 571.300 - 571.315, OL 2016, Ch. 71, Sec. 9

Hist.: DOA 7-2017(Temp), f. 3-14-17, cert. ef. 3-15-17 thru 9-10-17

603-048-2320

Usable Hemp Testing Requirements

(1) A handler must have every harvest lot of usable hemp or hemp stalk tested in the same manner as usable marijuana under OAR 333-007-0320 prior to sale or transfer.

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(2) A handler must test a harvest lot of usable industrial hemp or industrial hemp stalks for microbiological contaminants in accordance with OAR 333-007-0390, upon written request by the Department.

Stat. Auth.: ORS 561.190, 571.300 - 571.315; OL 2016, Ch. 71.
Stats. Implemented: ORS 571.300 - 571.315, OL 2016, Ch. 71, Sec. 9
Hist.: DOA 7-2017(Temp), f. 3-14-17, cert. ef. 3-15-17 thru 9-10-17

603-048-2330

Hemp Concentrate or Extract Testing Requirements

(1) A handler must have every process lot of hemp concentrate or extract tested in the same manner as cannabinoid concentrates and extracts under OAR 333-007-0330 prior to sale or transfer.

(2) A handler must have a process lot of a hemp concentrate or extract tested for microbiological contaminants in accordance with OAR 333-007-0390, upon written request by the Department.

Stat. Auth.: ORS 561.190, 571.300 - 571.315; OL 2016, Ch. 71.
Stats. Implemented: ORS 571.300 - 571.315, OL 2016, Ch. 71, Sec. 9
Hist.: DOA 7-2017(Temp), f. 3-14-17, cert. ef. 3-15-17 thru 9-10-17

603-048-2340

Cannabinoid Product Testing Requirements

(1) A handler must have every process lot of a cannabinoid product, including hemp edibles, capsules, hemp tincture, hemp topical, hemp transdermal patch prior to sale or transfer to a consumer tested for THC and CBD concentration in the same manner as cannabinoid products under OAR 333-007-0340 or 333-007-0345, as applicable.

(2) A handler must have a process lot tested for microbiological contaminants in accordance with OAR 333-007-0390, upon written request by the Department.

Stat. Auth.: ORS 561.190, 571.300 - 571.315; OL 2016, Ch. 71.
Stats. Implemented: ORS 571.300 - 571.315, OL 2016, Ch. 71, Sec. 9
Hist.: DOA 7-2017(Temp), f. 3-14-17, cert. ef. 3-15-17 thru 9-10-17

603-048-2350

Batch Requirements

(1) Usable hemp and hemp stalks: A handler must separate each harvest lot into no larger than 10 pound batches.

(2) Hemp concentrates or extracts:

(a) A process lot is considered a batch.

(b) The size of a process lot submitted for sampling and testing for purposes of a control study under OAR 333-007-0440 defines the maximum process lot for that concentrate, extract or product for purposes of sampling and testing after a control study has been certified.

(3) Cannabinoid products. A handler must separate process lots into not larger than 35,000 unit batches.

(4) A handler must assign each batch a unique batch number and that unique batch number must be:

(a) Provided to the individual responsible for taking samples; and
(b) Included on the batch label as required in OAR 603-048-2380.

(4) A handler may not reuse a unique batch number.

Stat. Auth.: ORS 561.190, 571.300 - 571.315; OL 2016, Ch. 71.
Stats. Implemented: ORS 571.300 - 571.315, OL 2016, Ch. 71, Sec. 9
Hist.: DOA 7-2017(Temp), f. 3-14-17, cert. ef. 3-15-17 thru 9-10-17

603-048-2380

Handler Site Requirements for Labeling, Storing, and Securing Pre-Tested Consumables; Recordkeeping

(1) After sampling of a harvest or process lot batch, a handler must:

(a) Label the batch with the following information:

(A) The handler's registration number;

(B) The harvest or process lot unique identification number;

(C) The name and accreditation number of the laboratory that took samples and the name and accreditation number of the laboratory responsible for the testing, if different;

(D) The test batch or sample unique identification numbers supplied by the laboratory personnel;

(E) The date the samples were taken; and

(F) In bold, capital letters, no smaller than 12 point font, "ITEM NOT TESTED."

(b) Store and secure the batch in a manner that prevents the consumable from being tampered with or transferred prior to test results being reported.

(c) Be able to easily locate a batch stored and secured under section (1)(b) of this rule and provide that location to the Department or a laboratory upon request.

(2) If the samples pass testing, the batch of consumable satisfies the testing required by Or Laws 2016, chapter 71, Section 9 and these rules.

(3) If the samples do not pass testing, the handler must comply with OAR 603-048-2450.

Stat. Auth.: ORS 561.190, 571.300 - 571.315; OL 2016, Ch. 71.
Stats. Implemented: ORS 571.300 - 571.315, OL 2016, Ch. 71, Sec. 9
Hist.: DOA 7-2017(Temp), f. 3-14-17, cert. ef. 3-15-17 thru 9-10-17

603-048-2440

Control Study

(1) A handler may request that a laboratory perform a control study on hemp concentrates, extracts, or cannabinoid products in accordance with OAR 333-007-0440(1).

(2) To be sufficient to satisfy the requirements of a control study under these rules, a laboratory must:

(a) Conduct the control study in accordance with OAR 333-007-0440; and

(b) Identify on a form prescribed by the Department if a batch undergoing a control study passed testing requirements identified in OAR 333-007-0440(6), and must send the form at the handler's request to the Department:

(3) A control study passes or fails according to OAR 333-007-0440.

(4) A process lot sampled and tested for purposes of a control study that passes all the required tests satisfies the testing required by Or Laws 2016, chapter 71, Section 9 and these rules.

(5) Future batches of the hemp concentrate, extract or cannabinoid product that has a certified control study may be sampled and tested according to OAR 333-007-0440(9)-(11) for a one year period.

(6) The Department will certify a control study for a hemp concentrate, extract or cannabinoid product that passes all the required tests in accordance with this rule.

Stat. Auth.: ORS 561.190, 571.300 - 571.315; OL 2016, Ch. 71.
Stats. Implemented: ORS 571.300 - 571.315, OL 2016, Ch. 71, Sec. 9
Hist.: DOA 7-2017(Temp), f. 3-14-17, cert. ef. 3-15-17 thru 9-10-17

603-048-2450

Failed Test Samples

(1) If a sample fails any initial test, the laboratory that did the testing may reanalyze the sample. If the sample passes, another laboratory must resample the batch and confirm that result in order for the batch to pass testing.

(a) If a handler wishes to have a sample reanalyzed, the handler must request a reanalysis within seven (7) calendar days from the date the laboratory sent notice of the failed test to the handler. The reanalysis must be completed by the laboratory within 30 days from the date the reanalysis was requested.

(b) If a handler has requested a reanalysis in accordance with subsection (1)(a) of this rule and the sample passes, the handler has seven (7) calendar days from the date the laboratory sent notice of the passed test to request that another laboratory resample the batch and confirm the passed test result. The retesting must be completed by the second laboratory within 30 days from the date the retesting was requested.

(2) A handler must inform the Department within 24 hours, of the following, electronically to HempTestReports@oda.state.or.us using the forms provided the Department:

(A) A request for reanalysis of a sample;

(B) The testing results of the reanalysis;

(C) A request for retesting; and

(D) The results of retesting.

(3) If a sample fails a test or a reanalysis under section (1) of this rule, the batch:

(a) May be remediated or sterilized in accordance with the OAR 333-007-0450; or

(b) Must be destroyed as required by OAR 333-007-0450 in a manner specified by the Department if the batch is not or cannot be remediated or sterilized under OAR 333-007-0450.

(4) A handler must inform a laboratory prior to samples being taken that the batch has failed a test and is being retested after undergoing remediation or sterilization.

(5) A handler must, as applicable:

(a) Have detailed procedures for sterilization processes to remove microbiological contaminants and for reducing the concentration of solvents.

(b) Document all sampling, testing, sterilization, remediation and destruction that are a result of failing a test under these rules.

(c) A handler must report failed test results to the Department within 24 hours of receipt of the failed test report electronically to HempTestReports@oda.state.or.us using the forms provided by the Department.

(6) If a batch fails a test under these rules a handler must store, segregate, label, and may not remove the batch from the registered premises

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without permission from the Department in accordance with OAR 333-007-0450.

Stat. Auth.: ORS 561.190, 571.300 - 571.315; OL 2016, Ch. 71.
Stats. Implemented: ORS 571.300 - 571.315, OL 2016, Ch. 71, Sec. 9
Hist.: DOA 7-2017(Temp), f. 3-14-17, cert. ef. 3-15-17 thru 9-10-17

603-048-2480

Additional Testing

(1) The Department may require a handler to submit samples identified by the Department to a laboratory of the handler's choosing to be tested in order to determine whether a handler is in compliance with OAR 603-048-2300 through 603-048-2500, and may require additional testing that is not required by these rules.

(2) To be sufficient to meet the requirement for audit testing under this rule, a handler must ensure, through a testing agreement or contract, that the laboratory conducting the testing complies with these rules, to the extent they are applicable, and if conducting testing not required by these rules, may only use Authority approved methods.

(3) The Department may establish a process for the random testing of hemp items for microbiological contaminants.

(4) Any testing ordered under this rule must be paid for by the handler.

Stat. Auth.: ORS 561.190, 571.300 - 571.315; OL 2016, Ch. 71.
Stats. Implemented: ORS 571.300 - 571.315, OL 2016, Ch. 71, Sec. 9
Hist.: DOA 7-2017(Temp), f. 3-14-17, cert. ef. 3-15-17 thru 9-10-17

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Department of Consumer and Business Services, Insurance Regulation Chapter 836

Rule Caption: Definition of Small Employer

Adm. Order No.: ID 3-2017

Filed with Sec. of State: 3-9-2017

Certified to be Effective: 3-9-17

Notice Publication Date: 12-1-2016

Rules Amended: 836-053-0015

Subject: ORS 743B.020 requires the Department to adopt by rule the method for determining whether an employer is a small employer for purposes of group health benefit plans. ORS 743B.005 links the definition of "small employer" to a federal definition that currently defines a small employer as an employer having at least one but not more than 50 employees, but allows the department to further modify that definition in accordance with guidance issued by three federal agencies. The federal law also includes an option that allows states to define small employer as an employer with 1 to 100 employees.

The Department defines small employers in OAR 836-053-0015 as those with "an average of at least one but not more than 50 employees on business days during the preceding calendar year and who employs at least one employee on the first day of the plan year." This definition is applicable from January 1, 2016 through December 31, 2017.

The amendments would abolish the sunset provision and maintain the current definition of small employer indefinitely

Rules Coordinator: Karen Winkel—(503) 947-7694

836-053-0015

Definition of Small Employer

(1) This rule is adopted for the purpose of modifying the definition of small employer as authorized in ORS 743B.005.

(2) This rule establishes the definition of small employer to be used in any instance in which the definition set forth in ORS 743B.005 would apply and in rules of the Department of Consumer and Business Services implementing the Insurance Code, for the period beginning on January 1, 2016 and ending on December 31, 2017.

(3) As used in ORS 743B.005 and rules of the Department of Consumer and Business Services implementing the Insurance Code, "small employer" means, in connection with a group health benefit plan with respect to a calendar year and a plan year, an employer who employed an average of at least one but not more than 50 employees on business days during the preceding calendar year and who employs at least one employee on the first day of the plan year.

(4) For purposes of determining the number of employees in a group health benefit plan, insurers and producers should follow the guidance enti-

led, "Revised Counting Methodology for Determining Small or Large Group," as set forth in **Exhibit A** of this rule.

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

Stat. Auth.: ORS 731.244 & 743.730(27)

Stats. Implemented: ORS 743.730

Hist.: ID 12-2015(Temp), f. & cert. ef. 10-16-15 thru 4-11-16; ID 4-2016, f. & cert. ef. 4-8-16; ID 3-2017, f. & cert. ef. 3-9-17

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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 1-2017

Filed with Sec. of State: 3-6-2017

Certified to be Effective: 4-1-17

Notice Publication Date: 2-1-2017

Rules Amended: 436-009-0004, 436-009-0010, 436-009-0020, 436-009-0023, 436-009-0025, 436-009-0030, 436-009-0040, 436-009-0060, 436-009-0110, 436-010-0210

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;

- Clarify that a medical provider may not attempt to collect payment for any medical service from a patient, except under specified circumstances;

- Provide that adjusted cost-to-charge ratios for Oregon hospitals will be published by bulletin once each year instead of twice per year;
- Establish a fee schedule amount for an implant when an ambulatory surgery center's cost for the implant is exactly \$100;

- Require that a worker must be reimbursed for claim related, out-of-pocket expenses within 14 days of any action causing the reimbursement request to be payable, or within 30 days of the insurer's receipt of the completed reimbursement request supported by documentation, whichever is later;

- Explain that the insurer must provide a written explanation of benefits (in addition to payment, if any) for the services being paid or denied within 45 days of receipt of the bill;

- Create standards for electronic payment of medical bills, to include provider consent and right to discontinue e-payment, provision of cardholder agreements, and negotiability of payment instruments;

- Increase the conversion factor for anesthesia services by three percent from \$58 to \$59.74; and

- Increase the maximum allowable payment for interpreter services from \$60 per hour to \$70 per hour if the interpreter has been certified by the Health Care Interpreter Program of the Oregon Health Authority's, Office of Equity and Inclusion.

The agency has amended OAR 436-010, "Medical Services," to:

- Explain requirements and limitations for chiropractic physicians, naturopathic physicians, and physician assistants to provide compensable medical services and to authorize temporary disability benefits.

Rules Coordinator: Fred Bruyns—(503) 947-7717

436-009-0004

Adoption of Standards

(1) The director adopts, by reference, the American Society of Anesthesiologists ASA,

Relative Value Guide 2017 as a supplementary fee schedule for those anesthesia codes not found in Appendix B. To get a copy of the ASA Relative Value Guide 2017, 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® 2017), Fourth Edition Revised, 2016, 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

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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 26, Issue 12, 2016. 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® 2017 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.

(6) The director adopts, by reference, CDT 2017: 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.

(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.

(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.

(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.

(10) Specific provisions contained in OAR chapter 436, divisions 009, 010, and 015 control over any conflicting provision in ASA Relative Value Guide 2017, CPT® 2017, CPT® Assistant, HCPCS 2017, CDT 2017, 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.

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; WCD 7-2016(Temp), f. 12-16-16, cert. ef. 1-1-17 thru 6-29-17; WCD 1-2017, f. 3-6-17, cert. ef. 4-1-17

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

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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® 2017 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® 2017 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® 2017, HCPCS' level II national modifiers, or anesthesia modifiers, when applicable.

(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, and a medical provider must not attempt to collect payment for any medical service from a patient, except as follows:

(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) Rolfing;

(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;

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(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. 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; WCD 7-2016(Temp), f. 12-16-16, cert. ef. 1-1-17 thru 6-29-17; WCD 1-2017, f. 3-6-17, cert. ef. 4-1-17

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 yearly.

(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

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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), also see 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, cf. 3-1-82; WCD 1-1984(Admin), f. & cf. 1-16-84; WCD 2-1985(Admin), f. 4-29-85, cf. 6-3-85; Renumbered from 436-069-0701, 5-1-85; WCD 3-1985(Admin)(Temp), f. & cf. 9-4-85; WCD 4-1985(Admin)(Temp), f. & cf. 9-11-85; WCD 6-1985(Admin), f. 12-10-85, cf. 1-1-86; WCD 1-1986(Admin)(Temp), f. 2-5-86, cf. 2-6-86; WCD 2-1986(Admin), f. 3-10-86, cf. 3-17-86; WCD 2-1987(Admin), f. 2-20-87, cf. 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 6-2014, 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; WCD 1-2017, f. 3-6-17, cert. ef. 4-1-17

436-009-0023

Ambulatory Surgery Center (ASC)

(1) Billing Form.

(a) The ASC must submit bills on a completed, current CMS 1500 form (see OAR 436-009-0010 (3)) unless the ASC submits medical bills electronically. Computer-generated reproductions of the CMS 1500 form may also be used.

(b) The ASC must add a modifier "SG" in box 24D of the CMS 1500 form to identify the facility charges.

(2) ASC Facility Fee.

(a) The following services are included in the ASC facility fee and the ASC may not receive separate payment for them:

(A) Nursing, technical, and related services;

(B) Use of the facility where the surgical procedure is performed;

(C) Drugs and biologicals designated as packaged in Appendix D, surgical dressings, supplies, splints, casts, appliances, and equipment directly related to the provision of the surgical procedure;

(D) Radiology services designated as packaged in Appendix D;

(E) Administrative, record-keeping, and housekeeping items and services;

(F) Materials for anesthesia;

(G) Supervision of the services of an anesthesiologist by the operating surgeon; and

(H) Packaged services identified in Appendix C or D.

(b) The payment for the surgical procedure (i.e., the ASC facility fee) does not include physician's services, laboratory, X-ray, or diagnostic procedures not directly related to the surgical procedures, prosthetic devices, orthotic devices, durable medical equipment (DME), or anesthesiologists' services.

(3) ASC Billing.

(a) The ASC should not bill for packaged codes as separate line-item charges when the payment amount says "packaged" in Appendices C or D.

(b) When the ASC provides packaged services (see Appendices C and D) with a surgical procedure, the billed amount should include the charges for the packaged services.

(c) For the purpose of this rule, an implant is an object or material inserted or grafted into the body. When the ASC's cost for an implant is \$100 or more, the ASC may bill for the implant as a separate line item. The ASC must provide the insurer a receipt of sale showing the ASC's cost of the implant.

(4) ASC Payment.

(a) Unless otherwise provided by contract, insurers must pay ASCs for services according to this rule.

(b) Insurers must pay for surgical procedures (i.e., ASC facility fee) and ancillary services the lesser of:

(A) The maximum allowable payment amount for the HCPCS code found in Appendix C for surgical procedures, and in Appendix D for ancillary services integral to a surgical procedure; or

(B) The ASC's usual fee for surgical procedures and ancillary services.

(c) When more than one procedure is performed in a single operative session, insurers must pay the principal procedure at 100 percent of the maximum allowable fee, and the secondary and all subsequent procedures at 50 percent of the maximum allowable fee.

A diagnostic arthroscopic procedure performed preliminary to an open operation is considered a secondary procedure and should be paid accordingly.

The multiple surgery discount described in this section does not apply to codes listed in Appendix C with an "N" in the "Subject to Multiple Procedure Discounting" column.

(d) The table below lists packaged surgical codes that ASCs may perform without any other surgical procedure. In this case do not use Appendix C to calculate payment, use the rates listed below instead. [Table not included. See ED. NOTE.]

(e) When the ASC's cost of an implant is \$100 or more, insurers must pay for the implants at 110 percent of the ASC's actual cost documented on a receipt of sale and not according to Appendix D or E.

(f) When the ASC's cost of an implant is less than \$100, insurers are not required to pay separately for the implant. An implant may consist of several separately billable components, some of which may cost less than \$100. For payment purposes, insurers must add the costs of all the components for the entire implant and use that total amount to calculate payment for the implant.

(g) The insurer does not have to pay the ASC when the ASC provides services to a patient who is enrolled in a managed care organization (MCO) and:

(A) The ASC is not a contracted facility for the MCO;

(B) The MCO has not pre-certified the service provided; or

(C) The surgeon is not an MCO panel provider.

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

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.245, 656.248 & 656.252

Hist.: 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 1-2017, f. 3-6-17, cert. ef. 4-1-17

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 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 docu-

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ment 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) The insurer must reimburse the worker within 14 days of any action causing the reimbursement request to be payable, or within 30 days of the insurer's receipt of the completed reimbursement request supported by documentation, whichever is later.

(f) 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.

(g) 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 attend-

ing 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 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.

(e) 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 2-1987, 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; WCD 1-2017, f. 3-6-17, cert. ef. 4-1-17

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.

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(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 within 45 days of receipt of the bill. 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 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) Electronic Payment.

(a) An insurer may pay a provider through a direct deposit system, automated teller machine card or debit card, or other means of electronic transfer if the provider voluntarily consents.

(A) The provider's consent must be obtained before initiating electronic payments.

(B) The consent may be written or verbal. The insurer must send the provider a written confirmation when consent is obtained verbally.

(C) The provider may discontinue receiving electronic payments by notifying the insurer in writing.

(b) Cardholder agreement for ATM or debit cards. The provider must receive a copy of the cardholder agreement outlining the terms and conditions under which an automated teller machine card or debit card has been issued before or at the time the initial electronic payment is made.

(c) Instrument of payment. The instrument of payment must be negotiable and payable to the provider for the full amount of the benefit paid, without cost to the provider.

(5) 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.

(6) EDI Reporting. For medical bill reporting requirements, see OAR 436-160 Electronic Data Interchange Medical Bill Data rules.

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; WCD 1-2017, f. 3-6-17, cert. ef. 4-1-17

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

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\$59.74. 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 97161, 97162, 97163, 97164, 97165, 97166, 97167, or 97168, 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: 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 2-2000, 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; WCD 7-2016(Temp), f. 12-16-16, cert. ef. 1-1-17 thru 6-29-17; WCD 1-2017, f. 3-6-17, cert. ef. 4-1-17

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.) [Table 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 organization 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; WCD 1-2017, f. 3-6-17, cert. ef. 4-1-17

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 serv-

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ices 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, excluding American Sign Language interpreter services, provided by noncertified interpreters;

(B) D0005 for American Sign Language interpreter services;

(C) D0006 for interpreter services, excluding American Sign Language interpreter services, provided by a health care interpreter certified by the Oregon Health Authority; and

(D) 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, D0006, 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;

(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 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.

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

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; WCD 1-2017, f. 3-6-17, cert. ef. 4-1-17

ADMINISTRATIVE RULES

436-010-0210

Attending Physician, Authorized Nurse Practitioner, and Time-Loss Authorization

(1) An attending physician or authorized nurse practitioner is primarily responsible for the patient's care, authorizes time loss, and prescribes and monitors ancillary care and specialized care.

(a) No later than five days after becoming a patient's attending physician or authorized nurse practitioner, the provider must notify the insurer using Form 827. Regardless of whether Form 827 is filed, the facts of the case and the actions of the provider determine if the provider is the attending physician or authorized nurse practitioner.

(b) Type A and B attending physicians and authorized nurse practitioners may authorize time loss and manage medical services subject to the limitations of ORS chapter 656 or a managed care organization contract. (See Appendix A "Matrix for Health Care Provider Types")

(c) Except for emergency services, or otherwise provided for by statute or these rules, all treatments and medical services must be approved by the worker's attending physician or authorized nurse practitioner.

(2) Chiropractic Physicians, Naturopathic Physicians, Physician Assistants (Type B providers).

(a) Prior to providing any compensable medical service or authorizing temporary disability benefits under ORS 656.245, a type B provider must certify to the director that the provider has reviewed a packet of materials provided by the director.

(b) Type B providers may assume the role of attending physician for a cumulative total of 60 days from the first visit on the initial claim or for a cumulative total of 18 visits, whichever occurs first.

(c) Type B providers may authorize payment of temporary disability compensation for a period not to exceed 30 days from the date of the first visit on the initial claim to any type B provider.

(d) Except for chiropractic physicians serving as the attending physician at the time of claim closure, type B providers may not make findings regarding the worker's impairment for the purpose of evaluating the worker's disability.

(3) Emergency Room Physicians. Emergency room physicians may authorize time loss for no more than 14 days when they refer the patient to a primary care physician. If an emergency room physician sees a patient in his or her private practice apart from their duties as an emergency room physician, the physician may be the attending physician.

(4) Authorized Nurse Practitioners.

(a) In order to provide any compensable medical service, a nurse practitioner licensed in Oregon under ORS 678.375 to 678.390 must review a packet of materials provided by the division and complete the statement of authorization. (See www.oregonwcdoc.info) Once the nurse practitioner has completed the statement of authorization, the division will assign an authorized nurse practitioner number.

(b) An authorized nurse practitioner may:

(A) Provide compensable medical services to an injured worker for a period of 180 days from the date of the first visit with a nurse practitioner on the initial claim. Thereafter, medical services provided by an authorized nurse practitioner are not compensable without the attending physician's authorization; and

(B) Authorize temporary disability benefits for a period of up to 180 days from the date of the first nurse practitioner visit on the initial claim.

(5) Unlicensed to Provide Medical Services. Attending physicians may prescribe services to be carried out by persons not licensed to provide a medical service or treat independently. These services must be rendered under the physician's direct control and supervision. Home health care provided by a patient's family member is not required to be provided under the direct control and supervision of the attending physician if the family member demonstrates competency to the satisfaction of the attending physician.

(6) Out-of-State Attending Physicians. The worker may choose an attending physician outside the state of Oregon with the approval of the insurer. When the insurer receives the worker's request or becomes aware of the worker's request to treat with an out-of-state attending physician, the insurer must give the worker written notice of approval or disapproval of the worker's choice of attending physician within 14 days.

(a) If the insurer approves the worker's choice of out-of-state attending physician, the insurer must immediately notify the worker and the physician in writing of the following:

(A) The Oregon medical fee and payment rules, OAR 436-009;

(B) The manner in which the out-of-state physician may provide compensable medical treatment or services to Oregon workers; and

(C) That the insurer cannot pay bills for compensable services above the Oregon fee schedule.

(b) If the insurer disapproves the worker's out-of-state attending physician, the notice to the worker must:

(A) Clearly state the reasons for the disapproval, for example, the out-of-state physician's refusal to comply with OAR 436-009 and 436-010,

(B) Identify at least two other physicians of the same healing art and specialty in the same area that the insurer would approve, and

(C) Inform the worker that if the worker disagrees with the disapproval, the worker may request approval from the director under OAR 436-010-0220.

(7) If an approved out-of-state attending physician does not comply with OAR 436-009 or 436-010, the insurer may withdraw approval of the attending physician. The insurer must notify the worker and the physician in writing:

(a) The reasons for withdrawing the approval,

(b) That any future services provided by that physician will not be paid by the insurer, and

(c) That the worker may be liable for payment of services provided after the date of notification.

(8) If the worker disagrees with the insurer's decision to disapprove an out-of-state attending physician, the worker or worker's representative may request approval from the director under OAR 436-010-0220.

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

Stat. Auth: ORS 656.726(4)

Stats. Implemented: ORS 656.005(12), 656.245, 656.260

Hist.: WCD 5-1982(Admin), f. 2-23-82, ef. 3-1-82; WCD 1-1984(Admin), f. & ef. 1-16-84; WCD 5-1984(Admin), f. & ef. 8-20-84; Renumbered from 436-069-0301, 5-1-85; WCD 6-1985(Admin), f. 12-10-85, ef. 1-1-86; WCD 6-1988, f. 9-6-88, cert. ef. 9-15-88; 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 436-010-0050; 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 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 12-2007(Temp), f. 12-14-07, cert. ef. 1-2-08 thru 6-29-08; WCD 2-2008, f. 6-13-08, cert. ef. 6-30-08; WCD 5-2011, f. 11-18-11, cert. ef. 1-1-12; 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 5-2015, f. 8-20-15, cert. ef. 10-1-15; WCD 1-2017, f. 3-6-17, cert. ef. 4-1-17

Department of Corrections Chapter 291

Rule Caption: Confidentiality and Inadmissibility of Mediation Communications

Adm. Order No.: DOC 2-2017

Filed with Sec. of State: 3-9-2017

Certified to be Effective: 3-9-17

Notice Publication Date:

Rules Adopted: 291-001-0115

Subject: Pursuant to ORS 36.224(4), adopting Oregon Department of Corrections' Confidentiality and Inadmissibility of Mediation Communications Rule OAR 291-001-0115 to adopt by reference the Confidentiality and Inadmissibility of Mediation Communications rule OAR 137-005-0052 adopted by the Attorney General effective as of 10-27-15.

Rules Coordinator: Janet R. Worley—(503) 945-0933

291-001-0115

Confidentiality and Inadmissibility of Mediation Communications

(1) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.

(2) Nothing in this rule affects any confidentiality created by other law. Nothing in this rule relieves a public body from complying with the Public Meetings Law, ORS 192.610 to 192.690. Whether or not they are confidential under this or other rules of the agency, mediation communications are exempt from disclosure under the Public Records Law to the extent provided in ORS 192.410 to 192.505.

(3) This rule applies only to mediations in which the agency is a party or is mediating a dispute as to which the agency has regulatory authority. This rule does not apply when the agency is acting as the "mediator" in a matter in which the agency also is a party as defined in ORS 36.234.

(4) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (8) of this rule.

(5) Mediations Excluded. Sections (6)–(9) of this rule do not apply to:

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(a) Mediation of workplace interpersonal disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials, unless a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed; or

(b) Mediation in which the person acting as the mediator will also act as the hearings officer in a contested case involving some or all of the same matters; or

(c) Mediation in which the only parties are public bodies; or

(d) Mediation in which two or more public bodies and a private entity are parties if the laws, rule or policies governing mediation confidentiality for at least one of the public bodies provide that mediation communications in the mediation are not confidential; or

(e) Mediation involving 15 or more parties if the agency has designated that another mediation confidentiality rule adopted by the agency may apply to that mediation.

(6) Disclosures by Mediator. A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:

(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c)–(d), (j)–(l), (o)–(p) and (r)–(s) of section (8) of this rule.

(7) Confidentiality and Inadmissibility of Mediation Communications. Except as provided in section (8) of this rule, mediation communications are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced as evidence by the parties or the mediator in any subsequent proceeding so long as:

(a) The parties to the mediation sign an agreement to mediate specifying the extent to which mediation communications are confidential; and,

(b) If the mediator is the employee of or acting on behalf of a state agency, the mediator or an authorized representative of the agency signs the agreement.

(8) Exceptions to Confidentiality and Inadmissibility.

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.

(b) Any document that, before its use in a mediation, was a public record as defined in ORS 192.410 remains subject to disclosure to the extent provided by ORS 192.410 to 192.505 and may be introduced into evidence in a subsequent proceeding.

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(d) Any mediation communication related to the conduct of a licensed professional that is made to or in the presence of a person who, as a condition of his or her professional license, is obligated to report such communication by law or court rule is not confidential and may be disclosed to the extent necessary to make such a report.

(e) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.

(f) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS Chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.

(g) An employee of the agency may disclose confidential mediation communications to another agency employee so long as the disclosure is necessary to conduct authorized activities of the agency. An employee receiving a confidential mediation communication under this subsection is

bound by the same confidentiality requirements as apply to the parties to the mediation.

(h) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.

(i) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.

(j) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.

(k) When a mediation is conducted as part of the negotiation of a collective bargaining agreement, the following mediation communications are not confidential and such communications may be introduced into evidence in a subsequent administrative, judicial or arbitration proceeding:

(A) A request for mediation, or

(B) A communication from the Employment Relations Board Conciliation Service establishing the time and place of mediation, or

(C) A final offer submitted by the parties to the mediator pursuant to ORS 243.712, or

(D) A strike notice submitted to the Employment Relations Board.

(l) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.

(m) Written mediation communications prepared by or for the agency or its attorney are not confidential and may be disclosed and may be introduced as evidence in any subsequent administrative, judicial or arbitration proceeding to the extent the communication does not contain confidential information from the mediator or another party, except for those written mediation communications that are:

(A) Attorney client privileged communications so long as they have been disclosed to no one other than the mediator in the course of the mediation or to persons as to whom disclosure of the communication would not waive the privilege, or

(B) Attorney work product prepared in anticipation of litigation or for trial, or

(C) Prepared exclusively for the mediator or in a caucus session and not given to another party in the mediation other than a state agency, or

(D) Prepared in response to the written request of the mediator for specific documents or information and given to another party in the mediation, or

(E) Settlement concepts or proposals, shared with the mediator or other parties.

(n) A mediation communication made to the agency may be disclosed and may be admitted into evidence to the extent the agency director, administrator or board determines that disclosure of the communication is necessary to prevent or mitigate a serious danger to the public's health or safety, and the communication is not otherwise confidential or privileged under state or federal law.

(o) The terms of any mediation agreement are not confidential and may be introduced as evidence in a subsequent proceeding, except to the extent the terms of the agreement are exempt from disclosure under ORS 192.410 to 192.505, a court has ordered the terms to be confidential under ORS 17.095 or state or federal law requires the terms to be confidential.

(p) In any mediation in a case that has been filed in court or when a public body's role in a mediation is solely to make mediation available to the parties the mediator may report the disposition of the mediation to that public body or court at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency conducting the mediation or making the mediation available or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232.

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(q) An agreement to mediate is not confidential and may be introduced into evidence in a subsequent proceeding.

(r) Any mediation communication relating to child abuse that is made to a person required to report child abuse under ORS 419B.010 is not confidential to the extent that the person is required to report the communication.

(s) Any mediation communication relating to elder abuse that is made to a person who is required to report elder abuse under ORS 124.050 to 124.095 is not confidential to the extent that the person is required to report the communication.

(9) When a mediation is subject to section (7) of this rule, the agency will provide to all parties to the mediation and the mediator a copy of this rule or a citation to the rule and an explanation of where a copy of the rule may be obtained. The agreement to mediate also must refer to this rule. Violation of this provision does not waive confidentiality or inadmissibility.

Stat. Auth.: ORS 36.224

Stats. Implemented: ORS 36.224, 36.228, 36.230, 36.232

Hist.: DOC 2-2017, f. & cert. ef. 3-9-17

Rule Caption: Approval for Short-Term Transitional Leaves

Adm. Order No.: DOC 3-2017(Temp)

Filed with Sec. of State: 3-15-2017

Certified to be Effective: 3-15-17 thru 9-10-17

Notice Publication Date:

Rules Amended: 291-063-0030

Subject: The current rule allows an inmate eligible for short-term transitional leave to be released from any Department of Corrections institution with proper approval from the releasing authority.

As part of reentry programs, the Department of Corrections has through intergovernmental agreements with certain counties, allowed inmates eligible for short-term transitional leave to be placed in county facilities in preparation for release. This temporary rule amendment is necessary to allow the department to release inmates that are eligible for short-term transitional leave and housed in a county facility to be released directly from the county facility.

Rules Coordinator: Janet R. Worley—(503) 945-0933

291-063-0030

Approval of Short-Term Transitional Leaves

(1) Short-term transitional leaves may be granted for inmates releasing from any Department of Corrections facility or county facility with proper approval of the releasing authority.

(2) Application:

(a) The inmate may initiate the short-term transitional leave process by filling out the appropriate Short-Term Transitional Leave application and submitting it to the assigned institutional counselor or designated staff member.

(c) Designated staff members will verify the information given and submit the leave recommendation and other relevant information to the releasing authority.

(3) Approval:

(a) The releasing authority or designee may grant a short-term transitional leave up to 30 days prior to the inmate's release to post-prison supervision to allow an inmate to participate in an approved release plan.

(b) No short-term transitional leave will be granted to allow the inmate to reside with a Department of Corrections employee, contractor, or volunteer unless the inmate is an immediate family member of the employee pursuant to ORS 144.108(3)(b).

(c) The releasing authority or designee will stipulate the special conditions necessary to enhance community safety. Short-term transitional leave conditions will replicate as much as possible post-prison supervision conditions. Short-term transitional leave conditions may hold an inmate to a higher standard than post-prison supervision.

Stat. Auth.: ORS 179.040, 421.166, 421.168, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 421.166, 421.168, 423.020, 423.030 & 423.075

Hist.: CD 1-1990, f. & cert. ef. 1-29-90; CD 21-1990(Temp), f. & cert. ef. 11-1-90; CD 11-1991, f. & cert. ef. 4-24-91; DOC 8-2003(Temp), f. & cert. ef. 4-17-03 thru 10-13-03; DOC 15-2003, f. 10-3-03, cert. ef. 10-4-03; DOC 17-2005, f. 12-30-05, cert. ef. 1-1-06; DOC 17-2010(Temp), f. 11-23-10, cert. ef. 12-1-10 thru 5-30-11; DOC 10-2011, f. & cert. ef. 6-2-11; DOC 3-2017(Temp), f. & cert. ef. 3-15-17 thru 9-10-17

Department of Energy, Energy Facility Siting Council Chapter 345

Rule Caption: Incorporate ODFW sage-grouse rules and remove requirement to identify federally listed threatened and endangered species.

Adm. Order No.: EFSC 1-2017

Filed with Sec. of State: 3-8-2017

Certified to be Effective: 3-8-17

Notice Publication Date: 2-1-2017

Rules Amended: 345-021-0010, 345-022-0000, 345-022-0060

Subject: The rule amendments relating to Oregon's Greater Sage-grouse Conservation Strategy for Oregon clearly and effectively make Oregon Department of Fish and Wildlife (ODFW) rules OAR 635-140-0000 through 635-140-0025 applicable to the Energy Facility Siting Council's (EFSC) review process.

- The amendment to OAR 345-022-0060 ensures EFSC rules are consistent with Oregon's greater sage-grouse conservation policy for Oregon. In 2015, in efforts to implement the Oregon sage-grouse conservation policy, ODFW amended its sage-grouse rules in Chapter 635, Division 140 and the Oregon Department of Land Conservation and Development (DLCD) adopted a new sage-grouse rule, OAR 660-023-0115. The amendment cross-references the newly amended ODFW sage-grouse rules and clearly establishes a new sage-grouse component to EFSC's Fish and Wildlife standard. Rule amendments are not needed to specifically cross-reference the newly adopted DLCD sage-grouse rule because existing EFSC rules and statutes already require general compliance with the statewide land use planning goals and directly applicable land use statutes and DLCD administrative rules.

- The amendments to OAR 345-021-0010(1)(p) revise the required contents of Exhibit P of an application for an energy facility site certificate so that the application includes sage-grouse habitat information and addresses the proposed facility's compliance with the new sage-grouse component of the EFSC Fish and Wildlife Habitat standard at OAR 345-022-0060.

- The amendments to OAR 345-022-0000 eliminate EFSC's authority to exercise its balancing authority over the newly proposed sage-grouse component of EFSC's Fish and Wildlife Standard with one limited exception. Pursuant to ORS 469.501(3) and OAR 345-022-0000(2), EFSC has the authority to issue a site certificate for a facility that does not meet one or more EFSC standards if EFSC determines that the overall public benefits of the facility outweigh any adverse effects on a resource or interest protected by the applicable standard the facility does not meet. However, EFSC cannot apply the balancing determination to the list of standards provided at OAR 345-022-0000(3). Because of the importance of protecting sage-grouse habitat, the amendments add the sage-grouse component of the EFSC Fish and Wildlife Habitat Standard to the list of standards excluded from the balancing authority but include one limited exception. The only exception is that the amended rules will allow EFSC to exercise its balancing authority in those situations where linear facilities (transmission lines and pipelines) proposed to be located outside of core and low density sage-grouse habitat are expected to cause indirect impacts on core and low density sage-grouse habitat and those indirect impacts would prevent the facility from complying with ODFW's avoidance rules at OAR 635-140-0025(2)(a) and (b). While ODFW is developing guidance on what the indirect impact distances will be sage-grouse habitat, the distances are not established in statute or rule and are subject to change. Therefore, at this moment in time, applicants for site certificates have reduced certainty when planning to site an energy facility in areas of the state dominated by sage-grouse habitat. This uncertainty as to what the indirect impact distances will be, coupled with the physical and geographic constraints in re-locating linear facilities compared to non-linear facilities, makes the siting of linear energy facilities especially difficult relative to non-linear energy facilities. Therefore, this limited exception to the rule excluding the ODFW's sage-grouse rules

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from the Council's balancing authority is intended to account for the uncertainty of the indirect impact distances in sage-grouse habitat by allowing EFSC to retain its balancing authority in those circumstances where a proposed facility avoids direct impacts to core and low-density sage-grouse habitat but either cannot, or there is no reasonable way to, satisfy the sage-grouse rules for avoidance of indirect impacts.

The amendment to OAR 345-021-0010(1)(q) removes the requirement for an applicant to identify federally listed threatened and endangered species in Exhibit Q of a site certificate application. This change makes the application requirements consistent with the EFSC siting standards. The EFSC Threatened and Endangered Species Standard at OAR 345-022-0070 requires EFSC to find that the design, construction and operation of the proposed facility are not likely to cause a significant reduction in the likelihood of survival or recovery of a species that the Oregon Fish and Wildlife Commission has listed as threatened or endangered under ORS 496.172(2). The EFSC standard does not apply to species that are federally listed as endangered or threatened under 16 USC Sec. 1533 unless the identified species is also a state listed species. Therefore, it is not necessary for an applicant to identify federally listed species for purposes of demonstrating the proposed facility's compliance with the EFSC standard. The existing requirement to identify federally listed species that are not also listed as threatened or endangered by the Oregon Fish and Wildlife Commission has contributed to confusion for both applicants and the public about the relevance of the federally listed species to the EFSC decision on a site certificate application.

Rules Coordinator: Jason Sierman—(503) 373-2127

345-021-0010

Contents of an Application

(1) The project order described in OAR 345-015-0160(1) identifies the provisions of this rule applicable to the application for the proposed facility, including any appropriate modifications to applicable provisions of this rule. The applicant shall include in its application for a site certificate information that addresses each provision of this rule identified in the project order. The applicant shall designate the information with the appropriate exhibit label identified in the following subsections. If the same information is required in each of several exhibits the applicant may provide the required information in one exhibit and include appropriate references in the others. For the purpose of submitting an application for a site certificate in an expedited review granted under 345-015-0300 or 345-015-0310, the applicant shall include information that addresses all provisions of this rule. In such expedited reviews, analysis areas addressed in this rule are the study areas defined in 345-001-0010, subject to later modification in the project order.

(a) Exhibit A. Information about the applicant and participating persons, including:

(A) The name and address of the applicant including all co-owners of the proposed facility, the name, mailing address, email address and telephone number of the contact person for the application, and if there is a contact person other than the applicant, the name, title, mailing address, email address and telephone number of that person.

(B) The contact name, mailing address, email address and telephone number of all participating persons, other than individuals, including but not limited to any parent corporation of the applicant, persons upon whom the applicant will rely for third-party permits or approvals related to the facility, and, if known, other persons upon whom the applicant will rely in meeting any facility standard adopted by the Council.

(C) If the applicant is a corporation, it shall give:

(i) The full name, official designation, mailing address, email address and telephone number of the officer responsible for submitting the application;

(ii) The date and place of its incorporation;

(iii) A copy of its articles of incorporation and its authorization for submitting the application; and

(iv) In the case of a corporation not incorporated in Oregon, the name and address of the resident attorney-in-fact in this state and proof of registration to do business in Oregon.

(D) If the applicant is a wholly owned subsidiary of a company, corporation or other business entity, in addition to the information required by

paragraph (C), it shall give the full name and business address of each of the applicant's full or partial owners.

(E) If the applicant is an association of citizens, a joint venture or a partnership, it shall give:

(i) The full name, official designation, mailing address, email address and telephone number of the person responsible for submitting the application;

(ii) The name, business address and telephone number of each person participating in the association, joint venture or partnership and the percentage interest held by each;

(iii) Proof of registration to do business in Oregon;

(iv) A copy of its articles of association, joint venture agreement or partnership agreement and a list of its members and their cities of residence; and

(v) If there are no articles of association, joint venture agreement or partnership agreement, the applicant shall state that fact over the signature of each member.

(F) If the applicant is a public or governmental entity, it shall give:

(i) The full name, official designation, mailing address, email address and telephone number of the person responsible for submitting the application; and

(ii) Written authorization from the entity's governing body to submit an application.

(G) If the applicant is an individual, the individual shall give his or her mailing address, email address and telephone number.

(H) If the applicant is a limited liability company, it shall give:

(i) The full name, official designation, mailing address, email address and telephone number of the officer responsible for submitting the application;

(ii) The date and place of its formation;

(iii) A copy of its articles of organization and its authorization for submitting the application; and

(iv) In the case of a limited liability company not registered in Oregon, the name and address of the resident attorney-in-fact in this state and proof of registration to do business in Oregon.

(b) Exhibit B. Information about the proposed facility, construction schedule and temporary disturbances of the site, including:

(A) A description of the proposed energy facility, including as applicable:

(i) The nominal electric generating capacity and the average electrical generating capacity, as defined in ORS 469.300.

(ii) Major components, structures and systems, including a description of the size, type and configuration of equipment used to generate electricity and useful thermal energy.

(iii) A site plan and general arrangement of buildings, equipment and structures.

(iv) Fuel and chemical storage facilities, including structures and systems for spill containment

(v) Equipment and systems for fire prevention and control.

(vi) For thermal power plants:

(I) A discussion of the source, quantity and availability of all fuels proposed to be used in the facility to generate electricity or useful thermal energy.

(II) Process flow, including power cycle and steam cycle diagrams to describe the energy flows within the system.

(III) Equipment and systems for disposal of waste heat.

(IV) The fuel chargeable to power heat rate.

(vii) For surface facilities related to underground gas storage, estimated daily injection and withdrawal rates, horsepower compression required to operate at design injection or withdrawal rates, operating pressure range and fuel type of compressors.

(viii) For facilities to store liquefied natural gas, the volume, maximum pressure, liquefaction and gasification capacity in thousand cubic feet per hour.

(B) A description of major components, structures and systems of each related or supporting facility.

(C) The approximate dimensions of major facility structures and visible features.

(D) If the proposed energy facility is a pipeline or a transmission line or has, as a related or supporting facility, a transmission line or pipeline that, by itself, is an energy facility under the definition in ORS 469.300, a corridor selection assessment explaining how the applicant selected the corridor(s) for analysis in the application. In the assessment, the applicant shall evaluate the corridor adjustments the Department has described in the project order, if any. The applicant may select any corridor for analysis in the

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application and may select more than one corridor. However, if the applicant selects a new corridor, then the applicant must explain why the applicant did not present the new corridor for comment at an informational meeting under OAR 345-015-0130. In the assessment, the applicant shall discuss the reasons for selecting the corridor(s), based upon evaluation of the following factors:

(i) Least disturbance to streams, rivers and wetlands during construction.

(ii) Least percentage of the total length of the pipeline or transmission line that would be located within areas of Habitat Category 1, as described by the Oregon Department of Fish and Wildlife.

(iii) Greatest percentage of the total length of the pipeline or transmission line that would be located within or adjacent to public roads and existing pipeline or transmission line rights-of-way.

(iv) Least percentage of the total length of the pipeline or transmission line that would be located within lands that require zone changes, variances or exceptions.

(v) Least percentage of the total length of the pipeline or transmission line that would be located in a protected area as described in OAR 345-022-0040.

(vi) Least disturbance to areas where historical, cultural or archaeological resources are likely to exist.

(vii) Greatest percentage of the total length of the pipeline or transmission line that would be located to avoid seismic, geological and soils hazards.

(viii) Least percentage of the total length of the pipeline or transmission line that would be located within lands zoned for exclusive farm use.

(E) If the proposed energy facility is a pipeline or transmission line or has, as a related or supporting facility, a transmission line or pipeline of any size:

(i) The length of the pipeline or transmission line.

(ii) The proposed right-of-way width of the pipeline or transmission line, including to what extent new right-of-way will be required or existing right-of-way will be widened.

(iii) If the proposed transmission line or pipeline corridor follows or includes public right-of-way, a description of where the transmission line or pipeline would be located within the public right-of-way, to the extent known. If the applicant proposes to locate all or part of a transmission line or pipeline adjacent to but not within the public right-of-way, describe the reasons for locating the transmission line or pipeline outside the public right-of-way. The applicant must include a set of clear and objective criteria and a description of the type of evidence that would support locating the transmission line or pipeline outside the public right-of-way, based on those criteria.

(iv) For pipelines, the operating pressure and delivery capacity in thousand cubic feet per day and the diameter and location, above or below ground, of each pipeline.

(v) For transmission lines, the rated voltage, load carrying capacity, and type of current and a description of transmission line structures and their dimensions.

(F) A construction schedule including the date by which the applicant proposes to begin construction and the date by which the applicant proposes to complete construction. Construction is defined in OAR 345-001-0010. The applicant shall describe in this exhibit all work on the site that the applicant intends to begin before the Council issues a site certificate. The applicant shall include an estimate of the cost of that work. For the purpose of this exhibit, "work on the site" means any work within a site or corridor, other than surveying, exploration or other activities to define or characterize the site or corridor, that the applicant anticipates or has performed as of the time of submitting the application.

(c) Exhibit C. Information about the location of the proposed facility, including:

(A) A map or maps showing the proposed locations of the energy facility site, all related or supporting facility sites and all areas that might be temporarily disturbed during construction of the facility in relation to major roads, water bodies, cities and towns, important landmarks and topographic features, using a scale of 1 inch = 2000 feet or smaller when necessary to show detail.

(B) A description of the location of the proposed energy facility site, the proposed site of each related or supporting facility and areas of temporary disturbance, including the total land area (in acres) within the proposed site boundary, the total area of permanent disturbance, and the total area of temporary disturbance. If a proposed pipeline or transmission line is to follow an existing road, pipeline or transmission line, the applicant shall state

to which side of the existing road, pipeline or transmission line the proposed facility will run, to the extent this is known.

(C) For energy generation facilities, a map showing the approximate locations of any other energy generation facilities that are known to the applicant to be permitted at the state or local level within the study area as defined in OAR 345-001-0010 for impacts to public services.

(d) Exhibit D. Information about the organizational expertise of the applicant to construct and operate the proposed facility, providing evidence to support a finding by the Council as required by OAR 345-022-0010, including:

(A) The applicant's previous experience, if any, in constructing and operating similar facilities.

(B) The qualifications of the applicant's personnel who will be responsible for constructing and operating the facility, to the extent that the identities of such personnel are known when the application is submitted.

(C) The qualifications of any architect, engineer, major component vendor, or prime contractor upon whom the applicant will rely in constructing and operating the facility, to the extent that the identities of such persons are known when the application is submitted.

(D) The past performance of the applicant, including but not limited to the number and severity of any regulatory citations in constructing or operating a facility, type of equipment, or process similar to the proposed facility.

(E) If the applicant has no previous experience in constructing or operating similar facilities and has not identified a prime contractor for construction or operation of the proposed facility, other evidence that the applicant can successfully construct and operate the proposed facility. The applicant may include, as evidence, a warranty that it will, through contracts, secure the necessary expertise.

(F) If the applicant has an ISO 9000 or ISO 14000 certified program and proposes to design, construct and operate the facility according to that program, a description of the program.

(G) If the applicant relies on mitigation to demonstrate compliance with any standards of Division 22 or 24 of this chapter, evidence that the applicant can successfully complete such proposed mitigation, including past experience with other projects and the qualifications and experience of personnel upon whom the applicant will rely, to the extent that the identities of such persons are known at the date of submittal.

(e) Exhibit E. Information about permits needed for construction and operation of the facility, including:

(A) Identification of all federal, state and local government permits related to the siting of the proposed facility, a legal citation of the statute, rule or ordinance governing each permit, and the name, mailing address, email address and telephone number of the agency or office responsible for each permit.

(B) A description of each permit, the reasons the permit is needed for construction or operation of the facility and the applicant's analysis of whether the permit should or should not be included in and governed by the site certificate.

(C) For any state or local government agency permits, licenses or certificates that are proposed to be included in and governed by the site certificate, evidence to support findings by the Council that construction and operation of the proposed facility will comply with the statutes, rules and standards applicable to the permit. The applicant may show this evidence:

(i) In Exhibit J for permits related to wetlands.

(ii) In Exhibit O for permits related to water rights.

(D) For federally-delegated permit applications, evidence that the responsible agency has received a permit application and the estimated date when the responsible agency will complete its review and issue a permit decision.

(E) If the applicant relies on a state or local government permit or approval issued to a third party, identification of any such third-party permit and for each:

(i) Evidence that the applicant has, or has a reasonable likelihood of entering into, a contract or other agreement with the third party for access to the resource or service to be secured by that permit.

(ii) Evidence that the third party has, or has a reasonable likelihood of obtaining, the necessary permit.

(iii) An assessment of the impact of the proposed facility on any permits that a third party has obtained and on which the applicant relies to comply with any applicable Council standard.

(F) If the applicant relies on a federally-delegated permit issued to a third party, identification of any such third-party permit and for each:

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(i) Evidence that the applicant has, or has a reasonable likelihood of entering into, a contract or other agreement with the third party for access to the resource or service to be secured by that permit.

(ii) Evidence that the responsible agency has received a permit application.

(iii) The estimated date when the responsible agency will complete its review and issue a permit decision.

(G) The applicant's proposed monitoring program, if any, for compliance with permit conditions.

(f) Exhibit F. A list of the names and mailing addresses of all owners of record, as shown on the most recent property tax assessment roll, of property located within or adjacent to the site boundary as defined in OAR 345-001-0010. The applicant shall submit an updated list of property owners as requested by the Department before the Department issues notice of any public hearing on the application for a site certificate as described in 345-015-0220. In addition to incorporating the list in the application for a site certificate, the applicant shall submit the list to the Department in an electronic format approved by the Department. Property adjacent to the site boundary means property that is:

(A) Within 100 feet of the site boundary where the site, corridor or micro-siting corridor is within an urban growth boundary.

(B) Within 250 feet of the site boundary where the site, corridor or micro-siting corridor is outside an urban growth boundary and not within a farm or forest zone.

(C) Within 500 feet of the site boundary where the site, corridor or micro-siting corridor is within a farm or forest zone.

(g) Exhibit G. A materials analysis including:

(A) An inventory of substantial quantities of industrial materials flowing into and out of the proposed facility during construction and operation.

(B) The applicant's plans to manage hazardous substances during construction and operation, including measures to prevent and contain spills.

(C) The applicant's plans to manage non-hazardous waste materials during construction and operation.

(h) Exhibit H. Information from reasonably available sources regarding the geological and soil stability within the analysis area, providing evidence to support findings by the Council as required by OAR 345-022-0020, including:

(A) A geologic report meeting the guidance in Oregon Department of Geology and Mineral Industries open file report 00-04 "Guidelines for Engineering Geologic reports and Site-Specific Seismic Hazard Reports."

(B) A description and schedule of site-specific geotechnical work that will be performed before construction for inclusion in the site certificate as conditions.

(C) Evidence of consultation with the Oregon Department of Geology and Mineral Industries regarding the appropriate site-specific geotechnical work that must be performed before submitting the application for the Department to determine that the application is complete.

(D) For all transmission lines, a description of locations along the proposed route where the applicant proposes to perform site specific geotechnical work, including but not limited to railroad crossings, major road crossings, river crossings, dead ends, corners, and portions of the proposed route where geologic reconnaissance and other site specific studies provide evidence of existing landslides or marginally stable slopes that could be made unstable by the planned construction.

(E) For all pipelines that would carry explosive, flammable or hazardous materials, a description of locations along the proposed route where the applicant proposes to perform site specific geotechnical work, including but not limited to railroad crossings, major road crossings, river crossings and portions of the proposed alignment where geologic reconnaissance and other site specific studies provide evidence of existing landslides or marginally stable slopes that could be made unstable by the planned construction.

(F) An assessment of seismic hazards. For the purposes of this assessment, the maximum probable earthquake (MPE) is the maximum earthquake that could occur under the known tectonic framework with a 10 percent chance of being exceeded in a 50 year period. If seismic sources are not mapped sufficiently to identify the ground motions above, the applicant shall provide a probabilistic seismic hazard analysis to identify the peak ground accelerations expected at the site for a 500 year recurrence interval and a 5000 year recurrence interval. In the assessment, the applicant shall include:

(i) Identification of the Maximum Considered Earthquake Ground Motion as shown for the site under the 2009 International Building Code.

(ii) Identification and characterization of all earthquake sources capable of generating median peak ground accelerations greater than 0.05g on rock at the site. For each earthquake source, the applicant shall assess the magnitude and minimum epicentral distance of the maximum credible earthquake (MCE).

(iii) A description of any recorded earthquakes within 50 miles of the site and of recorded earthquakes greater than 50 miles from the site that caused ground shaking at the site more intense than the Modified Mercalli III intensity. The applicant shall include the date of occurrence and a description of the earthquake that includes its magnitude and highest intensity and its epicenter location or region of highest intensity.

(iv) Assessment of the median ground response spectrum from the MCE and the MPE and identification of the spectral accelerations greater than the design spectrum provided in the 2010 Oregon Structural Specialty Code. The applicant shall include a description of the probable behavior of the subsurface materials and amplification by subsurface materials and any topographic or subsurface conditions that could result in expected ground motions greater than those characteristic of the Maximum Considered Earthquake Ground Motion identified above.

(v) An assessment of seismic hazards expected to result from reasonably probable seismic events. As used in this rule "seismic hazard" includes ground shaking, ground failure, landslide, lateral spreading, liquefaction, tsunami inundation, fault displacement and subsidence.

(G) An assessment of soil-related hazards such as landslides, flooding and erosion which could, in the absence of a seismic event, adversely affect or be aggravated by the construction or operation of the facility.

(H) An explanation of how the applicant will design, engineer and construct the facility to avoid dangers to human safety from the seismic hazards identified in paragraph (F). The applicant shall include proposed design and engineering features, applicable construction codes, and any monitoring for seismic hazards.

(I) An explanation of how the applicant will design, engineer and construct the facility to adequately avoid dangers to human safety presented by the hazards identified in paragraph (G).

(i) Exhibit I. Information from reasonably available sources regarding soil conditions and uses in the analysis area, providing evidence to support findings by the Council as required by OAR 345-022-0022, including:

(A) Identification and description of the major soil types in the analysis area.

(B) Identification and description of current land uses in the analysis area, such as growing crops, that require or depend on productive soils.

(C) Identification and assessment of significant potential adverse impact to soils from construction, operation and retirement of the facility, including, but not limited to, erosion and chemical factors such as salt deposition from cooling towers, land application of liquid effluent, and chemical spills.

(D) A description of any measures the applicant proposes to avoid or mitigate adverse impact to soils.

(E) The applicant's proposed monitoring program, if any, for adverse impact to soils during construction and operation.

(j) Exhibit J. Information based on literature and field study, as appropriate, about waters of this state, as defined under ORS 196.800, including:

(A) A description of all areas within the site boundary that might be waters of this state and a map showing the location of these features.

(B) An analysis of whether construction or operation of the proposed facility would adversely affect any waters of this state.

(C) A description of the significance of potential adverse impacts to each feature identified in (A), including the nature and amount of material the applicant would remove from or place in the waters analyzed in (B).

(D) If the proposed facility would not need a removal-fill authorization, an explanation of why no such authorization is required for the construction and operation of the proposed facility.

(E) If the proposed facility would need a removal-fill authorization, information to support a determination by the Council that the Oregon Department of State Lands should issue a removal-fill permit, including information in the form required by the Department of State Lands under OAR Chapter 141 Division 85.

(F) A description of proposed actions to mitigate adverse impacts to the features identified in (A) and the applicant's proposed monitoring program, if any, for such impacts.

(k) Exhibit K. Information about the proposed facility's compliance with the statewide planning goals adopted by the Land Conservation and Development Commission, providing evidence to support a finding by the Council as required by OAR 345-022-0030. The applicant shall state whether the applicant elects to address the Council's land use standard by

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obtaining local land use approvals under ORS 469.504(1)(a) or by obtaining a Council determination under ORS 469.504(1)(b). An applicant may elect different processes for an energy facility and a related or supporting facility but may not otherwise combine the two processes. Once the applicant has made an election, the applicant may not amend the application to make a different election. In this subsection, “affected local government” means a local government that has land use jurisdiction over any part of the proposed site of the facility. In the application, the applicant shall:

(A) Include a map showing the comprehensive plan designations and land use zones in the analysis area.

(B) If the applicant elects to obtain local land use approvals:

(i) Identify the affected local government(s) from which land use approvals will be sought.

(ii) Describe the land use approvals required in order to satisfy the Council’s land use standard.

(iii) Describe the status of the applicant’s application for each land use approval.

(iv) Provide an estimate of time for issuance of local land use approvals.

(C) If the applicant elects to obtain a Council determination on land use:

(i) Identify the affected local government(s).

(ii) Identify the applicable substantive criteria from the affected local government’s acknowledged comprehensive plan and land use regulations that are required by the statewide planning goals and that are in effect on the date the application is submitted and describe how the proposed facility complies with those criteria.

(iii) Identify all Land Conservation and Development Commission administrative rules, statewide planning goals and land use statutes directly applicable to the facility under ORS 197.646(3) and describe how the proposed facility complies with those rules, goals and statutes.

(iv) If the proposed facility might not comply with all applicable substantive criteria, identify the applicable statewide planning goals and describe how the proposed facility complies with those goals.

(v) If the proposed facility might not comply with all applicable substantive criteria or applicable statewide planning goals, describe why an exception to any applicable statewide planning goal is justified, providing evidence to support all findings by the Council required under ORS 469.504(2).

(D) If the proposed facility will be located on federal land:

(i) Identify the applicable land management plan adopted by the federal agency with jurisdiction over the federal land.

(ii) Explain any differences between state or local land use requirements and federal land management requirements.

(iii) Describe how the proposed facility complies with the applicable federal land management plan.

(iv) Describe any federal land use approvals required for the proposed facility and the status of application for each required federal land use approval.

(v) Provide an estimate of time for issuance of federal land use approvals.

(vi) If federal law or the land management plan conflicts with any applicable state or local land use requirements, explain the differences in the conflicting requirements, state whether the applicant requests Council waiver of the land use standard described under paragraph (B) or (C) of this subsection and explain the basis for a waiver.

(L) Exhibit L. Information about the proposed facility’s impact on protected areas, providing evidence to support a finding by the Council as required by OAR 345-022-0040, including:

(A) A list of the protected areas within the analysis area showing the distance and direction from the proposed facility and the basis for protection by reference to a specific subsection under OAR 345-022-0040(1).

(B) A map showing the location of the proposed facility in relation to the protected areas listed in OAR 345-022-0040 located within the analysis area.

(C) A description of significant potential impacts of the proposed facility, if any, on the protected areas including, but not limited to, potential impacts such as:

(i) Noise resulting from facility construction or operation;

(ii) Increased traffic resulting from facility construction or operation;

(iii) Water use during facility construction or operation;

(iv) Wastewater disposal resulting from facility construction or operation;

(v) Visual impacts of facility structures or plumes.

(vi) Visual impacts from air emissions resulting from facility construction or operation, including, but not limited to, impacts on Class I Areas as described in OAR 340-204-0050.

(m) Exhibit M. Information about the applicant’s financial capability, providing evidence to support a finding by the Council as required by OAR 345-022-0050(2). Nothing in this subsection shall require the disclosure of information or records protected from public disclosure by any provision of state or federal law. The applicant shall include:

(A) An opinion or opinions from legal counsel stating that, to counsel’s best knowledge, the applicant has the legal authority to construct and operate the facility without violating its bond indenture provisions, articles of incorporation, common stock covenants, or similar agreements.

(B) The type and amount of the applicant’s proposed bond or letter of credit to meet the requirements of OAR 345-022-0050.

(C) Evidence that the applicant has a reasonable likelihood of obtaining the proposed bond or letter of credit in the amount proposed in paragraph (B), before beginning construction of the facility.

(n) Exhibit N. If the proposed facility is a non-generating facility for which the applicant must demonstrate need under OAR 345-023-0005, information about the need for the facility, providing evidence to support a finding by the Council as required by 345-023-0005, including:

(A) Identification of the rule in Division 23 of this chapter under which the applicant chooses to demonstrate need.

(B) If the applicant chooses to demonstrate need for the proposed facility under OAR 345-023-0020(1), the least-cost plan rule:

(i) Identification of the energy resource plan or combination of plans on which the applicant relies to demonstrate need.

(ii) The name, address and telephone number of the person responsible for preparing each energy resource plan identified in subparagraph (i).

(iii) For each plan reviewed by a regulatory agency, the agency’s findings and final decision, including:

(I) For a plan reviewed by the Oregon Public Utility Commission, the acknowledgment order; or

(II) For a plan reviewed by any other regulatory agency, a summary of the public process including evidence to support a finding by the Council that the agency’s decision process included a full, fair and open public participation and comment process as required by OAR 345-023-0020(1)(L), and the location of and means by which the Department can obtain a complete copy of the public record.

(iv) Identification of the section(s) of the short-term action plan(s) that call(s) for the acquisition of the proposed facility or, as defined in OAR 345-001-0010, a facility substantially similar to the proposed facility.

(v) The attributes of the proposed facility that qualify it as one called for in the short-term action plan of the energy resource plan or combination of plans identified in subparagraph (i) or a demonstration that, as defined in OAR 345-001-0010, a facility substantially similar to the proposed facility is called for in the plan(s).

(C) In addition to the information described in paragraph (B), if the applicant chooses to demonstrate need for the proposed facility under OAR 345-023-0020(1), the least-cost plan rule, and relies on an energy resource plan not acknowledged by the Public Utility Commission of Oregon:

(i) The names, addresses and telephone numbers of members of any public advisory groups that participated in the preparation and review of each plan identified in paragraph (B).

(ii) A discussion of how the plan or combination of plans conforms to the standards in OAR 345-023-0020(1)(a) through (L) including citations to relevant portions of the plan documents or other supporting evidence.

(iii) The expected annual emissions in tons of nitrogen oxides, PM-10 particulate, sulfur dioxide, carbon dioxide and mercury and a discussion of other environmental impacts, as compared to resources in the applicable energy resource plan.

(D) In addition to the information described in paragraphs (B) and (C), if the applicant chooses to demonstrate need for a proposed natural gas pipeline or storage facility for liquefied natural gas under OAR 345-023-0020(1), the least-cost plan rule, and relies on an energy resource plan not acknowledged by the Public Utility Commission of Oregon, the applicant shall include the information described in paragraph (G) of this subsection if the energy resource plan or combination of plans does not contain that information. If the energy resource plan or combination of plans contains the information described in paragraph (G), the applicant shall provide a list of citations to the sections of the energy resource plan(s) that contain the information;

(E) In addition to the information described in paragraphs (B) and (C), if the applicant chooses to demonstrate need for a proposed electric transmission line under OAR 345-023-0020(1), the least-cost plan rule and

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relies on an energy resource plan not acknowledged by the Public Utility Commission of Oregon, the applicant shall include the information described in paragraph (F) of this subsection if the energy resource plan or combination of plans does not contain that information. If the energy resource plan or combination of plans contains the information described in paragraph (F), the applicant shall provide a list of citations to the sections of the energy resource plan(s) that contain the information.

(F) If the applicant chooses to demonstrate need for a proposed electric transmission line under OAR 345-023-0030, the system reliability rule:

(i) Load-resource balance tables for the area to be served by the proposed facility. In the tables, the applicant shall include firm capacity demands and existing and committed firm resources for each of the years from the date of submission of the application to at least five years after the expected in-service date of the facility.

(ii) Within the tables described in subparagraph (i), a forecast of firm capacity demands for electricity and firm annual electricity sales for the area to be served by the proposed facility. The applicant shall separate firm capacity demands and firm annual electricity sales into loads of retail customers, system losses, reserve margins and each wholesale contract for firm sale. In the forecast, the applicant shall include a discussion of how the forecast incorporates reductions in firm capacity demand and firm annual electricity sales resulting from:

(I) Existing federal, state or local building codes, and equipment standards and conservation programs required by law for the area to be served by the proposed facility;

(II) Conservation programs provided by the energy supplier, as defined in OAR 345-001-0010;

(III) Conservation that results from responses to price; and

(IV) Retail customer fuel choice;

(iii) Within the tables described in subparagraph (i), a forecast of existing and committed firm resources used to meet the demands described in subparagraph (ii). The applicant shall include, as existing and committed firm resources, existing generation and transmission facilities, firm contract resources and committed new resources minus expected resource retirements or displacement. In the forecast, the applicant shall list each resource separately.

(iv) A discussion of the reasons each resource is being retired or displaced if the forecast described in subparagraph (iii) includes expected retirements or displacements.

(v) A discussion of the annual capacity factors assumed for any generating facilities listed in the forecast described in subparagraph (iii).

(vi) A discussion of the reliability criteria the applicant uses to demonstrate the proposed facility is needed, considering the load carrying capability of existing transmission system facilities supporting the area to be served by the proposed facility.

(vii) A discussion of reasons why the proposed facility is economically reasonable compared to the alternatives described below. In the discussion, the applicant shall include a table showing the amounts of firm capacity and firm annual electricity available from the proposed facility and each alternative and the estimated direct cost, as defined in OAR 345-001-0010, of the proposed facility and each alternative. The applicant shall include documentation of assumptions and calculations supporting the table. The applicant shall evaluate alternatives to construction and operation of the proposed facility that include, but are not limited to:

(I) Implementation of cost-effective conservation, peak load management and voluntary customer interruption as a substitute for the proposed facility.

(II) Construction and operation of electric generating facilities as a substitute for the proposed facility.

(III) Direct use of natural gas, solar or geothermal resources at retail loads as a substitute for use of electricity transmitted by the proposed facility.

(IV) Adding standard sized smaller or larger transmission line capacity.

(viii) The earliest and latest expected in-service dates of the facility and a discussion of the circumstances of the energy supplier, as defined in OAR 345-001-0010, that determine these dates.

(G) If the applicant chooses to demonstrate need for a proposed natural gas pipeline or a proposed facility for storing liquefied natural gas under OAR 345-023-0040, the economically reasonable rule:

(i) Load-resource balance tables for the area to be served by the proposed facility. In the tables, the applicant shall include firm demands and resource availability for each of the years from the date of submission of the application to at least five years after the expected in-service date of the

proposed facility. In the tables, the applicant shall list flowing supply and storage supply separately.

(ii) Within the tables described in subparagraph (i), a forecast of firm capacity demands for the area to be served by the proposed facility. The applicant shall separate firm capacity demands into firm demands of retail customers, system losses and each wholesale contract for firm sale. The applicant shall accompany the tables with load duration curves of firm capacity and interruptible demands for the most recent historical year, the year the facility is expected to be placed in service and the fifth year after the expected in-service date. In the forecast of firm capacity demands, the applicant shall include a discussion of how the forecast incorporates reductions in firm capacity demand resulting from:

(I) Existing federal, state or local building codes and equipment standards and conservation programs required by law for the area to be served by the proposed facility;

(II) Conservation programs provided by the energy supplier, as defined in OAR 345-001-0010;

(III) Conservation that results from responses to price; and

(IV) Retail customer fuel choice;

(iii) Within the tables described in subparagraph (i), a forecast of existing and committed firm resources used to meet the demands described in subparagraph (ii). The applicant shall include, as existing and committed firm capacity resources, existing pipelines, storage facilities, and scheduled and budgeted new facilities minus expected resource retirements or displacement. In the forecast, the applicant shall list each committed resource separately.

(iv) A discussion of the reasons each resource is being retired or displaced if the forecast described in subparagraph (iii) includes expected retirements or displacements.

(v) A discussion of the capacity factors assumed for any storage facilities listed in the forecast described in subparagraph (iii).

(vi) A discussion of the reliability criteria the applicant uses to demonstrate the proposed facility is needed, considering the capacity of existing gas system facilities supporting the area to be served by the proposed facility;

(vii) A discussion of reasons why the proposed facility is economically reasonable compared to the alternatives described in subparagraphs (viii) or (ix). In the discussion, the applicant shall include a table showing the amounts of firm capacity available from the proposed facility and each alternative and the estimated direct cost, as defined in OAR 345-001-0010, of the proposed facility and each alternative. The applicant shall include documentation of assumptions and calculations supporting the table.

(viii) In an application for a proposed natural gas pipeline, an evaluation of alternatives to construction and operation of the proposed facility including, but not limited to:

(I) Implementation of cost-effective conservation, peak load management and voluntary customer interruption as a substitute for the proposed facility.

(II) Installation of propane storage systems, facilities to store liquefied natural gas and underground gas storage reservoirs as a substitute for the proposed facility.

(III) Direct use of electricity, solar or geothermal resources at retail loads as a substitute for use of natural gas supplied by the proposed facility.

(IV) Adding standard sized smaller or larger pipeline capacity.

(ix) In an application for a proposed liquefied natural gas storage facility, an evaluation of alternatives to construction and operation of the proposed facility including, but not limited to:

(I) Implementation of cost-effective conservation, peak load management and voluntary customer interruption as a substitute for the proposed facility.

(II) Installation of propane storage systems, natural gas pipelines and underground gas storage facilities as a substitute for the proposed facility.

(III) Direct use of electricity, solar or geothermal resources at retail loads as a substitute for use of natural gas supplied by the proposed facility.

(IV) Adding smaller or larger liquefied natural gas storage capacity; and

(x) The earliest and latest expected in-service date of the facility and a discussion of the circumstances of the energy supplier, as defined in OAR 345-001-0010, that determine these dates.

(o) Exhibit O. Information about anticipated water use during construction and operation of the proposed facility. The applicant shall include:

(A) A description of the use of water during construction and operation of the proposed facility.

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(B) A description of each source of water and the applicant's estimate of the amount of water the facility will need during construction and during operation from each source under annual average and worst-case conditions.

(C) A description of each avenue of water loss or output from the facility site for the uses described in (A), the applicant's estimate of the amount of water in each avenue under annual average and worst-case conditions and the final disposition of all wastewater.

(D) For thermal power plants, a water balance diagram, including the source of cooling water and the estimated consumptive use of cooling water during operation, based on annual average conditions.

(E) If the proposed facility would not need a groundwater permit, a surface water permit or a water right transfer, an explanation of why no such permit or transfer is required for the construction and operation of the proposed facility.

(F) If the proposed facility would need a groundwater permit, a surface water permit or a water right transfer, information to support a determination by the Council that the Water Resources Department should issue the permit or transfer of a water use, including information in the form required by the Water Resources Department under OAR Chapter 690, Divisions 310 and 380.

(G) A description of proposed actions to mitigate the adverse impacts of water use on affected resources.

(p) Exhibit P. Information about the fish and wildlife habitat and the fish and wildlife species, other than the species addressed in subsection (q) that could be affected by the proposed facility, providing evidence to support a finding by the Council as required by OAR 345-022-0060. The applicant shall include:

(A) A description of biological and botanical surveys performed that support the information in this exhibit, including a discussion of the timing and scope of each survey.

(B) Identification of all fish and wildlife habitat in the analysis area, classified by the general fish and wildlife habitat categories as set forth in OAR 635-415-0025 and the sage-grouse specific habitats described in the Greater Sage-Grouse Conservation Strategy for Oregon at OAR 635-140-0000 through -0025 (core, low density, and general habitats), and a description of the characteristics and condition of that habitat in the analysis area, including a table of the areas of permanent disturbance and temporary disturbance (in acres) in each habitat category and subtype.

(C) A map showing the locations of the habitat identified in (B).

(D) Based on consultation with the Oregon Department of Fish and Wildlife (ODFW) and appropriate field study and literature review, identification of all State Sensitive Species that might be present in the analysis area and a discussion of any site-specific issues of concern to ODFW.

(E) A baseline survey of the use of habitat in the analysis area by species identified in (D) performed according to a protocol approved by the Department and ODFW.

(F) A description of the nature, extent and duration of potential adverse impacts on the habitat identified in (B) and species identified in (D) that could result from construction, operation and retirement of the proposed facility.

(G) A description of any measures proposed by the applicant to avoid, reduce, or mitigate the potential adverse impacts described in (F) in accordance with the general fish and wildlife habitat mitigation goals and standards described in OAR 635-415-0025 and a description of any measures proposed by the applicant to avoid, minimize, and provide compensatory mitigation for the potential adverse impacts described in (F) in accordance with the sage-grouse specific habitat mitigation requirements described in the Greater Sage-Grouse Conservation Strategy for Oregon at OAR 635-140-0000 through -0025, and a discussion of how the proposed measures would achieve those goals and requirements.

(H) A description of the applicant's proposed monitoring plans to evaluate the success of the measures described in (G).

(q) Exhibit Q. Information about threatened and endangered plant and animal species that may be affected by the proposed facility, providing evidence to support a finding by the Council as required by OAR 345-022-0070. The applicant shall include:

(A) Based on appropriate literature and field study, identification of all threatened or endangered species listed under ORS 496.172(2) and ORS 564.105(2) that may be affected by the proposed facility.

(B) For each species identified under (A), a description of the nature, extent, locations and timing of its occurrence in the analysis area and how the facility might adversely affect it.

(C) For each species identified under (A), a description of measures proposed by the applicant, if any, to avoid or reduce adverse impact.

(D) For each plant species identified under (A), a description of how the proposed facility, including any mitigation measures, complies with the protection and conservation program, if any, that the Oregon Department of Agriculture has adopted under ORS 564.105(3).

(E) For each plant species identified under paragraph (A), if the Oregon Department of Agriculture has not adopted a protection and conservation program under ORS 564.105(3), a description of significant potential impacts of the proposed facility on the continued existence of the species and on the critical habitat of such species and evidence that the proposed facility, including any mitigation measures, is not likely to cause a significant reduction in the likelihood of survival or recovery of the species.

(F) For each animal species identified under (A), a description of significant potential impacts of the proposed facility on the continued existence of such species and on the critical habitat of such species and evidence that the proposed facility, including any mitigation measures, is not likely to cause a significant reduction in the likelihood of survival or recovery of the species.

(G) The applicant's proposed monitoring program, if any, for impacts to threatened and endangered species.

(r) Exhibit R. An analysis of significant potential impacts of the proposed facility, if any, on scenic resources identified as significant or important in local land use plans, tribal land management plans and federal land management plans for any lands located within the analysis area, providing evidence to support a finding by the Council as required by OAR 345-022-0080, including:

(A) A list of the local, tribal and federal plans that address lands within the analysis area.

(B) Identification and description of the scenic resources identified as significant or important in the plans listed in (A), including a copy of the portion of the management plan that identifies the resource as significant or important.

(C) A description of significant potential adverse impacts to the scenic resources identified in (B), including, but not limited to, impacts such as:

(i) Loss of vegetation or alteration of the landscape as a result of construction or operation; and

(ii) Visual impacts of facility structures or plumes.

(D) The measures the applicant proposes to avoid, reduce or otherwise mitigate any significant adverse impacts.

(E) A map or maps showing the location of the scenic resources described under (B).

(F) The applicant's proposed monitoring program, if any, for impacts to scenic resources.

(s) Exhibit S. Information about historic, cultural and archaeological resources. Information concerning the location of archaeological sites or objects may be exempt from public disclosure under ORS 192.502(4) or ORS 192.501(11). The applicant shall submit such information separately, clearly marked as "confidential," and shall request that the Department and the Council keep the information confidential to the extent permitted by law. The applicant shall include information in Exhibit S or in confidential submissions providing evidence to support a finding by the Council as required by OAR 345-022-0090, including:

(A) Historic and cultural resources within the analysis area that have been listed, or would likely be eligible for listing, on the National Register of Historic Places.

(B) For private lands, archaeological objects, as defined in ORS 358.905(1)(a), and archaeological sites, as defined in ORS 358.905(1)(c), within the analysis area.

(C) For public lands, archaeological sites, as defined in ORS 358.905(1)(c), within the analysis area.

(D) The significant potential impacts, if any, of the construction, operation and retirement of the proposed facility on the resources described in paragraphs (A), (B) and (C) and a plan for protection of those resources that includes at least the following:

(i) A description of any discovery measures, such as surveys, inventories, and limited subsurface testing work, recommended by the State Historic Preservation Officer or the National Park Service of the U.S. Department of Interior for the purpose of locating, identifying and assessing the significance of resources listed in paragraphs (A), (B) and (C).

(ii) The results of the discovery measures described in subparagraph (i), together with an explanation by the applicant of any variations from the survey, inventory, or testing recommended.

(iii) A list of measures to prevent destruction of the resources identified during surveys, inventories and subsurface testing referred to in subparagraph (i) or discovered during construction.

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(E) The applicant's proposed monitoring program, if any, for impacts to historic, cultural and archaeological resources during construction and operation of the proposed facility.

(t) Exhibit T. Information about the impacts the proposed facility would have on important recreational opportunities in the analysis area, providing evidence to support a finding by the Council as required by OAR 345-022-0100, including:

(A) A description of the recreational opportunities in the analysis area that includes information on the factors listed in OAR 345-022-0100(1) as a basis for identifying important recreational opportunities.

(B) A description of any significant potential adverse impacts to the important opportunities identified in (A) including, but not limited to:

(i) Direct or indirect loss of a recreational opportunity as a result of facility construction or operation.

(ii) Noise resulting from facility construction or operation.

(iii) Increased traffic resulting from facility construction or operation.

(iv) Visual impacts of facility structures or plumes.

(C) A description of any measures the applicant proposes to avoid, reduce or otherwise mitigate the significant adverse impacts identified in (B).

(D) A map of the analysis area showing the locations of important recreational opportunities identified in (A).

(E) The applicant's proposed monitoring program, if any, for impacts to important recreational opportunities.

(u) Exhibit U. Information about significant potential adverse impacts of construction and operation of the proposed facility on the ability of public and private providers in the analysis area to provide the services listed in OAR 345-022-0110, providing evidence to support a finding by the Council as required by 345-022-0110. The applicant shall include:

(A) The important assumptions the applicant used to evaluate potential impacts.

(B) Identification of the public and private providers in the analysis area that would likely be affected.

(C) A description of any likely adverse impact to the ability of the providers identified in (B) to provide the services listed in OAR 345-022-0110.

(D) Evidence that adverse impacts described in (C) are not likely to be significant, taking into account any measures the applicant proposes to avoid, reduce or otherwise mitigate the impacts.

(E) The applicant's proposed monitoring program, if any, for impacts to the ability of the providers identified in (B) to provide the services listed in OAR 345-022-0110.

(v) Exhibit V. Information about the applicant's plans to minimize the generation of solid waste and wastewater and to recycle or reuse solid waste and wastewater, providing evidence to support a finding by the Council as required by OAR 345-022-0120. The applicant shall include:

(A) A description of the major types of solid waste and wastewater that construction, operation and retirement of the facility are likely to generate, including an estimate of the amount of solid waste and wastewater.

(B) A description of any structures, systems and equipment for management and disposal of solid waste, wastewater and storm water.

(C) A discussion of any actions or restrictions proposed by the applicant to reduce consumptive water use during construction and operation of the facility.

(D) The applicant's plans to minimize, recycle or reuse the solid waste and wastewater described in (A).

(E) A description of any adverse impact on surrounding and adjacent areas from the accumulation, storage, disposal and transportation of solid waste, wastewater and stormwater during construction and operation of the facility.

(F) Evidence that adverse impacts described in (D) are likely to be minimal, taking into account any measures the applicant proposes to avoid, reduce or otherwise mitigate the impacts.

(G) The applicant's proposed monitoring program, if any, for minimization of solid waste and wastewater impacts.

(w) Exhibit W. Information about site restoration, providing evidence to support a finding by the Council as required by OAR 345-022-0050(1). The applicant shall include:

(A) The estimated useful life of the proposed facility.

(B) Specific actions and tasks to restore the site to a useful, non-hazardous condition.

(C) An estimate, in current dollars, of the total and unit costs of restoring the site to a useful, non-hazardous condition.

(D) A discussion and justification of the methods and assumptions used to estimate site restoration costs.

(E) For facilities that might produce site contamination by hazardous materials, a proposed monitoring plan, such as periodic environmental site assessment and reporting, or an explanation why a monitoring plan is unnecessary.

(x) Exhibit X. Information about noise generated by construction and operation of the proposed facility, providing evidence to support a finding by the Council that the proposed facility complies with the Oregon Department of Environmental Quality's noise control standards in OAR 340-035-0035. The applicant shall include:

(A) Predicted noise levels resulting from construction and operation of the proposed facility.

(B) An analysis of the proposed facility's compliance with the applicable noise regulations in OAR 340-035-0035, including a discussion and justification of the methods and assumptions used in the analysis.

(C) Any measures the applicant proposes to reduce noise levels or noise impacts or to address public complaints about noise from the facility.

(D) Any measures the applicant proposes to monitor noise generated by operation of the facility.

(E) A list of the names and addresses of all owners of noise sensitive property, as defined in OAR 340-035-0015, within one mile of the proposed site boundary.

(y) Exhibit Y. If the facility is a base load gas plant, a non-base load power plant, or a nongenerating energy facility that emits carbon dioxide, a statement of the means by which the applicant elects to comply with the applicable carbon dioxide emissions standard under OAR 345-024-0560, 345-024-0600, or 345-024-0630 and information, showing detailed calculations, about the carbon dioxide emissions of the energy facility. The applicant may present the calculations in tabular form. The applicant shall include the following information and calculations:

(A) Fuel cycle and usage including the maximum hourly fuel use at net electrical power output at average annual conditions for a base load gas plant and the maximum hourly fuel use at nominal electric generating capacity for a non-base load power plant or a base load gas plant with power augmentation technologies, as applicable.

(B) The gross capacity as estimated at the generator output terminals for each generating unit. For a base load gas plant, gross capacity is based on the average annual ambient conditions for temperature, barometric pressure and relative humidity. For a non-base load plant, gross capacity is based on the average temperature, barometric pressure and relative humidity at the site during the times of year when the facility is intended to operate. For a baseload gas plant with power augmentation, gross capacity in that mode is based on the average temperature, barometric pressure and relative humidity at the site during the times of year when the facility is intended to operate with power augmentation.

(C) A table showing a reasonable estimate of all on-site electrical loads and losses greater than 50 kilowatts, including losses from on-site transformers, plus a factor for incidental loads, that are required for the normal operation of the plant when the plant is at its designed full power operation.

(D) The maximum number of hours per year and energy content (Btu per year, higher heating value) of alternate fuel use.

(E) The total gross carbon dioxide emissions for 30 years, unless an applicant for a non-base load power plant or nongenerating energy facility proposes to limit operation to a shorter time.

(F) The gross carbon dioxide emissions rate expressed as:

(i) Pounds of carbon dioxide per kilowatt-hour of net electric power output for a base load gas plant, including operation with or without power augmentation, as appropriate, or for a non-base load power plant;

(ii) Pounds of carbon dioxide per horsepower hour for nongenerating facilities for which the output is ordinarily measured in horsepower; or

(iii) A rate comparable to pounds of carbon dioxide per kilowatt-hour of net electric power output for nongenerating facilities other than those measured in horsepower.

(G) The total excess carbon dioxide emissions for 30 years, unless an applicant for a non-base load power plant or a nongenerating energy facility proposes to limit operation to a shorter time.

(H) The excess carbon dioxide emissions rate, using the same measure as required for paragraph (F).

(I) The average annual site conditions, including temperature, barometric pressure and relative humidity, together with a citation of the source and location of the data collection devices.

(J) For a non-base load power plant (or when using power augmentation), the average temperature, barometric pressure and relative humidity at the site during the times of the year when the facility is intended to operate,

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together with a citation of the source and location of the data collection devices.

(K) The annual fuel input in British thermal units, higher heating value, to the facility for each type of fuel the facility will use, assuming:

(i) For a base load gas plant, a 100-percent capacity factor on a new and clean basis and the maximum number of hours annually that the applicant proposes to use alternative fuels.

(ii) For a non-base load power plant, the applicant's proposed annual hours of operation on a new and clean basis, the maximum number of hours annually that the applicant proposes to use alternative fuels and, if the calculation is based on an operational life of fewer than 30 years, the proposed operational life of the facility.

(iii) For a nongenerating energy facility, the reasonably likely operation of the facility based on one year, 5-year, 15-year, and 30-year averages, unless an applicant proposes to limit operation to a shorter time.

(L) For each type of fuel a base load gas plant or a non-base load power plant will use, the estimated heat rate and capacity of the facility measured on a new and clean basis with no thermal energy to cogeneration, consistent with the data supplied in Exhibit B.

(M) For each type of fuel a nongenerating energy facility will use, the estimated efficiency and capacity of the facility with no thermal energy to cogeneration.

(N) If the facility provides thermal energy for cogeneration to lower its net carbon dioxide emissions rate, the applicant shall include:

(i) The estimated annual useful thermal energy available from the facility for non-electric processes, annual useful thermal energy used by non-electric processes, and annual thermal energy rejected as waste heat.

(ii) For a base load gas plant or non-base load power plant, the estimated annual net electric power output and annual fuel input in British thermal units higher heating value for the facility for each type of fuel the facility will use and the basis of such estimates.

(iii) A description of the non-electric thermal processes, the names and addresses of the persons intending to use the non-electric thermal energy, and a description and an estimate of the fuel displaced by cogeneration, including supporting assumptions.

(iv) A description of the products produced and thermal energy needed for production of the primary products made by the persons intending to use the non-electric thermal energy produced by the proposed facility, supported by fuel use and steam production records or estimates, if the production facility is new.

(v) The efficiency of each boiler that the thermal energy will displace.

(vi) For each boiler, the annual fossil fuel displaced in million Btu, higher heating value, by type of fuel that will be displaced by the thermal energy.

(vii) The annual carbon dioxide offset by the cogeneration host, using a rate of 117 pounds of carbon dioxide per million Btu of natural gas fuel (higher heating value) and a rate of 161 pounds of carbon dioxide per million Btu of distillate fuel (higher heating value).

(viii) The cumulative carbon dioxide offset by the steam host through the thirtieth year of facility operation, or for a shorter period if an applicant for a nongenerating facility proposes a shorter operational period.

(ix) A copy of the contractual agreement between the applicant and the cogeneration host for the use of the thermal energy.

(x) A description of the guarantees of offsets that the applicant shall provide for cogeneration projects, pursuant to OAR 345-024-0560(1) and 345-024-0600(1).

(xi) A proposed monitoring and evaluation plan and an independent verification plan, pursuant to subparagraphs (O)(xix) and (O)(xx).

(xii) A copy of the instrument by which the certificate holder will transfer the offsets to the Council for it to hold in trust.

(O) If the applicant proposes to offset carbon dioxide emissions as described in OAR 345-024-0550(3), 345-024-0560(2), 345-024-0590(3), 345-024-0600(2), 345-024-0620(3) or 345-024-0630(1), the applicant shall include:

(i) A description of each offset project.

(ii) A description of who will implement the offset project, including qualifications and experience.

(iii) Detailed estimates of the of carbon dioxide offset, measured in short tons, that the offset projects will achieve over the life of the project.

(iv) For each offset project, an explanation of how the applicant quantified its carbon dioxide estimates to a degree of certainty acceptable to the Council through a transparent and replicable calculation methodology.

(v) For each offset project, evidence that the offset project would not likely have been implemented if not for the applicant's activities or funding.

(vi) For each offset project, a description of a "Baseline" projection that does not include the proposed project and a "Project Case" projection that does. The historic Baseline shall use reliable emissions data or pre-project data available for the most recent three years unless the applicant can demonstrate that a different period more closely represents historical operations or unless it can demonstrate that another method provides a more reasonable estimate. The applicant shall show how the Baseline projection changes over time if changes from business-as-usual could be reasonably anticipated during the project life.

(vii) For each offset project, a description, in a transparent and realistic manner, of the assumptions and methodologies used to quantify the Baseline and the Project Case projections, including a description of the key parameters and data sources. This shall include a description of the formulae used to estimate carbon dioxide emissions or sequestration within the project boundary and a net change of carbon dioxide emissions or sequestration that occurs outside of the project boundary that is measurable and attributable to the project activity.

(viii) For projects that avoid conventional electricity generation, a description of a Baseline that calculates the carbon dioxide emissions per kilowatt hour in two steps: (1) for the first five years of operation, a description of the rate based on dispatch data or models or, absent that, a weighted average of all resources in a power pool except zero-fuel-cost or must-run facilities, and (2) a description of the rate for any subsequent years based on a group of similar facilities built within the prior five years or under construction in the electrical distribution region of the project or the three most recent plants built in the region, whichever rate is lower.

(ix) For projects that avoid conventional electricity generation, a description of avoided transmission and distribution losses, using average grid area or national losses.

(x) A description of any guarantee for offsets from projects that the applicant proposes pursuant to OAR 345-024-0560(2), 345-024-0600(2), and 345-024-630(1), if the applicant chooses to offer a guarantee.

(xi) A description of the offset project boundary. The boundary shall encompass all carbon dioxide emissions under the control of the project that are significant and reasonably attributable to the project activity. If the project is being conducted by one part of a corporation, the boundary shall include the emissions and reductions of the whole corporate entity and the carbon dioxide emissions resulting from processes and facilities that are related to the project, with identification of subsidiaries that are affected by the project.

(xii) A description of significant risks and risk mitigation strategies, including an estimate of the range of uncertainty around the expected carbon dioxide offsets.

(xiii) For biological sequestration projects, an assessment of the risk of climate change to natural systems that are sequestering the carbon dioxide, including, if appropriate, the risks from forest fires, pest and other unplanned releases of carbon from sequestration.

(xiv) A description of whether the offset project will permanently avoid or displace emissions of carbon dioxide. If a project only temporarily sequesters carbon, an indication of the duration of sequestration or storage.

(xv) A description of the amount of funding the applicant will provide for each offset project it proposes.

(xvi) If the applicant anticipates that a project will have funding sources in addition to itself, identification of the sources of those funds, the amount of other funding that is required to implement a project, the amount of funds other parties have committed, and the risks of other funds not being available.

(xvii) If the applicant proposes that a project will have funding sources in addition to itself, a description of how ownership of the offsets will be allocated among the several funding sources.

(xviii) A copy of the instrument by which the certificate holder will transfer all the offsets to the Council for it to hold in trust.

(xix) A description of a transparent and replicable methodology for the applicant's monitoring and evaluation plan and for an independent verification plan, including (1) procedures the applicant and the independent entity will employ, (2) how the applicant will assure funds for ongoing monitoring, evaluation and verification, (3) the time frame and frequency over which the applicant will conduct monitoring and evaluation and over which the independent entity will conduct verification, including the frequency of site visits, if applicable, (4) the reporting procedures and guidelines for the plans, and (5) whether the applicant has identified the independent entity that will perform the verification.

(xx) The monitoring and evaluation plan and the verification plan shall identify the data needs and data quality with regard to accuracy, com-

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parability, completeness and validity. It shall include methodologies to be used for data collection, monitoring, storage, reporting and management, including quality assurance and quality control provisions. It shall provide complete calculations used to calculate and estimate carbon dioxide emissions from activity within the project boundary. It shall show any formulae and assumptions the applicant used to calculate offset project leakage.

(xxi) A description of reasonably likely, significant undesirable long-term environmental impacts from the implementation of an offset project.

(P) If the applicant elects to comply with the applicable carbon dioxide emissions standard by using the monetary path under OAR 345-024-0560(3), 345-024-0600(3) or 345-024-0630(2), the applicant shall include:

(i) A statement of the applicant's election to use the monetary path.

(ii) The amount of carbon dioxide reduction, in tons, for which the applicant is taking credit by using the monetary path.

(iii) The qualified organization to whom the applicant will provide offset funds and funds for the cost of selecting and contracting for offsets. The applicant shall include evidence that the organization meets the definition of a qualified organization under OAR 345-001-0010. The applicant may identify an organization that has applied for, but has not received, an exemption from federal income taxation, but the Council shall not find that the organization is a qualified organization unless the organization is exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code as amended and in effect on September 18, 2015.

(iv) A statement of whether the applicant intends to provide a bond or letter of credit to secure the funds it must provide to the qualified organization or whether it requests the option of providing either a bond or a letter of credit.

(z) Exhibit Z. If the proposed facility has an evaporative cooling tower, information about the cooling tower plume, including:

(A) The predicted size and frequency of occurrence of a visible plume and an assessment of its visual impact.

(B) The predicted locations and frequency of occurrence of ice formation on surfaces and ground level fogging and an assessment of significant potential adverse impacts, including, but not limited to, traffic hazards on public roads.

(C) The predicted locations and rates of deposition of solids released from the cooling tower (cooling tower drift) and an assessment of significant potential adverse impacts to soils, vegetation and other land uses.

(D) Any measures the applicant proposes to reduce adverse impacts from the cooling tower plume or drift.

(E) The assumptions and methods used in the plume analysis.

(F) The applicant's proposed monitoring program, if any, for cooling tower plume impacts;

(aa) Exhibit AA. If the proposed energy facility is a transmission line or has, as a related or supporting facility, a transmission line of any size:

(A) Information about the expected electric and magnetic fields, including:

(i) The distance in feet from the proposed center line of each proposed transmission line to the edge of the right-of-way.

(ii) The type of each occupied structure, including but not limited to residences, commercial establishments, industrial facilities, schools, day-care centers and hospitals, within 200 feet on each side of the proposed center line of each proposed transmission line.

(iii) The approximate distance in feet from the proposed center line to each structure identified in (A).

(iv) At representative locations along each proposed transmission line, a graph of the predicted electric and magnetic fields levels from the proposed center line to 200 feet on each side of the proposed center line.

(v) Any measures the applicant proposes to reduce electric or magnetic field levels.

(vi) The assumptions and methods used in the electric and magnetic field analysis, including the current in amperes on each proposed transmission line.

(vii) The applicant's proposed monitoring program, if any, for actual electric and magnetic field levels.

(B) An evaluation of alternate methods and costs of reducing radio interference likely to be caused by the transmission line in the primary reception area near interstate, U.S. and state highways.

(bb) Exhibit BB. Any other information that the Department requests in the project order or in a notification regarding expedited review.

(cc) Exhibit CC. Identification, by legal citation, of all state statutes and administrative rules and local government ordinances containing standards or criteria that the proposed facility must meet for the Council to issue a site certificate, other than statutes, rules and ordinances identified in Exhibit E, and identification of the agencies administering those statutes,

administrative rules and ordinances. The applicant shall identify all statutes, administrative rules and ordinances that the applicant knows to be applicable to the proposed facility, whether or not identified in the project order. To the extent not addressed by other materials in the application, the applicant shall include a discussion of how the proposed facility meets the requirements of the applicable statutes, administrative rules and ordinances.

(dd) Exhibit DD. If the proposed facility is a facility for which the Council has adopted specific standards, information about the facility providing evidence to support findings by the Council as required by the following rules:

(A) For wind energy facilities, OAR 345-024-0010 and 345-024-0015.

(B) For surface facilities related to underground gas storage reservoirs, OAR 345-024-0030, including information required by 345-021-0020.

(C) For any transmission line under Council jurisdiction, OAR 345-024-0090.

(2) Documents prepared in connection with an environmental assessment or environmental impact statement for the proposed facility under the National Environmental Policy Act of 1970, if any, may contain some of the information required under section (1) of this rule. The applicant may copy relevant sections of such documents into the appropriate exhibits of the site certificate application. The applicant may otherwise submit full copies of those documents and include, in the appropriate exhibits of the site certificate application, cross-references to the relevant sections of those documents. The applicant may use such documents only to avoid duplication. The applicant shall include additional information in the site certificate application as needed to meet the requirements of section (1) of this rule.

(3) The applicant shall include a table of contents in the preliminary application identifying the location of each exhibit required by this rule. The applicant shall submit an original and two printed copies of the preliminary application to the Department and shall prepare and distribute additional copies of the application as required by OAR 345-021-0050. Upon a request by the Department, the applicant must submit printed copies of the preliminary application for members of the Council. In addition to the printed copies, the applicant shall submit the full preliminary application in a non-copy-protected electronic format acceptable to the Department.

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

Stat. Auth.: ORS 469.373 & 469.470

Stats. Implemented: ORS 469.350, 469.370, 469.501, 469.503 & 469.504

Hist.: EFSC 6-1980, f. & ef. 8-26-80; EFSC 7-1986, f. & ef. 9-18-86; EFSC 9-1980, f. & ef. 12-22-80; EFSC 1-1981, f. & ef. 1-19-81; EFSC 2-1981, f. & ef. 1-19-81; EFSC 4-1986, f. & ef. 9-5-86; EFSC 2-1992, f. & cert. ef. 8-28-92; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-079-0140, 345-080-0090, 345-100-0055, 345-111-0075, 345-115-0055 & 345-125-0100; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2000, f. & cert. ef. 2-2-00; EFSC 2-2000, f. & cert. ef. 11-20-00; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2003, f. & cert. ef. 9-3-03; EFSC 1-2007, f. & cert. ef. 5-15-07; EFSC 1-2012, f. & cert. ef. 5-15-12; EFSC 2-2015, f. & cert. ef. 10-20-15; EFSC 1-2017, f. & cert. ef. 3-8-17

345-022-0000

General Standard of Review

(1) To issue a site certificate for a proposed facility or to amend a site certificate, the Council shall determine that the preponderance of evidence on the record supports the following conclusions:

(a) The facility complies with the requirements of the Oregon Energy Facility Siting statutes, ORS 469.300 to 469.570 and 469.590 to 469.619, and the standards adopted by the Council pursuant to 469.501 or the overall public benefits of the facility outweigh any adverse effects on a resource or interest protected by the applicable standards the facility does not meet as described in section (2);

(b) Except as provided in OAR 345-022-0030 for land use compliance and except for those statutes and rules for which the decision on compliance has been delegated by the federal government to a state agency other than the Council, the facility complies with all other Oregon statutes and administrative rules identified in the project order, as amended, as applicable to the issuance of a site certificate for the proposed facility. If the Council finds that applicable Oregon statutes and rules, other than those involving federally delegated programs, would impose conflicting requirements, the Council shall resolve the conflict consistent with the public interest. In resolving the conflict, the Council cannot waive any applicable state statute.

(2) The Council may issue or amend a site certificate for a facility that does not meet one or more of the applicable standards adopted under ORS 469.501 if the Council determines that the overall public benefits of the facility outweigh any adverse effects on a resource or interest protected by

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the applicable standards the facility does not meet. The Council shall make this balancing determination only when the applicant has shown that the proposed facility cannot meet applicable Council standards or has shown, to the satisfaction of the Council, that there is no reasonable way to meet the applicable Council standards through mitigation or avoidance of any adverse effects on a protected resource or interest. The applicant has the burden to show that the overall public benefits outweigh any adverse effects on a resource or interest, and the burden increases proportionately with the degree of adverse effects on a resource or interest. The Council shall weigh overall public benefits and any adverse effects on a resource or interest as follows:

(a) The Council shall evaluate any adverse effects on a resource or interest by considering factors including, but not limited to, the following:

(A) The uniqueness and significance of the resource or interest that would be affected;

(B) The degree to which current or future development may adversely affect the resource or interest, if the proposed facility is not built;

(C) Proposed measures to reduce any adverse effects on a resource or interest by avoidance of impacts;

(D) The magnitude of any anticipated adverse effects on a resource or interest, taking into account any proposed mitigation.

(b) The Council shall evaluate overall public benefits by considering factors including, but not limited to, the following:

(A) The overall environmental effects of the facility, considering both beneficial and adverse environmental effects;

(B) The degree to which the proposed facility promotes Oregon energy policy as described in ORS 469.010 by demonstrating or advancing new efficiency or renewable technology or by expanding electric generating capacity from renewable energy sources;

(C) Recommendations from any special advisory group designated by the Council under ORS 469.480;

(D) Evidence that the benefits are likely to occur only if the proposed facility is built;

(E) For facilities that are subject to a need standard, evidence underlying the Council's decision on compliance with the rules in OAR 345, Division 23, except that the Council shall not find that need for a facility is sufficient, by itself, to outweigh any adverse effects on a resource or interest affected by the proposed facility.

(3) Notwithstanding section (2) of this rule, the Council shall not apply the balancing determination to the following standards:

(a) The organizational expertise standard described in OAR 345-022-0010;

(b) The land use standard described in OAR 345-022-0030;

(c) The retirement and financial assurance standard described in OAR 345-022-0050;

(d) The need standards described in OAR 345-023-0005;

(e) The standards for energy facilities that emit carbon dioxide described in OAR 345-024-0500 through 345-024-0720;

(f) The protected areas standard described in OAR 345-022-0040, if the statutes or administrative rules governing the management of the protected area prohibit location of the proposed facility in that area; or

(g) The sage-grouse specific habitat mitigation requirements under the Council's fish and wildlife habitat standard described in OAR 345-022-0060, except that the Council may apply the balancing determination to the requirements of 635-140-0025(2)(a) and (b) for indirect impacts on core and low density sage-grouse habitat, as defined in 635-140-0015, which are caused by transmission lines or pipelines as defined in ORS 469.300(1)(a), and by transmission lines or pipelines that are related or supporting facilities to an energy facility as defined in ORS 469.300(24), proposed to be sited entirely outside of core and low density sage-grouse habitat.

(4) In making determinations regarding compliance with statutes, rules and ordinances normally administered by other agencies or compliance with requirements of the Council statutes if other agencies have special expertise, the Department of Energy shall consult with such other agencies during the notice of intent, site certificate application and site certificate amendment processes. Nothing in these rules is intended to interfere with the state's implementation of programs delegated to it by the federal government.

Stat. Auth.: ORS 469.470 & 469.501

Stats. Implemented: ORS 469.501, 469.503, 469.504 & 469.505

Hist.: EFSC 6-1980, f. & ef. 8-26-80; EFSC 1-1981, f. & ef. 1-19-81; EFSC 2-1981, f. & ef. 1-19-81; EFSC 4-1986, f. & ef. 9-5-86; EFSC 7-1986, f. & ef. 9-18-86; EFSC 9-1980, f. & ef. 12-22-80; EFSC 1-1993, f. & cert. ef. 1-15-93, Renumbered from 345-079-0080, 345-080-0075, 345-100-0052, 345-011-0055, 345-115-0052 & 345-125-0070(8); EFSC 5-1993(Temp), f. & cert. ef. 8-16-93; EFSC 1-1994, f. & cert. ef. 1-28-94; EFSC 2-1994, f. & cert. ef. 5-6-94; EFSC 2-1994, f. & cert. ef. 5-6-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2003, f.

& cert. ef. 9-3-03; EFSC 1-2007, f. & cert. ef. 5-15-07; EFSC 1-2015, f. & cert. ef. 5-18-15; EFSC 1-2017, f. & cert. ef. 3-8-17

345-022-0060

Fish and Wildlife Habitat

To issue a site certificate, the Council must find that the design, construction and operation of the facility, taking into account mitigation, are consistent with:

(1) The general fish and wildlife habitat mitigation goals and standards of OAR 635-415-0025(1) through (6) in effect as of February 24, 2017, and

(2) For energy facilities that impact sage-grouse habitat, the sage-grouse specific habitat mitigation requirements of the Greater Sage-Grouse Conservation Strategy for Oregon at OAR 635-415-0025(7) and OAR 635-140-0000 through -0025 in effect as of February 24, 2017.

Stat. Auth.: ORS 469.470 & 469.501

Stats. Implemented: ORS 469.501

Hist.: NTEC 9, f. 2-13-75, ef. 3-11-75; EFSC 1-1980, f. & ef. 2-28-80; EFSC 6-1980, f. & ef. 8-26-80; EFSC 9-1980, f. & ef. 12-22-80; EFSC 1-1981, f. & ef. 1-19-81; EFSC 1-1985, f. & ef. 1-7-85; EFSC 4-1986, f. & ef. 9-5-86; EFSC 1-1993, f. & cert. ef. 1-15-93, Renumbered from 345-026-0045, 345-080-0060, 345-100-0040, 345-115-0040 & 345-125-0070; EFSC 5-1993(Temp), f. & cert. ef. 8-16-93; EFSC 1-1994, f. & cert. ef. 1-28-94; EFSC 2-1994, f. & cert. ef. 5-6-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 2-2000, f. & cert. ef. 11-20-00; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2007, f. & cert. ef. 5-15-07; EFSC 1-2017, f. & cert. ef. 3-8-17

Department of Fish and Wildlife

Chapter 635

Rule Caption: Extend 2017 Treaty Indian Columbia River Winter Commercial Season in The Dalles/John Day Pool

Adm. Order No.: DFW 17-2017(Temp)

Filed with Sec. of State: 2-22-2017

Certified to be Effective: 2-22-17 thru 3-31-17

Notice Publication Date:

Rules Amended: 635-041-0065

Subject: This amended rule extends the Treaty Indian winter commercial gill net season in The Dalles and John Day Pool through March 1, 2017. Modifications are consistent with action taken February 21, 2017 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, carp, and legal-sized white sturgeon 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. Wednesday, February 1 through 6:00 p.m. Tuesday, March 21, 2017.

(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 may be sold or retained for subsistence purposes. White sturgeon between 38 and 54 inches in fork length taken from the Bonneville Pool and 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. Fish landed during any open commercial period may be sold after the period closes.

(2) Salmon, steelhead, shad, walleye, catfish, bass, yellow perch, carp, and legal-sized white sturgeon may be taken for commercial purposes in the following Columbia River Treaty Indian gill net fisheries:

(a) The Dalles Pool beginning 6:00 a.m. Wednesday, February 1 through 6:00 p.m. Wednesday, March 1, 2017 (28.5 days); and John Day Pool beginning 6:00 a.m. Wednesday, February 1 through 6:00 p.m. Wednesday, March 1, 2017 (28.5 days).

(b) Gear is restricted to gill nets. There are no mesh size restrictions.

(c) Salmon, steelhead, shad, yellow perch, bass, walleye, catfish and carp may be sold or retained for subsistence purposes. White sturgeon between 43-54 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 described in section (2)(a) above or may be kept for subsistence purposes. Fish landed during any open fishing period may be sold after the period closes.

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(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. & cert. 1-28-77; FWC 2-1978, f. & cert. 1-31-78; FWC 7-1978, f. & cert. 2-21-78; FWC 2-1979, f. & cert. 1-25-79; FWC 13-1979(Temp), f. & cert. 3-30-1979, Renumbered from 635-035-0065; FWC 6-1980, f. & cert. 1-28-80; FWC 1-1981, f. & cert. 1-19-81; FWC 6-1982, f. & cert. 1-28-82; FWC 2-1983, f. 1-21-83, cert. 2-1-83; FWC 4-1984, f. & cert. 1-31-84; FWC 2-1985, f. & cert. 1-30-85; FWC 4-1986(Temp), f. & cert. 1-28-86; FWC 79-1986(Temp), f. & cert. 12-22-86; FWC 2-1987, f. & cert. 1-23-87; FWC 3-1988(Temp), f. & cert. 1-29-88; FWC 10-1988, f. & cert. 3-4-88; FWC 5-1989, f. 2-6-89, cert. 2-7-89; FWC 13-1989(Temp), f. & cert. 3-21-89; FWC 15-1990(Temp), f. 2-8-90, cert. 2-9-90; FWC 20-1990, f. 3-6-90, cert. 3-15-90; FWC 13-1992(Temp), f. & cert. 3-5-92; FWC 7-1993, f. & cert. 2-1-93; FWC 12-1993(Temp), f. & cert. 2-22-93; FWC 18-1993(Temp), f. & cert. 3-2-93; FWC 7-1994, f. & cert. 2-1-94; FWC 11-1994(Temp), f. & cert. 2-28-94; FWC 9-1995, f. & cert. 2-1-95; FWC 19-1995(Temp), f. & cert. 3-3-95; FWC 5-1996, f. & cert. 2-7-96; FWC 4-1997, f. & cert. 1-30-97; DFW 8-1998(Temp), f. & cert. 2-5-98 thru 2-28-98; DFW 14-1998, f. & cert. 3-3-98; DFW 20-1998(Temp), f. & cert. 3-13-98 thru 3-20-98; DFW 23-1998(Temp), f. & cert. 3-20-98 thru 6-30-98; DFW 2-1999(Temp), f. & cert. 2-1-99 thru 2-19-99; DFW 9-1999, f. & cert. 2-26-99; DFW 14-1999(Temp), f. 3-5-99, cert. 3-6-99 thru 3-20-99; Administrative correction 11-17-99; DFW 6-2000(Temp), f. & cert. 2-1-00 thru 2-29-00; DFW 9-2000, f. & cert. 2-25-00; DFW 19-2000, f. 3-18-00, cert. 3-18-00 thru 3-21-00; DFW 26-2000(Temp), f. 5-4-00, cert. 5-6-00 thru 5-28-00; Administrative correction 5-22-00; DFW 3-2001, f. & cert. 2-6-01; DFW 14-2001(Temp), f. 3-12-01, cert. 3-14-01 thru 3-21-01; Administrative correction 6-20-01; DFW 9-2002, f. & cert. 2-1-02; DFW 11-2002(Temp), f. & cert. 2-8-02 thru 8-7-02; DFW 17-2002(Temp), f. 3-7-02, cert. 3-8-02 thru 9-1-02; DFW 18-2002(Temp), f. 3-13-02, cert. 3-15-02 thru 9-11-02; DFW 134-2002(Temp), f. & cert. 12-19-02 thru 4-1-03; DFW 20-2003(Temp), f. 3-12-03, cert. 3-13-03 thru 4-1-03; DFW 131-2003(Temp), f. 12-26-03, cert. 1-1-04 thru 4-1-04; DFW 5-2004(Temp), f. 1-26-04, cert. 2-2-04 thru 4-1-04; DFW 15-2004(Temp), f. 3-8-04, cert. 3-10-04 thru 4-1-04; DFW 130-2004(Temp), f. 12-23-04, cert. 1-1-05 thru 4-1-05; DFW 4-2005(Temp), f. & cert. 1-31-05 thru 4-1-05; DFW 18-2005(Temp), f. & cert. 3-15-05 thru 3-21-05; Administrative correction 4-20-05; DFW 3-2006(Temp), f. & cert. 1-27-06 thru 3-31-06; Administrative correction 4-19-06; DFW 7-2007(Temp), f. 1-31-07, cert. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. 2-14-07; DFW 14-2007(Temp), f. & cert. 3-9-07 thru 9-4-07; DFW 15-2007(Temp), f. & cert. 3-14-07 thru 9-9-07; Administrative correction 9-16-07; DFW 6-2008(Temp), f. 1-29-08, cert. 1-31-08 thru 7-28-08; DFW 20-2008(Temp), f. 2-28-08, cert. 2-29-08 thru 7-28-08; DFW 21-2008(Temp), f. & cert. 3-5-08 thru 7-28-08; DFW 22-2008(Temp), f. 3-7-08, cert. 3-10-08 thru 7-28-08; Administrative correction 8-21-08; DFW 142-2008, f. & cert. 11-21-08; DFW 6-2009(Temp), f. 1-30-09, cert. 2-2-09 thru 8-1-09; DFW 11-2009(Temp), f. 2-13-09, cert. 2-16-09 thru 7-31-09; DFW 22-2009(Temp), f. 3-5-09, cert. 3-6-09 thru 7-31-09; Administrative correction 8-21-09; DFW 9-2010(Temp), f. & cert. 2-3-10 thru 8-1-10; DFW 12-2010(Temp), f. 2-10-10, cert. 2-11-10 thru 8-1-10; DFW 18-2010(Temp), f. 2-24-10, cert. 2-26-10 thru 4-1-10; DFW 24-2010(Temp), f. 3-2-10, cert. 3-10-10 thru 4-1-10; Administrative correction 4-21-10; DFW 8-2011(Temp), f. 1-31-11, cert. 2-1-11 thru 4-1-11; DFW 9-2011(Temp), f. 2-9-11, cert. 2-10-11 thru 4-1-11; DFW 23-2011, f. & cert. 3-21-11; DFW 5-2012(Temp), f. 1-30-12, cert. 2-1-12 thru 3-31-12; DFW 18-2012(Temp), f. 2-28-12, cert. 2-29-12 thru 6-15-12; DFW 19-2012(Temp), f. 3-2-12, cert. 3-5-12 thru 6-15-12; DFW 20-2012(Temp), f. & cert. 3-5-12 thru 6-15-12; DFW 46-2012(Temp), f. 5-14-12, cert. 5-15-12 thru 6-30-12; Administrative correction, 8-1-12; DFW 9-2013(Temp), f. 1-31-13, cert. 2-1-13 thru 3-31-13; DFW 15-2013(Temp), f. 2-22-13, cert. 2-27-13 thru 6-15-13; DFW 18-2013(Temp), f. 3-5-13, cert. 3-6-13 thru 6-15-13; DFW 35-2013(Temp), f. & cert. 5-21-13 thru 6-30-13; DFW 48-2013(Temp), f. 6-7-13, cert. 6-8-13 thru 7-31-13; Administrative correction, 8-21-13; DFW 6-2014(Temp), f. 1-30-14, cert. 2-1-14 thru 7-30-14; DFW 15-2014(Temp), f. 2-25-14, cert. 2-26-14 thru 7-30-14; DFW 17-2014(Temp), f. 2-28-14, cert. 3-1-14 thru 7-30-14; DFW 23-2014(Temp), f. 3-11-14, cert. 3-12-14 thru 7-31-14; DFW 37-2014(Temp), f. & cert. 5-6-14 thru 7-31-14; DFW 46-2014(Temp), f. 5-19-14, cert. 5-20-14 thru 7-31-14; DFW 48-2014(Temp), f. 5-27-14, cert. 5-28-14 thru 7-31-13; DFW 54-2014(Temp), f. 6-2-14, cert. 6-3-14 thru 7-31-14; DFW 59-2014(Temp), f. 6-9-14, cert. 6-10-14 thru 7-31-14; Administrative correction, 8-28-14; DFW 9-2015(Temp), f. 1-29-15, cert. 2-2-15 thru 3-31-15; DFW 13-2015(Temp), f. 2-19-15, cert. 2-20-15 thru 3-31-15; DFW 19-2015(Temp), f. 3-11-15, cert. 3-12-15 thru 3-31-15; Administrative correction, 4-21-15; DFW 38-2015(Temp), f. & cert. 5-5-15 thru 7-31-15; DFW 46-2015(Temp), f. 5-18-15, cert. 5-19-15 thru 7-31-15; DFW 48-2015(Temp), f. 5-26-15, cert. 5-27-15 thru 7-31-15; DFW 55-2015(Temp), f. & cert. 6-2-15 thru 7-31-15; DFW 60-2015(Temp), f. 6-8-15, cert. 6-9-15 thru 7-31-15; DFW 67-2015(Temp), f. 6-10-15, cert. 6-11-15 thru 7-31-15; Administrative correction, 8-18-15; DFW 6-2016(Temp), f. 1-28-16, cert. 2-1-16 thru 3-31-16; DFW 10-2016(Temp), f. 2-11-16, cert. 2-12-16 thru 3-31-16; DFW 11-2016(Temp), f. 2-18-16, cert. 2-19-16 thru 3-31-16; DFW 15-2016(Temp), f. 2-25-16, cert. 2-26-16 thru 3-31-16; DFW 16-2016(Temp), f. 3-3-16, cert. 3-5-16 thru 3-31-16; Administrative correction, 4-29-16; DFW 50-2016(Temp), f. 5-12-16, cert. 5-16-16 thru 7-31-16; DFW 55-2016(Temp), f. 5-24-16, cert. 5-25-16 thru 7-31-16; DFW 65-2016(Temp), f. & cert. 6-6-16 thru 7-31-16; Administrative correction, 8-29-16; DFW 5-2017(Temp), f. 1-31-17, cert. 2-1-17 thru 3-31-17; DFW 10-2017(Temp), f. & cert. 2-7-17 thru 3-31-17; DFW 16-2017(Temp), f. & cert. 2-15-17 thru 3-31-17; DFW 17-2017(Temp), f. & cert. 2-22-17 thru 3-31-17

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Rule Caption: Columbia River Recreational Seasons for Salmon, Steelhead and Shad Set

Adm. Order No.: DFW 18-2017(Temp)

Filed with Sec. of State: 2-28-2017

Certified to be Effective: 3-1-17 thru 6-15-17

Notice Publication Date:

Rules Amended: 635-023-0125

Subject: This amended rule sets regulations for Columbia River recreational spring Chinook, steelhead and shad seasons with descriptions of areas, dates, and bag limits for harvest of adipose fin-clipped Chinook salmon, adipose fin-clipped steelhead and shad. Revisions are consistent with action taken February 23, 2017 by the

Oregon and Washington Departments of Fish and Wildlife in a meeting of the Columbia River Compact.

Rules Coordinator: Michelle Tate—(503) 947-6044

635-023-0125

Spring Sport Fishery

(1) The 2017 Oregon Sport Fishing Regulations provide requirements for the Columbia River Zone and the Snake River Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the 2017 Oregon Sport Fishing Regulations.

(2) The Columbia River recreational salmon and steelhead fishery downstream of Bonneville Dam is open from the mouth at Buoy 10 upstream to Beacon Rock (boat and bank) plus bank angling only from Beacon Rock upstream to the Bonneville Dam deadline from Wednesday, March 1 through Thursday, April 6, 2017. (37 retention days) with the following restrictions:

(a) No more than two adult adipose fin-clipped salmonids, of which only one may be a Chinook, may be retained per day. All non-adipose fin-clipped salmon and non-adipose fin-clipped steelhead must be released immediately unharmed.

(b) The upstream boat boundary at Beacon Rock is defined as: "a deadline marker on the Oregon bank (approximately four miles downstream from Bonneville Dam Powerhouse One) in a straight line through the western tip of Pierce Island to a deadline marker on the Washington bank at Beacon Rock."

(c) No angling is allowed within a closure area near the mouth of the Lewis River. This closure area is defined as: A line from a marker on the lower end of Bachelor Island through USCG buoy Red #4 to the Oregon shore, downstream to a line from the lower (north) end of Sauvie Island across to the downstream range marker (0.7 miles downstream of the Lewis R.) and continuing along the wing jetty to the Washington Shore.

(d) All other permanent 2017 Oregon Sport Fishing Regulations apply.

(3) The Columbia River recreational salmon and steelhead fishery upstream of the Tower Island power lines (approximately 6 miles below The Dalles Dam) to the Oregon/Washington border, plus the Oregon and Washington banks between Bonneville Dam and the Tower Island power lines is open from Thursday, March 16 through Friday, May 5, 2017 (51 retention days) with the following restrictions:

(a) No more than two adult adipose fin-clipped salmonids, of which only one may be a Chinook, may be retained per day. All non-adipose fin-clipped salmon and non-adipose fin-clipped steelhead must be released immediately unharmed.

(b) All other permanent 2017 Oregon Sport Fishing Regulations apply.

(4) Beginning Wednesday, March 1 through Thursday, June 15, 2017 the following restrictions are in effect for Columbia River Select Area recreational salmon and steelhead fisheries:

(a) On days when the recreational fishery below Bonneville Dam is open to retention of Chinook, the salmonid daily bag limit in Select Areas will be the same as mainstem Columbia River bag limits; and

(b) On days when the mainstem Columbia River fishery is closed to Chinook retention, the permanent salmonid bag limit regulations for Select Areas apply.

(5) Beginning Thursday, March 16 through Monday, May 15, 2017, the mainstem Columbia River will be open for retention of adipose fin-clipped steelhead from Buoy 10 upstream to the Oregon/Washington border and open for shad from Buoy 10 upstream to Bonneville Dam only during days and in areas open for retention of adipose fin-clipped spring Chinook.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 11-2004, f. & cert. 2-13-04; DFW 17-2004(Temp), f. & cert. 3-10-04 thru 7-31-04; DFW 29-2004(Temp), f. 4-15-04, cert. 4-22-04 thru 7-31-04; DFW 30-2004(Temp), f. 4-21-04, cert. 4-22-04 thru 7-31-04; DFW 36-2004(Temp), f. 4-29-04, cert. 5-1-04 thru 7-31-04; DFW 39-2004(Temp), f. 5-5-04, cert. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. 5-20-04 thru 7-31-04; DFW 51-2004(Temp), f. 6-9-04, cert. 6-16-04 thru 7-31-04; Administrative correction 8-19-04; DFW 117-2004, f. 12-13-04, cert. 1-1-05; DFW 6-2005, f. & cert. 2-14-05; DFW 27-2005(Temp), f. & cert. 4-20-05 thru 6-15-05; DFW 35-2005(Temp), f. 5-4-05, cert. 5-5-05 thru 10-16-05; DFW 38-2005(Temp), f. & cert. 5-10-05 thru 10-16-05; DFW 44-2005(Temp), f. 5-17-05, cert. 5-22-05 thru 10-16-05; DFW 51-2005(Temp), f. 6-3-05, cert. 6-4-05 thru 7-31-05; Administrative correction 11-18-05; DFW 136-2005, f. 12-7-05, cert. 1-1-06; DFW 5-2006, f. & cert. 2-15-06; DFW 21-2006(Temp), f. 4-13-06, cert. 4-14-06 thru 5-15-06; DFW 27-2006(Temp), f. 5-12-06, cert. 5-13-06 thru 6-15-06; DFW 29-2006(Temp), f. & cert. 5-16-06 thru 7-31-06; DFW 79-2006, f. 8-11-06, cert. 1-1-07; DFW 7-2007(Temp), f. 1-31-07, cert. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. 2-14-07; DFW 28-2007(Temp), f. & cert. 4-26-07 thru 7-26-07; DFW 33-2007(Temp), f. 5-

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15-07, cert. ef. 5-16-07 thru 7-30-07; DFW 37-2007(Temp), f. & cert. ef. 5-31-07 thru 7-30-07; DFW 39-2007(Temp), f. 6-5-07, cert. ef. 6-6-07 thru 7-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 13-2008(Temp), f. 2-21-08, cert. ef. 2-25-08 thru 8-22-08; DFW 17-2008(Temp), f. & cert. ef. 2-27-08 thru 8-22-08; DFW 35-2008(Temp), f. 4-17-08, cert. ef. 4-21-08 thru 8-22-08; DFW 49-2008(Temp), f. & cert. ef. 5-13-08 thru 6-15-08; Administrative correction 7-22-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 10-2009(Temp), f. 2-13-09, cert. ef. 3-1-09 thru 6-15-09; DFW 18-2009, f. & cert. ef. 2-26-09; DFW 48-2009(Temp), f. 5-14-09, cert. ef. 5-15-09 thru 6-16-09; DFW 68-2009(Temp), f. 6-11-09, cert. ef. 6-12-09 thru 6-16-09; Administrative correction 7-21-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 19-2010(Temp), f. 2-26-10, cert. ef. 3-1-10 thru 8-27-10; DFW 23-2010(Temp), f. & cert. ef. 3-2-10 thru 8-27-10; DFW 45-2010(Temp), f. 4-21-10, cert. ef. 4-24-10 thru 7-31-10; DFW 49-2010(Temp), f. 4-27-10, cert. ef. 4-29-10 thru 7-31-10; DFW 55-2010(Temp), f. 5-7-10, cert. ef. 5-8-10 thru 7-31-10; Suspended by DFW 88-2010(Temp), f. 6-25-10, cert. ef. 6-26-10 thru 7-31-10; Administrative correction 8-18-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 13-2011(Temp), f. & cert. ef. 2-14-11 thru 6-15-11; DFW 28-2011(Temp), f. 4-7-11, cert. ef. 4-8-11 thru 6-15-11; DFW 30-2011(Temp), f. 4-15-11, cert. ef. 4-16-11 thru 6-15-11; DFW 33-2011(Temp), f. & cert. ef. 4-21-11 thru 6-15-11; DFW 39-2011(Temp), f. 5-5-11, cert. ef. 5-7-11 thru 6-15-11; DFW 48-2011(Temp), f. 5-13-11, cert. ef. 5-15-11 thru 6-15-11; DFW 55-2011(Temp), f. 5-25-11, cert. ef. 5-27-11 thru 6-15-11; DFW 59-2011(Temp), f. & cert. ef. 6-2-11 thru 6-15-11; Administrative correction 6-28-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 8-2012(Temp), f. 2-6-12, cert. ef. 2-15-12 thru 6-15-12; DFW 31-2012(Temp), f. 4-5-12, cert. ef. 4-6-12 thru 6-15-12; DFW 33-2012(Temp), f. 4-12-12, cert. ef. 4-14-12 thru 6-15-12; DFW 45-2012(Temp), f. 5-1-12, cert. ef. 5-2-12 thru 7-31-12; DFW 47-2012(Temp), f. 5-15-12, cert. ef. 5-16-12 thru 7-31-12; DFW 49-2012(Temp), f. 5-18-12, cert. ef. 5-19-12 thru 7-31-12; DFW 51-2012(Temp), f. 5-23-12, cert. ef. 5-26-12 thru 7-31-12; Suspended by DFW 85-2012(Temp), f. 7-6-12, cert. ef. 7-9-12 thru 8-31-12; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 12-2013(Temp), f. 2-12-13, cert. ef. 2-28-13 thru 7-31-13; DFW 26-2013(Temp), f. 4-4-13, cert. ef. 4-5-13 thru 7-1-13; DFW 38-2013(Temp), f. 5-22-13, cert. ef. 5-25-13 thru 7-1-13; DFW 49-2013(Temp), f. 6-7-13, cert. ef. 6-8-13 thru 6-30-13; Administrative correction, 7-18-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 12-2014(Temp), f. 2-13-14, cert. ef. 3-1-14 thru 6-15-14; DFW 29-2014(Temp), f. 4-3-14, cert. ef. 4-4-14 thru 6-15-14; DFW 31-2014(Temp), f. 4-17-14, cert. ef. 4-19-14 thru 7-31-14; DFW 40-2014(Temp), f. 5-7-14, cert. ef. 5-9-14 thru 6-30-14; DFW 44-2014(Temp), f. 5-14-14, cert. ef. 5-15-14 thru 6-15-14; DFW 52-2014(Temp), f. 5-28-14, cert. ef. 5-31-14 thru 6-30-14; Administrative correction, 7-24-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15; DFW 12-2015(Temp), f. 2-3-15, cert. ef. 3-1-15 thru 6-15-15; DFW 16-2015(Temp), f. & cert. ef. 3-5-15 thru 6-15-15; DFW 26-2015(Temp), f. 4-8-15, cert. ef. 4-10-15 thru 6-15-15; DFW 35-2015(Temp), f. 4-30-15, cert. ef. 5-2-15 thru 6-15-15; DFW 40-2015(Temp), f. & cert. ef. 5-6-15 thru 6-15-15; DFW 52-2015(Temp), f. 5-27-15, cert. ef. 5-28-15 thru 6-15-15; DFW 59-2015(Temp), f. 6-2-15, cert. ef. 6-3-15 thru 6-15-15; DFW 167-2015, f. 12-29-15, cert. ef. 1-1-16; DFW 9-2016(Temp), f. 2-1-16, cert. ef. 3-1-16 thru 6-15-16; DFW 29-2016(Temp), f. 4-7-16, cert. ef. 4-8-16 thru 6-15-16; DFW 44-2016(Temp), f. 5-5-16, cert. ef. 5-6-16 thru 6-15-16; DFW 49-2016(Temp), f. 5-11-16, cert. ef. 5-13-16 thru 6-15-16; DFW 52-2016(Temp), f. 5-19-16, cert. ef. 5-20-16 thru 6-15-16; DFW 57-2016(Temp), f. 5-25-16, cert. ef. 5-28-16 thru 6-15-16; DFW 68-2016(Temp), f. 6-9-16, cert. ef. 6-10-16 thru 6-16-16; DFW 153-2016, f. 12-28-16, cert. ef. 1-1-17; DFW 18-2017, f. 2-28-17, cert. ef. 3-1-17 thru 6-15-17

Rule Caption: Treaty Indian Winter Commercial Gill Net Fisheries in Zone 6 of the Columbia River Revised

Adm. Order No.: DFW 19-2017(Temp)

Filed with Sec. of State: 3-1-2017

Certified to be Effective: 3-1-17 thru 3-31-17

Notice Publication Date:

Rules Amended: 635-041-0065

Subject: This amended rule extends the Treaty Indian winter commercial gill net season in The Dallas and John Day Pool through March 4, and opens The Bonneville Pool through March 6, 2017. Modifications are consistent with action taken March 1, 2017 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, legal sized white sturgeon, walleye, carp, bass, and yellow perch may be taken for commercial or subsistence purposes from the Columbia River Treaty Indian Fishery, from all of Zone 6 beginning 6:00 a.m. Wednesday, February 1 through 6:00 p.m. Tuesday, March 21, 2017.

(a) Gear used in the fisheries described below, is restricted to subsistence fishing gear which includes hoopnets, dipnets, and rod and reel with hook-and-line.

(b) White sturgeon between 43-54 inches fork length in The Dalles and John Day pools and white sturgeon between 38-54 inches fork length in the Bonneville Pool may be sold or kept for subsistence use, and fish landed during any open commercial period may be sold after the period closes.

(2) Salmon, steelhead, shad, walleye, catfish, bass, yellow perch, carp, and legal-sized white sturgeon may be taken for commercial purposes in the following Columbia River Treaty Indian gill net fisheries:

(a) The Bonneville Pool beginning 6:00 a.m. Monday March 6 through 6:00 p.m. Tuesday March 21 2017 (15.5 days)

(b) The Dalles Pool beginning 6:00 a.m. Wednesday, February 1 through 6:00 p.m. Saturday, March 4, 2017 (31.5 days); and

(c) John Day Pool beginning 6:00 a.m. Wednesday, February 1 through 6:00 p.m. Saturday, March 4, 2017 (31.5 days).

(3) There are no mesh size restrictions, however gear is restricted to gill nets.

(4) Closed areas as set forth in OAR 635-041-0045 remain in effect with the exception of Spring Creek Hatchery sanctuary.

(5) Sale of platform and hook-and-line caught fish is allowed during open commercial fishing seasons.

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, cert. 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. 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; Administrative correction, 4-29-16; DFW 50-2016(Temp), f. 5-12-16, cert. ef. 5-16-16 thru 7-31-16; DFW 55-2016(Temp), f. 5-24-16, cert. ef. 5-25-16 thru 7-31-16; DFW 65-2016(Temp), f. & cert. ef. 6-6-16 thru 7-31-16; Administrative correction, 8-29-16; DFW 5-2017(Temp), f. 1-31-17, cert. ef. 2-1-17 thru 3-31-17; DFW 10-2017(Temp), f. & cert. ef. 2-7-17 thru 3-31-17; DFW 16-2017(Temp), f. & cert. ef. 2-15-17 thru 3-31-17; DFW 19-2017(Temp), f. & cert. ef. 3-1-17 thru 3-31-17

Rule Caption: 2016–2017 Big Game Tag Numbers, Dates and Regulations and Tag Numbers for 2017 Big Game

Adm. Order No.: DFW 20-2017

Filed with Sec. of State: 3-2-2017

ADMINISTRATIVE RULES

Certified to be Effective: 3-2-17

Notice Publication Date: 5-1-2016

Rules Amended: 635-008-0120, 635-045-0002, 635-060-0000, 635-065-0625, 635-065-0760, 635-066-0000, 635-066-0010, 635-066-0020, 635-067-0000, 635-068-0000, 635-069-0000, 635-070-0000, 635-071-0000, 635-072-0000

Subject: Hunting season regulations and/or controlled hunt tag numbers and correction to filing 635-065-0760

Rules Coordinator: Michelle Tate—(503) 947-6044

635-008-0120

Ladd Marsh Wildlife Area (Union County)

The Ladd Marsh Wildlife Area is open to wildlife-oriented public use compatible with the goals and objectives contained in the 2008 Ladd Marsh Wildlife Area Management Plan unless otherwise excluded or restricted by the following rules:

(1) All wildlife area lands, except those west of Foothill Road, are closed to public entry except Wed., Sat., Sun. and holidays during pheasant, quail and waterfowl hunting seasons with the following exceptions:

- (a) The Nature Trail, adjacent to I-84, is open year-round;
- (b) The Foothill Road Viewpoint is open year-round;
- (c) The Peach Road Fishing Pond is open year-round;
- (d) The Tule Lake Public Access Area is open March 1–September 30.

(2) All lands west of Foothill Road are closed to all entry Feb. 1 through March 31, except by access permit issued by ODFW.

(3) A daily public access permit, is required, must be possessed at all times by users and must be completed and returned at the end of the day.

(4) The wildlife area is closed to the public between 10 pm and 4 am.

(5) All lands north and east of Foothill Road are open to big game hunting Wed., Sat., Sun. and federal holidays August 1 through January 31. The use of centerfire rifles and handguns is prohibited. A free daily access permit is required. All safety zones and refuge areas are closed to all hunting.

(6) Open to the discharge of firearms only while hunting during authorized game bird and big game hunting seasons, or by permit. Discharge of all handgun and centerfire or rimfire rifles is prohibited east of Foothill Road. Discharge of air guns, BB guns, and paintball guns is prohibited at all times.

(7) Camping is prohibited.

(8) Dogs are prohibited except during authorized bird hunting seasons.

(9) No person shall possess or use any shot other than federally-approved nontoxic shot at any time, except for big game hunters using buckshot or slugs.

(10) Horses are prohibited east of Foothill Road.

(11) ATV and snowmobile use is prohibited on all area lands except for administrative use.

(12) Trapping is prohibited except by access permit issued by ODFW.

(13) ODFW Wildlife Area Parking Permit required.

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

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

Hist.: GC 64, f. 4-3-57; GC 232, f. 8-13-70, ef. 9-11-70; GC 252, f. 5-11-72, ef. 6-1-72, Renumbered from 630-010-0500, Renumbered from 635-015-0005; FWC 63-1980, f. & ef. 11-4-80; FWC 2-1981(Temp), f. & ef. 1-20-81; FWC 30-1982, f. & ef. 5-18-82, Renumbered from 635-008-0005(11); FWC 53-1994, f. & cert. ef. 8-25-94; DFW 38-2008, f. & cert. ef. 4-24-08; DFW 108-2011, f. & cert. ef. 8-5-11; DFW 103-2012, f. & cert. ef. 8-6-12; DFW 80-2013(Temp), f. 7-25-13, cert. ef. 7-26-13 thru 1-21-14; DFW 85-2013, f. & cert. ef. 8-5-13; DFW 117-2014, f. & cert. ef. 8-7-14; DFW 151-2014, f. & cert. ef. 10-17-14; DFW 41-2016, f. & cert. ef. 4-27-16; DFW 20-2017, f. & cert. ef. 3-2-17

635-045-0002

Definitions

(1) “Adult hunting license” is a resident or nonresident hunting license, resident combination angling and hunting license, disabled veteran’s angling and hunting license, pioneer’s angling and hunting license or senior citizen’s angling and hunting license.

(2) “Agricultural lands” are lands that are not less than ten acres in extent that have been cultivated and planted or irrigated to domestic crops that are currently in use. Isolated home gardens, abandoned farmsteads, logged lands, rangelands, and tree farms, are not included in this definition.

(3) “Antler Point” is a point at least one inch in length measured from tip of point to nearest edge of beam. This definition applies only to the three-point elk and spike only elk bag limits.

(4) “Antlerless deer” means doe or fawn deer.

(5) “Antlerless elk” means cow or calf elk.

(6) “Application” means the electronic form completed and purchased to apply for a hunt where the number or distribution of hunters is limited through a public drawing or other means. Mail order applications sent to the Department along with the proper remittance are used to generate the electronic form.

(7) “Bait” for hunting game mammals means any substance placed to attract an animal by its sense of smell or taste, including but not limited to food items or minerals (such as salt). Applying a scent or attractant to one’s body or clothing while worn, is not baiting.

(8) “Baited Area” means an area where baiting has taken place.

(9) “Baiting” means the placing, exposing, depositing, distributing, or scattering of corn, wheat, salt or other feed to constitute a lure or enticement to, on, or over an area where hunters are attempting to take game birds.

(10) “Brace” is defined as an orthosis that is prescribed by a physician and fabricated by an orthotist certified by the American Board for Certification in Orthotics and Prosthetics, Inc.

(11) “Brace Height” is the distance from the back of the bow’s riser at the handgrip to the string when the bow is at rest.

(12) “Buck Deer” means a male deer with at least one visible antler.

(13) “Buck Pronghorn” means a male pronghorn antelope with visible horns and a dark cheek patch below the ear.

(14) “Bull elk” for the purposes of a bag limit definition, means a male elk with at least one visible antler.

(15) “Calendar year” means from January 1 through December 31.

(16) “Carcass” is the skinned or unskinned body, with or without entrails, of a game bird or game mammal.

(17) “Cascade elk” means any live elk occurring in the Dixon, Evans Creek, Indigo, Keno, McKenzie, Metolius, Rogue, Santiam and Upper Deschutes units and those parts of Fort Rock and Sprague units west of Highway 97, and that part of Grizzly Unit west of Hwy 97 and south of Hwy 26.

(18) “Closed season” is any time and place when it is not authorized to take a specific species, sex or size of wildlife.

(19) “Coast elk” means any live elk occurring in the Alsea, Applegate, Chetco, Melrose, Powers, Saddle Mountain, Scappoose, Siuslaw, Sixes, Stott Mountain, Tioga, Trask, Willamette, and Wilson units.

(20) “Commission” means the Oregon Fish and Wildlife Commission.

(21) “Controlled hunt” is a season where the number or distribution of hunters is limited through a public drawing or other means.

(22) “Department” means the Oregon Department of Fish and Wildlife.

(23) “Director” means the Oregon Fish and Wildlife Director.

(24) “Doe or fawn pronghorn” means a female pronghorn antelope without a dark cheek patch below the ear or a pronghorn fawn (young of the year) of either sex.

(25) “Domestic partner” means, as provided in section 3 of the Oregon Family Fairness Act of 2007 (ORS Chapter 106), “an individual who has, in person, joined into a civil contract with another individual of the same sex, provided that each individual is at least 18 years of age and is otherwise capable, and that at least one of the individuals is a resident of Oregon.”

(26) “Eastern Oregon” means all counties east of the summit of the Cascade Range including all of Klamath and Hood River counties.

(27) “Eastern Oregon deer” means any live deer occurring east of the east boundaries of the Santiam, McKenzie, Dixon, Indigo and Rogue units.

(28) “Eligible Hunter” means someone who will be 12 years of age by the time they hunt.

(29) “Entry permit” means a permit issued by the Department to be in an area where entry is restricted by regulation.

(30) “Established airport” is one that the Oregon Department of Aviation has licensed as a public-use airport, registered as a personal-use airport, or specifically exempted from either licensing or registration.

(31) “Feral Swine” means animals of the genus *Sus* as defined by the Oregon Department of Agriculture in OAR 603-010-0055.

(32) “Fiscal year” means from July 1 through June 30.

(33) “Furbearers” are beaver, bobcat, fisher, marten, mink, muskrat, otter, raccoon, red fox, and gray fox.

(34) “Game Birds” are any waterfowl, snipe, band-tailed pigeon, mourning dove, pheasant, quail, partridge, grouse, or wild turkey.

(35) “Game mammals” are pronghorn antelope, black bear, cougar, deer, elk, moose, Rocky Mountain goat, bighorn sheep, and western gray squirrel.

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(36) "General season" is any season open to the holder of a valid hunting license and appropriate game mammal tag without restriction as to the number of participants.

(37) "Hunter certification" means to have met educational, safety or other requirements designated by administrative rule for participation in a hunt.

(38) "Hunt" means to take or attempt to take any wildlife by means involving the use of a weapon or with the assistance of any mammal or bird.

(39) "Husbandry" means the care given animals directly by their owners and managers, including but not limited to:

- (a) Nutrition;
- (b) Breeding program;
- (c) Veterinary medical care;
- (d) Environmental cleanliness; and
- (e) Humane handling.

(40) "Immediate family" for the purpose of Landowner Preference, means a landowner's spouse, children, sons-in law, daughters-in-law, father, mother, brother, brothers-in law, sister, sisters-in-law, stepchildren, and grandchildren.; for all other purposes, it means spouse, domestic partner, children, father, mother, brother, sister, stepchildren, and grandchildren.

(41) "Inedible" means unfit for human consumption.

(42) "Juvenile hunting license" is a resident, nonresident hunting license or resident combination angling and hunting license for persons 9 to 17 years of age to hunt wildlife.

(43) "Landowner", as used in OAR chapter 635, division 075, means:

(a) A person who holds title in trust or in fee simple to 40 or more contiguous acres of land; provided however that a recorded deed or contract of ownership shall be on file in the county in which the land is located; and/or

(b) A corporation or Limited Liability Company (LLC) holding title in fee simple to 40 or more contiguous acres of land; provided however that the corporation or LLC shall be registered with the State of Oregon; and/or

(c) A partnership holding title in fee simple to 40 or more contiguous acres of land; and/or

(d) Persons who hold title as part of a time share are not eligible for landowner preference.

(44) "Low Income" means a person who is "economically disadvantaged" as defined in Section 4(8) of the Federal Job Training Partnership Act of 1982.

(45) "Mounted Wildlife" means any hide, head or whole body of wildlife prepared by a licensed taxidermist for display.

(46) "Muzzleloader" is any single-barreled (shotguns may be double barreled) long gun meant to be fired from the shoulder and loaded from the muzzle with an open ignition system and open or peep sights.

(47) "On or within" means a straight line distance measured on a map.

(48) "One deer" means a buck, doe, or fawn deer.

(49) "One elk" means a bull, cow, or calf elk.

(50) "Open Ignition" is an ignition system where the percussion cap, or frizzen, or flint is visible and exposed to the weather at all times and is not capable of being closed or covered by any permanent piece of the weapon.

(51) "Partner" means a person in an association of two or more persons formed to carry on as co-owners for profit.

(52) "Point-of-Sale" (POS) is a computerized licensing system available at locations that sell Oregon's hunting and angling licenses. Licenses and tags are generated and issued directly to customers from a POS machine at the time of sale.

(53) "Possession" means to have physical possession or to otherwise exercise dominion or control over any wildlife or parts thereof, and any person who counsels, aids or assists another person holding such wildlife is deemed equally in possession.

(54) "Postmark" means the date of mailing as stated in a mark applied by the U.S. Postal Service to a piece of mail. Office postal machine meter marks are not valid application deadline postmarks.

(55) "Predatory animals" means coyotes, rabbits, rodents, and feral swine which are or may be destructive to agricultural crops, products and activities.

(56) "Protected wildlife" means "game mammals" as defined in OAR 635-045-0002(35) "game birds" as defined in 635-045-0002(34), "furbearers" as defined in 635-045-0002(33), "threatened and endangered species" as defined in 635-100-0125, and "nongame wildlife protected" as defined in 635-044-0130.

(57) "Pursue" means the act of trailing, tracking, or chasing wildlife in an attempt to locate, capture, catch, tree, or kill any game mammal, game bird, or furbearer.

(58) "Raw pelt" means any pelt that has not been processed or converted to any usable form beyond initial cleaning, stretching, and drying.

(59) "Resident" is any person who

(a) Has resided in Oregon for a period of at least six consecutive months immediately prior to the date of making application for a license, tag, or permit.

(b) Members of the uniformed services of the United States who:

(i) Are permanently assigned to active duty in this state, and their spouse and dependent children.

(ii) Reside in this state while assigned to duty at any base, station, shore establishment or other facility in this state.

(iii) Reside in this state while serving as members of the crew of a ship that has an Oregon port or shore establishment as its home port or permanent station.

(iv) Aliens attending school in Oregon under a foreign student exchange program.

(v) All other persons are nonresidents.

(60) "River" is that portion of a natural water body lying below the level of bankfull stage. Bankfull stage is the stage or elevation at which overflow of the natural banks of a stream or body of water begins to inundate the upland.

(61) "Rocky Mountain elk" is any live elk occurring east of the following described line: Beginning at the California line on Highway 97; north on Highway 97 to State Highway 26 at Madras; northwest on Highway 26 to east boundary of Santiam Unit; north along east boundary of Santiam Unit to the Columbia River.

(62) "Sabot" A carrier, bushing or device in which a projectile of a smaller caliber is centered so as to permit firing the projectile within a larger caliber weapon. Cloth, paper or felt patches used with round balls are not considered a sabot.

(63) "Shotgun" is a smoothbore firearm, designed for firing birdshot, and intended to be fired from the shoulder, with a barrel length of 18 inches or more, and with an overall length of 26 inches or more. Exception: Shotguns equipped with rifled slug barrels are considered shotguns when used for hunting pronghorn antelope, black bear, cougar, deer, or elk when centerfire rifles or shotguns are legal weapons.

(64) "Sight bait" is exposed flesh bait within 15 feet of any foothold trap set for carnivores.

(65) "Spike deer" is a deer with spike (unbranched) antlers.

(66) "Spike-only bull elk" means a bull elk with at least one visible unbranched antler (a brow tine is not considered an antler branch under spike-only regulations).

(67) "Stockholder" is a person who owns stock within a corporation as defined in OAR 635-045-0002(42)(b).

(68) "Tag" is a document authorizing the taking of a designated kind of mammal at a specified time and place.

(69) "Take" means to kill or obtain possession or control of any wildlife.

(70) "Three point plus elk" for the purposes of a bag limit definition, means a bull elk having 3 points or more on one antler including the brow tine.

(71) "Unbarbed broadhead" is a fixed position arrowhead where the rear edge of the blade(s) forms an angle with the arrow shaft to which it is attached of 90° or greater.

(72) "Uniformed Services" means Army, Navy, Air Force, Marine Corps and Coast Guard, or their reserve components; the National Guard or Oregon National Guard, commissioned corps of the National Oceanic and Atmospheric Administration, and the Public Health Service of the United States Department of health and Human Services detailed with the Army or Navy.

(73) "Unprotected Mammals and Birds" are European starling, house sparrow, Eurasian collared-dove and any mammal species for which there are no closed seasons or bag limits.

(74) "Valid certification permit" is a permit for the current season that has not become invalid after taking a season limit or illegal game bird.

(75) "Visible Antler" means a velvet or hardened antler that is visible above the hairline on the skullcap and is capable of being shed.

(76) "Wait period" means the length of time a successful controlled hunt applicant must wait before reapplying for the species for which he was successful in drawing.

(77) "Waste" means to allow any edible portion of any game mammal (except cougar) or game bird to be rendered unfit for human consumption,

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or to fail to retrieve edible portions, except internal organs, of such game mammals or game birds from the field. Entrails, including the heart and liver, are not considered edible. "Edible portion" means the meat of the front quarters as far down as the knees (the distal joint of the radius-ulna), meat of the hindquarters as far down as the hocks (the distal joint of the tibia-fibula), and the meat along the backbone including the loins (backstrap), and tenderloins. For elk, it also includes the meat of the neck.

(78) "Waterfowl" means ducks, geese, mergansers and coots.

(79) "Weapon" is any device used to take or attempt to take wildlife.

(80) "Western Oregon" means all counties west of the summit of the Cascade Range except Klamath and Hood River counties.

(81) "Western Oregon deer" is any live deer except the Columbian white-tailed deer occurring west of the east boundaries of the Santiam, McKenzie, Dixon, Indigo, and Rogue units.

(82) "Wildlife" means fish, wild birds, amphibians, reptiles, wild mammals, and feral swine.

(83) "Wildlife" means for the purposes of harassment to relieve damage described in OAR 635-043-0096 through 635-043-0115, game mammals, game birds except migratory birds protected by Federal law, furbearing mammals and wildlife declared protected by the commission.

(84) "Wildlife" means for the purposes of scientific taking described in OAR 635-043-0023 through 635-043-0045, wild birds, wild mammals, amphibians and reptiles, including nests, eggs, or young of same.

(85) "Wildlife" means, for the purposes of the Wildlife Diversity Plan described in OAR 635-100-0001 through 635-100-0194, fish, shellfish, amphibians, reptiles, feral swine, wild mammals, wild birds, and animals living intertidally on the bottom as defined by ORS 506.011.

(86) "Wildlife unit" is a geographic area described in OAR 635-080-0000 through 635-080-0077.

(87) "Youth" is any "Resident" of Oregon or Nonresident 12 through 17 years of age.

[Publications: Publications referenced are available from the agency.]

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

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

Hist.: FWC 47-1989, f. & cert. ef. 7-25-89; FWC 104-1989, f. & cert. ef. 9-29-89; FWC 14-1990, f. & cert. ef. 2-2-90; FWC 22-1990, f. & cert. ef. 3-21-90; FWC 17-1991, f. & cert. ef. 3-12-91; FWC 33-1991, f. & cert. ef. 3-25-91; FWC 50-1991, f. & cert. ef. 5-13-91; FWC 57-1991, f. & cert. ef. 6-24-91; FWC 9-1993, f. & cert. ef. 2-8-93; FWC 6-1994, f. & cert. ef. 1-26-94; FWC 20-1995, f. & cert. ef. 3-6-95; FWC 63-1995, f. & cert. ef. 8-3-95; FWC 21-1996, f. & cert. ef. 5-1-96; FWC 50-1996, f. & cert. ef. 8-30-96; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 53-1997, f. & cert. ef. 9-3-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. & cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. & cert. ef. 1-1-01; DFW 73-2001, f. & cert. ef. 8-15-01; DFW 121-2001, f. & cert. ef. 1-1-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 118-2003, f. & cert. ef. 1-1-04; DFW 142-2005, f. & cert. ef. 12-16-05; DFW 127-2006, f. & cert. ef. 1-1-07; DFW 68-2007, f. & cert. ef. 8-14-07; DFW 118-2007, f. & cert. ef. 10-31-07, c. cert. ef. 1-1-08; DFW 52-2008, f. & cert. ef. 5-28-08; DFW 150-2008, f. & cert. ef. 1-1-09; DFW 108-2009, f. & cert. ef. 9-8-09; DFW 140-2009, f. & cert. ef. 11-3-09, cert. ef. 1-1-10; DFW 168-2010, f. & cert. ef. 1-1-11; DFW 103-2012, f. & cert. ef. 8-6-12; DFW 147-2012, f. & cert. ef. 1-1-13; DFW 117-2013, f. & cert. ef. 10-10-13; DFW 63-2014, f. & cert. ef. 6-10-14; DFW 158-2015, f. & cert. ef. 11-25-15; DFW 20-2017, f. & cert. ef. 3-2-17

635-060-0000

Purpose and General Information

(1) The purpose of these rules is to describe the requirements and procedures for controlled hunts pursuant to ORS Chapter 496.162.

(2) The documents entitled "2016-2017 Oregon Game Bird Regulations," and 2017 Oregon Big Game Regulations," are incorporated by reference into these rules. These documents are available at hunting license agents and regional, district, and headquarters offices of the Oregon Department of Fish and Wildlife.

[Publications: Publications referenced are available from the agency.]

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

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

Hist.: FWC 118, f. & cert. ef. 6-3-77; FWC 25-1978, f. & cert. ef. 5-26-78; FWC 32-1978, f. & cert. ef. 6-30-78; FWC 29-1979, f. & cert. ef. 8-2-79; FWC 33-1980, f. & cert. ef. 6-30-80; FWC 7-1981, f. & cert. ef. 2-18-81, f. & cert. ef. 6-1-81; FWC 10-1981, f. & cert. ef. 3-31-81; FWC 22-1981, f. & cert. ef. 6-29-81; FWC 21-1982, f. & cert. ef. 3-31-82; FWC 38-1982, f. & cert. ef. 6-25-82; FWC 34-1984, f. & cert. ef. 7-24-84; FWC 16-1985, f. & cert. ef. 4-11-85; FWC 43-1985, f. & cert. ef. 8-22-85; FWC 35-1986, f. & cert. ef. 8-7-86; FWC 11-1987, f. & cert. ef. 3-6-87; FWC 40-1987, f. & cert. ef. 7-6-87; FWC 12-1988, f. & cert. ef. 3-10-88; FWC 37-1988, f. & cert. ef. 6-13-88; FWC 14-1989, f. & cert. ef. 3-28-89; FWC 48-1989, f. & cert. ef. 7-25-89; FWC 23-1990, f. & cert. ef. 3-21-90; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 61-1998, f. & cert. ef. 8-10-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 56-1999, f. & cert. ef. 8-13-99; DFW 92-1999, f. & cert. ef. 12-8-99, cert. ef. 1-1-00; DFW 51-2000, f. & cert. ef. 8-22-00; DFW 82-2000, f. & cert. ef. 12-21-00, cert. ef. 1-1-01; DFW 73-2001, f. & cert. ef. 8-15-01; DFW 121-2001, f. & cert. ef. 12-24-01, cert. ef. 1-1-02; DFW 3-2002(Temp), f. & cert. ef. 1-3-02 thru 1-23-02; DFW 28-2002(Temp), f. & cert. ef. 4-1-02, cert. ef. 4-2-02 thru 9-28-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 88-2002, f. & cert. ef. 8-14-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 76-2003, f. & cert. ef. 8-13-03; DFW 118-2003, f. & cert. ef. 12-4-03, cert. ef. 1-1-04; DFW 84-2004, f. & cert. ef. 8-18-04; DFW 122-2004, f. & cert. ef. 12-21-04, cert. ef. 1-1-05; DFW 91-2005, f. & cert. ef. 8-19-05; DFW 128-2005, f. & cert. ef. 12-1-05, cert. ef. 1-1-06; DFW 81-2006, f. & cert. ef. 8-11-06; DFW 127-2006, f. & cert. ef. 12-7-06, cert. ef. 1-1-07; DFW 68-2007, f. & cert. ef. 8-14-07; DFW 118-2007, f. & cert. ef. 10-31-07, c. cert. ef. 1-1-08; DFW 60-2008, f. & cert. ef. 6-12-08; DFW 90-2008, f. & cert. ef. 8-13-08; DFW 150-2008, f. & cert. ef. 12-18-08, cert. ef. 1-1-09; DFW 93-2009, f. & cert. ef. 8-12-09; DFW 140-2009, f. & cert. ef. 11-3-09, cert. ef. 1-1-10; DFW 117-2010, f. & cert. ef. 10-10-13; DFW 63-2014, f. & cert. ef. 6-10-14; DFW 158-2015, f. & cert. ef. 11-25-15; DFW 20-2017, f. & cert. ef. 3-2-17

ef. 8-13-10; DFW 140-2010(Temp), f. & cert. ef. 10-6-10 thru 12-31-10; Administrative correction 1-25-11; DFW 108-2011, f. & cert. ef. 8-5-11; DFW 103-2012, f. & cert. ef. 8-6-12; DFW 85-2013, f. & cert. ef. 8-5-13; DFW 112-2014, f. & cert. ef. 8-4-14; DFW 151-2014, f. & cert. ef. 10-17-14; DFW 105-2015, f. & cert. ef. 8-12-15; DFW 158-2015, f. & cert. ef. 11-25-15; DFW 41-2016, f. & cert. ef. 4-27-16; DFW 20-2017, f. & cert. ef. 3-2-17

635-065-0625

Regulations on State and Federal Wildlife Areas, Refuges and Special Areas

State and Federal wildlife areas, refuges and special areas listed below shall be open to hunting during authorized seasons, subject to the following special regulations and exceptions:

(1) Bear Valley National Wildlife Refuge (Klamath County): Closed to all public entry except walk-in deer hunting prior to November 1.

(2) Cascade Head — Lincoln City Area: The Cascade Head — Lincoln City Area is closed to hunting with centerfire rifles, muzzleloaders, or handguns. Hunting is restricted to archery and shotguns only during authorized seasons, except for Department approved emergency hunts. Hunters using shotguns for elk shall use slugs (single projectile) only. The Cascade Head — Lincoln City Area boundaries shall be defined as follows: Beginning at the Pacific Ocean and Siletz River mouth, east along the north shoreline of the Siletz River to Drift Cr. Rd. (mile post 1 on Hwy 229); north on Drift Cr. Rd. to Anderson Cr. Rd.; north on Anderson Cr. Rd. to Schooner Cr. Rd.; west on Schooner Cr. Rd. to Forest Rd. 2200; north and east on FR 2200 to FR 1726; west on FR 1726 to FR 2100; northeast on FR 2100 to the power line crossing; north along the power line to State Hwy. 18; west on Hwy 18 to Old Scenic Hwy 101; north on Old Scenic Hwy 101 to Three Rocks Rd.; west on Three Rocks Rd. to U.S. Hwy 101; north on Hwy 101 to FR 1861; west on FR 1861 to Harts Cove trailhead; west on Harts Cove trail to the Pacific Ocean; south along the coastline to the Siletz River, point of beginning.

(3) Cold Springs Refuge (Umatilla County): The Cold Springs Refuge shall be closed to deer and elk hunting.

(4) Dean Creek Elk Viewing Area (Douglas County): All Bureau of Land Management lands within or contiguous to BLM lands within T22S R11W (including Spruce Reach Island located adjacent to Hwy. 38 and between the outlets of Koapke and Hinsdale Sloughs) are closed to hunting. Also, other lands located within the following boundary are closed to hunting during all elk and deer seasons that pertain to this area: beginning at the intersection of Schofield Rd. and Hwy. 38, south on Schofield Rd. to its intersection with Hakki Ridge Rd., east on Hakki Ridge Rd. to the crest of Hakki Ridge, east along the crest of Hakki Ridge to its intersection with the BLM boundary located in T22S, R11W Section 4, easterly along the BLM boundary to Hwy. 38, west on Hwy 38 to point of beginning.

(5) Dunes National Recreational Area: Use of rifles and handguns is prohibited for all hunting in that portion of the Siuslaw Unit west of Highway 101 and north of Tahkenitch Creek.

(6) North Bank Habitat Management Area (NBHMA; previously known as the Dunning Ranch Area in Douglas County): 6,500 acres located approximately eight miles northeast of Roseburg. Area: All BLM lands located in T25S, R5W, Sections 35,36; T26S, R5W, Sections 1,2,11,12,13,14; T25S, R4W, Sections 31,32,33; T26S, R4W, Sections 4,5,6,7,8,18. This area is closed to all big game hunting except for and during controlled hunts specific to the NBHMA by hunters possessing a controlled hunt tag for the area. Elk, black bear, and cougar hunting will be allowed by hunters who possess a valid NBHMA controlled hunt tag in addition to valid elk, black bear, or cougar tags. The use of bait for hunting game mammals is prohibited on NBHMA. All BLM lands located in T25S, R5W, Sections 35, 36; T26S, R5W, Sections 1, 2, 11, 12, 13, 14; T25S, R4W, Sections 31, 32, 33; T26S, R4W, Sections 4, 5, 6, 7, 8, 18.

(7) William Finley National Wildlife Refuge (Benton County):

(a) Portions of the Refuge are open to deer and elk hunting under special regulations established by the Refuge.

(b) All hunters shall obtain a refuge permit and check in and out of the refuge daily. Information about deer and elk hunting locations, seasons, weapon restrictions, and application instructions are available at the refuge office at 541-757-7236 or on their website (http://www.fws.gov/refuge/William_L_Finley/Hunt.html).

(8) Government Island State Recreation Area (Multnomah County): Use of rifles, handguns, and shotguns with slugs or buckshot, and bows is prohibited at all times.

(9) Hart Mountain National Antelope Refuge (Lake County): Portions of the refuge shall be open for hunting as prescribed under chukar season, controlled pronghorn antelope and bighorn sheep hunts, deer bowhunting season, and muzzleloader deer season. The refuge is open for pronghorn antelope Mandatory Reporting Incentive tag holders, and pronghorn antelope and bighorn sheep auction and raffle tag holders but is closed for

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Access and Habitat deer and elk auction and raffle and Mandatory Reporting Incentive tag holders.

(10) Heppner Regulated Hunt Area: Closed to all motor vehicle use year-round unless posted otherwise, open fires and camping prohibited in posted areas. Approximately 63 square miles in Townships 2, 3, 4, and 5 South, Ranges 25, 26, 27 and 28 East;

(11) John Day Fossil Beds National Monument: Those parts of the National Monument in the Grizzly, Biggs, Fossil, and Northside Units are closed to all hunting and trapping.

(12) John Day River Refuge: Includes all land within 1/4 mile of the John Day River mean high water line from the Columbia River upstream to Thirty Mile Creek. Within this area, from the Columbia Rvr upstream to Rock Cr, the area shall be open to hunting of upland game birds during authorized seasons only between September 1 and October 31 annually but closed to all waterfowl hunting. The remaining area from Rock Cr upstream to Thirty Mile Cr is open to the hunting of all game birds during authorized seasons. Hunting of big game is allowed during authorized seasons.

(13) Klamath Marsh National Wildlife Refuge: This area is closed to all deer and elk hunting.

(14) Long Ranch (Linn County): Forty-eight acres in T13S, R4E, and S32 are closed to all hunting.

(15) Malheur National Wildlife Refuge (Harney County): Portions of the refuge in Blitzen Valley lying west of State Highway 205 is open during authorized rifle and bow deer and pronghorn antelope seasons.

(16) McDonald Forest-Dunn Forest Area (Benton County): The area is closed to all hunting except during controlled hunts as authorized by the commission.

(17) McKay Creek Refuge (Umatilla County): This refuge is closed to deer and elk hunting.

(18) Metolius Wildlife Refuge (Jefferson County): All hunting, injuring, taking, killing, or destroying any wild bird or mammal on public land is prohibited on public lands within T12 and T13S, R9E, bounded by USFS road 1420 and 1419 on the west; road 1400 on the south and east; and road 1420-400, Metolius River, and posted boundary from the Metolius River to road 1400 on the north (approximately five square miles). 36 CFR 261.58(v).

(19) Mill Creek Watershed (Umatilla County): This watershed is closed to all access and hunting except by holders of a Mill Creek Watershed controlled elk tag and a Forest Service entry permit.

(20) Newberry Crater Wildlife Refuge (Deschutes County): All hunting, injuring, taking, killing, or destroying any wild bird or mammal is prohibited on public lands within the rim of Newberry Crater in: T21S, R12E; T22S, R12E; T21S, R13E; T22S, R13E (approximately 15 square miles).

(21) Rimrock Springs Wildlife Area (Grizzly Unit): This area is closed to all hunting.

(22) Rogue River Area:

(a) All land within one mile of the Rogue River between Grave Creek and Lobster Creek is closed to bear hunting.

(b) All land within 1/4 mile of the Rogue River in the wild river section from Grave Creek downstream to Watson Creek is closed to all hunting except during authorized seasons.

(23) Snake River Islands (Malheur County): Closed to hunting with rifles.

(24) South Slough National Estuarine Reserve: Specific areas are closed to hunting due to public health and safety. Contact reserve headquarters office for specific closures.

(25) Starkey Experimental Forest Enclosure (Union County): That portion of The Starkey Experimental Forest within the eight foot high elk-proof fence enclosure is closed to all hunting during deer and elk season except for persons possessing a controlled hunt tag for the area. A posted 1/4 mile buffer zone on the National Forest lands surrounding the enclosure is closed to all hunting with a centerfire rifle or bow. The enclosure is open to deer and elk hunting only by permit during controlled hunts. The main study area is open to hunting of other species during authorized seasons. The 12-foot right-of-way along each side of all eight foot-high perimeter and internal game fences is closed to all motorized travel. Public entry is allowed only through the main gate. The Experimental Forest is closed to all public entry during the winter closure, which runs from the day after the controlled antlerless elk hunt until May 1 annually. Access and Habitat auction or raffle tag holders are not eligible to hunt in the Starkey Experimental Forest enclosure.

(26) Umatilla Refuge (Morrow County): This refuge is closed to deer and elk hunting except during controlled hunts specific to the refuge and emergency hunts as provided in OAR chapter 635, division 078.

(27) Wallowa Lake (Wallowa County): All land on or within 1/4 mile of the Wallowa River from Wallowa Lake upstream to the falls and within 1/4 mile along the west side of Wallowa Lake from the Wallowa Lake State Park to the Wallowa River outlet is closed to all big game hunting.

(28) Willamette River Greenway Corridor: Hunting is permitted with shotguns or bows and arrows only during authorized season on Willamette River Greenway parcels, except in those parcels where hunting is prohibited.

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 28, f. & ef. 7-8-83; FWC 34-1984, f. & ef. 7-24-84; FWC 43-1985, f. & ef. 8-22-85; FWC 35-1986, f. & ef. 8-7-86; FWC 41-1987, f. & ef. 7-6-87; FWC 38-1988, f. & cert. ef. 6-13-88; FWC 94-1988(Temp), f. & cert. ef. 9-19-88; FWC 15-1989, f. & cert. ef. 3-28-89; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 24-1990, f. & cert. ef. 3-21-90; FWC 55-1990, f. & cert. ef. 6-21-90; FWC 20-1991, f. & cert. ef. 3-12-91; FWC 58-1991, f. & cert. ef. 6-24-91; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 4-1995, f. 1-23-95, cert. ef. 7-1-95; FWC 18-1996, f. 4-10-96, cert. ef. 8-1-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 9-2003(Temp), f. & cert. ef. 1-28-03 thru 6-16-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 127-2006, f. 12-7-06, cert. ef. 1-1-07; DFW 118-2007, f. 10-31-07, c. cert. ef. 1-1-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09; DFW 140-2009, f. 11-3-09, c. cert. ef. 1-1-10; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11; DFW 159-2011, f. 12-14-11, cert. ef. 1-1-12; DFW 147-2012, f. 12-18-12, cert. ef. 1-1-13; DFW 80-2013(Temp), f. 7-25-13, cert. ef. 7-26-13 thru 1-21-14; Administrative correction, 2-24-14; DFW 117-2014, f. & cert. ef. 8-7-14; DFW 1-2015, f. & cert. ef. 1-6-15; DFW 18-2016, f. & cert. ef. 3-21-16; DFW 20-2017, f. & cert. ef. 3-2-17

635-065-0760

Other Restrictions

It is *unlawful*:

- (1) To take or hold in captivity the young of any game mammal.
- (2) To hold in captivity any wildlife of this state for which a permit is required without first securing a permit.
- (3) To release without a permit any wildlife brought from another state or country, or raised in captivity in this state.
- (4) To resist game law enforcement officers.
- (5) To refuse inspection of any license, tag or permit by an employee of the Department; any person authorized to enforce the wildlife laws; or a landowner or agent of the landowner on his or her land while on that property.
- (6) To refuse inspection, by an employee of the Oregon Department of Fish and Wildlife, or any person authorized to enforce wildlife laws, of any gear used for the purpose of taking wildlife.
- (7) To take or attempt to take any game mammals, game birds, migratory waterfowl or any protected wildlife species of any size or sex or amount, by any method or weapon, during any time or in any area not prescribed in these rules.
- (8) To disturb, damage, remove, alter or possess any official Department signs.
- (9) To sell, lend, or borrow any big game tag.
- (10) It is unlawful to operate or to be transported in a motor-propelled vehicle in violation of Cooperative Travel Management Areas. "Motor-propelled vehicle" includes aircraft not landing on designated airstrips. Through cooperative agreement, motor vehicle use is limited to specific roads during the dates for the areas listed below. There are two methods of posting road access information; negative marking in which closed roads are marked by signs, gates, berms, or other similar indicators, or positive marking in which open roads are marked by round green reflectors, orange carsonite posts, or similar indicators. Unit descriptions may be found in OAR 635-080-0000 through 635-080-0077. The following closures shall be effective during the specified periods each year:
 - (a) North Coast Access Area: Three days prior to opening of general archery season through the close of all bull elk rifles seasons — Applies to all gated, posted, and/or barrier closed roads within the Saddle Mountain, Scappoose, Trask and Wilson wildlife management units. Cooperators require: day use only on private lands, no ATV use on private and designated state lands, no vehicle may block any road gate.
 - (b) Upper Tualatin-Trask: Three days prior to the opening of controlled buck deer rifle season through the close of all bull elk rifle seasons — That part of the Trask Unit as follows: 60 square miles in Townships 1 and 2 North and 1 South, and Ranges 5 and 6 West;
 - (c) Luckiamute: Permanent Closure — Those parts of the Stott Mt. /Alesa Units as follows: 9 square miles in Townships 8 and 9 South, Ranges 7 and 8 West.

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(d) Mid-Coast: Permanent Closure — That part of the Alsea Unit as follows: Open roads in the Siuslaw NF lands south of US Hwy 20 and north of State Hwy 126 are designated on the Siuslaw NF Motor Vehicle Use Map. However; additional roads may be posted as closed as part of the Cooperative TMA or for administrative purposes.

(e) Smith Ridge: Permanent Closure — That part of the McKenzie Unit as follows: 8 square miles in Townships 13 and 14 South, Ranges 6 and 7 East;

(f) Chucksney Mountain: September 1 through November 30 annually — That part of the McKenzie Unit as follows: 6 square miles in Township 19 South, Range 5 1/2 East;

(g) Skookum Flat: Permanent Closure — That part of the McKenzie Unit as follows: 8 square miles in Townships 19 and 20 South, Range 6 East;

(h) Scott Creek: Permanent Closure — That part of the McKenzie Unit as follows: 51 square miles in Townships 14, 15, and 16 South, Ranges 6 and 7 East;

(i) Wendling: opening of general buck deer season through November 30. Approximately 185 sq. mi in Unit 19 northeast of Springfield; north of Hwy 126, east of Marcola and Brush Creek Rds., and south of the Calapooia River Mainline. Roads open to motor vehicle use will be marked with orange road markers. Access may be closed due to fire danger.

(j) Coos Bay BLM: Permanent Closure — That part of the Tioga Unit as follows: Individual posted roads on lands administered by BLM, Coos Bay District.

(k) Upper Rogue: Three days prior to the general Cascade elk season through the end of the general Cascade elk season — That part of the Rogue Unit as follows: High Cascades Ranger District, Rogue River National Forest;

(l) Jackson: Three days prior to the general Cascade elk season through April 30 annually — That part of the Rogue, Dixon, and Evans Creek units as follows: 116 square miles in Townships 32, 33, 34, and 35 South, Ranges 1 and 2 West and 1 and 2 East; off-road motor vehicle travel is prohibited at all times;

(m) Pokegama: November 20 through March 31 annually — That part of the Keno Unit as follows: 97 square miles in Townships 40 and 41 South, Ranges 4, 5, and 6 East;

(n) Lower Klamath Hills: Permanent Closure — That part of the Klamath Unit as follows: 3 square miles in Township 40 South, Range 9 East;

(o) Goodlow Mountain Area Closure: December 1 through March 31 annually — That part of the Klamath Unit as follows: 17 square miles in Townships 38 and 39 South, Ranges 12 and 13 East;

(p) Sun Creek: November 1 through June 30 annually — That part of the Sprague Unit as follows: 14 square miles in Township 32 South, Ranges 6 and 7 1/2 East;

(q) Fox Butte: Three days prior to the opening of controlled buck deer season through the close of the controlled buck deer season — That part of the Paulina Unit as follows: 230 square miles in Townships 20, 21, 22, 23, and 24 South, Ranges 14, 15, and 16 East;

(r) Timbers: Permanent Closure — That part of the Paulina Unit as follows: 25 square miles in Townships 23 and 24 South, Ranges 9 and 10 East;

(s) Rager: Three days prior to the opening of controlled buck deer rifle season through the close of antlerless elk rifle season — That part of the Ochoco Unit as follows: 352 square miles south of U.S. Highway 26 and west of the South Fork John Day River.

(t) White River Wildlife Area: December 1 through March 31 annually — That part of the White River Unit as follows: 59 square miles along the eastern edge of the Mt. Hood National Forest in the southern half of the White River Unit;

(u) Lower Deschutes: Permanent Closure — That part of the Biggs Unit as follows: 12 square miles along lower 17 miles of Deschutes River except the county access road to Kloan;

(v) Murderers Creek-Flagtail: Three days prior to the opening of the archery deer and elk seasons through the close of controlled buck deer rifle season and from three days prior to the controlled Rocky Mountain bull elk first season through the Rocky Mountain bull elk second season — That part of the Murderers Creek Unit as follows: 185 square miles in Townships 13, 14, 15, 16, and 17 South, Ranges 26, 27, 28, and 29 East;

(w) Camp Creek: Three days prior to opening of controlled buck deer rifle season through the close of controlled buck deer rifle season and from three days prior to the controlled Rocky Mountain bull elk first season through the Rocky Mountain bull elk second season — That part of the

Northside Unit as follows: 54 square miles in Townships 10, 11, and 12 South, Ranges 31, 32, and 33 East.

(x) Bridge Creek Wildlife Area: December 1 through April 14 annually except by permit — That part of the Ukiah Unit as follows: 20 square miles in Townships 5 and 6 south, Ranges 31 and 32 East in the Southwest corner of Ukiah Unit;

(y) Meacham: Three days prior to the opening of the archery deer and elk seasons through May 31. Approximately 41 square miles in Units 49, 52 and 54 in townships 1 and 2 south, township 1 north, ranges 34, 35, and 36 east.

(z) Dark Canyon: Three days prior to the opening of controlled buck deer season through the close of the last elk season encompassing this travel management area. That part of the Sumpter Unit as follows: 20 square miles in Townships 11 and 12 South, Ranges 40 and 41 East;

(aa) Patrick Creek: Three days prior to the opening of controlled buck deer season through the close of the last elk season and May 1 through June 30 encompassing this travel management area. That part of the Sumpter Unit as follows: 8 square miles in Townships 10 and 11 South, Ranges 35 1/2 and 36 East;

(bb) Dry Beaver/Ladd Canyon: Permanent Closure — That part of the Starkey Unit as follows: 125 square miles in Townships 4, 5 and 6 South, Ranges 35, 36, 37 and 38 East;

(cc) Clear Creek: Three days prior to opening of Rocky Mountain bull elk season through close of Rocky Mountain bull elk second season — That part of the Starkey Unit as follows: 21 square miles in Township 5 South, Ranges 37 and 38 East;

(dd) Trail Creek: Three days prior to opening of Rocky Mountain bull elk season through close of Rocky Mountain bull elk second season — That part of the Starkey Unit as follows: 29 square miles in Townships 6 and 7 South, Ranges 35 1/2 and 36 East;

(ee) Indian Creek-Gorham Butte: Three days prior to opening of Rocky Mountain bull elk season through close of Rocky Mountain bull elk second season — That part of the Starkey Unit as follows: 24 square miles in Townships 6 and 7 South, Ranges 36 and 37 East;

(ff) Elkhorn Wildlife Area: Permanent Closure — Those parts of the Starkey and Sumpter units as follows: 7 square miles in Township 6 South, Range 38 East;

(gg) Starkey Experimental Forest Enclosure: Permanent Closure — That part of the Starkey Unit as follows: 40 square miles in Townships 3 and 4 South, Range 34 East;

(hh) Hall Ranch: Three days prior to the opening of Rocky Mountain bull elk first season through April 30 — that part of the Catherine Creek Unit as follows: 3 square miles in Township 5 South, Range 41 East;

(ii) Little Catherine Creek: Three days prior to opening of archery season through May 31 — That part of the Catherine Creek Unit as follows: 22 square miles in Townships 3, 4 and 5 South, Ranges 40 and 41 East;

(jj) Walla Walla: Permanent Closure — Those parts of Walla Walla, Wenaha, and Mt. Emily units as follows: All gated, posted, and closed roads within the Walla Walla Ranger District of the Umatilla National Forest.

(kk) Wenaha Wildlife Area: Permanent Closure — That part of the Wenaha Unit as follows: 17 square miles in Townships 5 and 6 North, Ranges 42 and 43 East along eastern edge of Umatilla Forest in northeast corner of Wenaha Unit;

(ll) Noregaard: Three days prior to archery season through May 31. However, roads will be open to permit removal of camping equipment during a time period extending through two Sundays following the end of the last antlerless elk rifle season. That part of the Sled Springs Unit as follows: 175 square miles in west one-third of Sled Springs Wildlife Unit

(mm) Shamrock: Three days prior to archery season through May 31. However, roads will be open to permit removal of camping equipment during a time period extending through two Sundays following the end of the last antlerless elk rifle season. — That part of the Sled Springs Unit as follows: 20 square miles in Township 4 North, Range 44 East;

(nn) Chesnimnus: Three days prior to Chesnimnus rifle bull season through end of Chesnimnus rifle bull season — That portion of the Chesnimnus Wildlife Unit within the boundaries of the Wallowa-Whitman National Forest;

(oo) Cemetery Ridge Road: Permanent Closure — That part of the Chesnimnus Unit as follows: Cemetery Ridge Road north of the south boundary of Section 4, Township 3 North, and Range 48 East;

(pp) Lord Flat Trail (#1774): Three days prior to archery season through the end of all elk rifle seasons — 15 miles of road in Townships 1 South and 1 and 2 North, Ranges 49 and 50 East;

(qq) Grouse-Lick Creeks: Three days prior to opening of Rocky Mountain bull elk first season through the close of Rocky Mountain bull elk

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second season- That part of the Imnaha Unit as follows: 100 square miles in Townships 2, 3, 4, and 5 South, Ranges 46, 47 and 48 East;

(rr) Clear Lake Ridge: Three days prior to opening of archery season through December 1 annually — That part of the Imnaha Unit as follows: Five square miles in Township 2 South, Range 47 East, Sections 3 and 4 and Township 1 South, Range 47 East, Sections 28, 15, 33, 34 and 22.

(ss) Mehlorn: Permanent Closure: That part of the Pine Creek and Keating Units as follows: 26 square miles in Township 6 South, Ranges 45 and 46 East;

(tt) Lake Fork-Dutchman: Three days prior to opening of archery season to the end of all elk rifle seasons and from May 1 to July 1 — That part of the Pine Creek Unit as follows: 42 square miles in Townships 6 and 7 South, Ranges 46 and 47 East;

(uu) Okanogan-Fish: Three days prior to the opening of buck deer rifle season to the end of elk rifle seasons and from May 1 to July 1 — That part of the Pine Creek Unit as follows: 20 square miles in Township 6 and 7 South, Ranges 46 and 47 East;

(vv) Summit Point: Permanent Closure: That part of the Keating Unit as follows: 14 square miles in Townships 6 and 7 South, Ranges 44 and 45 East.

(ww) Eagle Creek: December 1 — April 15: That part of the Keating Unit as follows: 17 square miles in Townships 7 and 8 South, Range 44 and 45 East;

(xx) Conroy Cliff: Three days prior to the opening of controlled buck deer rifle season through the close of controlled buck deer rifle season and from three days prior to the controlled Rocky Mountain bull elk first season through the Rocky Mountain bull elk second season — That part of the Malheur River Unit as follows: 46 square miles in Townships 16, 17, and 18 South, Ranges 32 1/2, 34, and 35 East;

(yy) Devine Ridge-Rattlesnake: Three days prior to the opening of controlled buck deer rifle season through the close of controlled buck deer rifle season and from three days prior to the controlled Rocky Mountain bull elk first season through the Rocky Mountain bull elk second season — That part of the Malheur River Unit as follows: 59 square miles in Townships 20 and 21 South, Ranges 31, 32, 32 1/2 East;

(zz) Dairy Creek: Three days prior to the opening of controlled buck deer rifle season through the close of controlled buck deer rifle season and from three days prior to the controlled Rocky Mountain bull elk first season through the Rocky Mountain bull elk second season — That part of the Silvies Unit as follows: 98 square miles in Townships 19, 20, 21, and 22 South, Ranges 24, 25, and 26 East;

(aaa) Burnt Cabin: Three days prior to the opening of controlled buck deer rifle season through the close of controlled buck deer rifle season and from three days prior to the controlled Rocky Mountain bull elk first season through the Rocky Mountain bull elk second season — That part of the Silvies Unit as follows: 22 square miles in Townships 18 and 19 South, Ranges 26 and 27 East;

(bbb) Walker Rim: Three days prior to the opening of controlled buck deer season through the close of the controlled buck deer season — That part of the Fort Rock Unit as follows: 113 square miles in Townships 24, 25, and 26 South, Ranges 8, 9, and 10 East;

(ccc) North Paulina: Permanent Closure — That part of the Fort Rock Unit as follows: 12 square miles in Townships 25 and 26 South; Range 8 East;

(ddd) Sugarpine Mountain: Permanent Closure — That part of the Fort Rock Unit as follows: 40 square miles in Township 28, Ranges 9 and 10 East

(eee) Stott Mt.-North Alsea: One day prior to opening of archery season through the bull elk rifle seasons — All gated and/or barrier closed roads within the Alsea Unit north of US Hwy 20 and west of State Hwy 223 (Kings Valley Hwy); and in the Stott Mt. Unit. Cooperators require: day use only on private lands, no ATV use on private lands and designated state lands, and no vehicle may block any road or gate. Access may be closed during extreme fire danger;

(fff) Spring Butte: Permanent Closure — That part of the Paulina Unit as follows: 30 square miles in Township 23 South, Range 11 East;

(ggg) Wildhorse Ridge/Teepee Butte: Three days prior to archery season through the end of all elk rifle seasons. Posted and gated roads north of 46 roads in Chesnimnus Unit are closed;

(hhh) Hells Canyon National Recreation Area: Permanent Closure — Those parts of the Chesnimnus, Imnaha, Snake River, and Pine Creek Units in Eastern Wallowa County that are closed by the National Recreation Area;

(iii) PO Saddle Road — Three days prior to opening of archery season through June 15th, annually — Three miles of road in Townships 3 and 4 South, Range 48 East.

(jjj) Whiskey Creek — Three days prior to archery season through May 31. However, roads will be open to permit removal of camping equipment during a time period extending through two Sundays following the last antlerless elk season. That part of the Sled Springs unit as follows — 45 square miles in Townships 2 and 3 North, Ranges 43, 44, and 45 East.

(kkk) South Boundary: Permanent Closure — That part of the Ochoco Unit as follows: 47 square miles in Townships 15 and 16 South, Ranges 20, 21, and 22 East.

(lll) Green Diamond Travel Management Area: Permanent Closure — Applies to all gated, posted, or barrier-closed roads within the Rogue, Keno, Klamath Falls, Sprague, Interstate, Silver Lake, and Fort Rock Units within the land holdings of Green Diamond Resource Company.

(mmm) Prineville Reservoir Wildlife Area: From November 15 or December 1 (as posted at each gate) through April 15 annually — That part of the Ochoco and Maury Units as follows: 5 square miles in Township 16 South, Range 17 East.

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 28, f. & ef. 7-8-83; FWC 34-1984, f. & ef. 7-24-84; FWC 43-1985, f. & ef. 8-22-85; FWC 35-1986, f. & ef. 8-7-86; FWC 15-1989, f. & cert. ef. 3-28-89; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 24-1990, f. & cert. ef. 3-21-90; FWC 55-1990, f. & cert. ef. 6-21-90; FWC 58-1991, f. & cert. ef. 6-24-91; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 4-1995, f. 1-23-95, cert. ef. 7-1-95; FWC 30-1995, f. & cert. ef. 4-17-95; FWC 18-1996, f. 4-10-96, cert. ef. 8-1-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; 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 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 5-2003, f. 1-17-03, cert. ef. 7-1-03; DFW 116-2003(Temp), f. & cert. ef. 11-25-03 thru 3-31-04; DFW 120-2003, f. 12-4-03, cert. ef. 6-16-04; DFW 125-2004, f. 12-21-04, cert. ef. 6-1-05; DFW 133-2005, f. 12-1-05, cert. ef. 6-1-06; DFW 128-2006, f. 12-7-06, cert. ef. 6-1-07; DFW 118-2007, f. 10-31-07, cert. ef. 1-1-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11; DFW 159-2011, f. 12-14-11, cert. ef. 1-1-12; DFW 147-2012, f. 12-18-12, cert. ef. 1-1-13; DFW 138-2013, f. & cert. ef. 12-20-13; DFW 159-2014(Temp), f. 12-4-14, cert. ef. 1-1-15 thru 6-29-15; DFW 69-2015, f. & cert. ef. 6-11-15; DFW 18-2016, f. & cert. ef. 3-21-16; DFW 81-2016, f. & cert. ef. 6-27-16; DFW 18-2016, f. & cert. ef. 3-21-16; DFW 20-2017, f. & cert. ef. 3-2-17

635-066-0000

Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods, and other restrictions for hunting black bear pursuant to ORS Chapter 496.

(2) OAR chapter 635, division 066 incorporates, by reference, the requirement for black bear hunting set out in the document entitled 2017 “Oregon Big Game Regulations,” into Oregon Administrative Rules. Therefore, persons must consult the 2017 “Oregon Big Game Regulations” in addition to OAR chapter 635, to determine all applicable requirements for the hunting of black bear. The annual Oregon Big Game Regulations are available at authorized license agents and regional, district and headquarters offices and website of the Oregon Department of Fish and Wildlife

(3) Additional regulation information is available on the Oregon Department of Fish and Wildlife website at www.odfw.com.

[Publications: Publications referenced are available from the agency.]

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

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

Hist.: FWC 64-1989, f. & cert. ef. 8-15-89; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 1-1999, f. & cert. 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 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 127-2006, f. 12-7-06, cert. ef. 1-1-07; DFW 118-2007, f. 10-31-07, cert. ef. 1-1-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09; DFW 140-2009, f. 11-3-09, cert. ef. 1-1-10; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11; DFW 159-2011, f. 12-14-11, cert. ef. 1-1-12; DFW 147-2012, f. 12-18-12, cert. ef. 1-1-13; DFW 138-2013, f. & cert. ef. 12-20-13; DFW 1-2015, f. & cert. ef. 1-6-15; DFW 18-2016, f. & cert. ef. 3-21-16; DFW 20-2017, f. & cert. ef. 3-2-17

635-066-0010

General Season Regulations

(1) Pursuant to ORS 497.112, annual black bear tag sales to nonresident black bear hunters for the general fall season shall be limited to no more than three percent of the total tag sales based on previous year’s hunter densities.

(a) Tags shall be available at any authorized license agent and through the Salem Headquarters office on a first-come, first-served basis.

(b) The application procedure shall be as follows:

(A) An applicant may purchase a nonresident general black bear tag at any hunting license agent or;

(B) An applicant shall mail or fax copies, through the Salem Headquarters only, of his/her nonresident driver’s license, adult nonresident

ADMINISTRATIVE RULES

hunting license, juvenile nonresident hunting license, or provide documentation which includes the following information:

- (i) Applicant's full name and current address;
- (ii) Applicant's date of birth;
- (iii) Applicant's Social Security number;
- (iv) Applicant's telephone number;
- (c) An applicant shall include a fee of \$15.50 (plus a \$10.00 license agent fee) with the application.

(d) The applicant shall state the areas for which he/she is applying in order of choice.

(2) Open Area: The entire state is open, except that lands within one mile of the Rogue River between Grave Creek and Lobster Creek are closed to all black bear hunting. Nonresidents shall be restricted to hunting black bear only in specific areas as described below.

(3) Nonresident black bear tags shall be distributed by areas as described in the Black Bear Management Plan. These areas are described as follows:

(a) Northwest: All of wildlife management units: 10, 11, 12, 14, 15, 17, and 18. (Number of Tags: 207)

(b) Southwest and Southwest Nonresident Additional: All of wildlife management units: 20, 23, 24, 25, 26, 27, 28, and 29. (Number of Tags: 271)

(c) Cascades and Cascade Nonresident Additional: All of wildlife management units: 16, 19, 21, 22, 30, 31, 34, 39, 41, and 42 and those portions of wildlife management units 33 and 77 lying west of Highway 97. (Number of Tags: 365)

(d) Eastern: All of wildlife management units: 32, 35, 38, 40, and 43 and those portions of wildlife management units 33 and 77 lying east of Highway 97; and all other wildlife management units to the east of these units. (Number of Tags: 357)

(4) No person shall use dogs to hunt or pursue black bear.

(5) No person shall use bait to attract or hunt black bear.

(6) The skull of any bear taken must be presented to an ODFW office or designated collection site. The person who took the animal is responsible to have it presented, within 10 days of the kill, to be checked and marked. Skull must be unfrozen when presented for check-in. Check-in at ODFW offices must occur during normal business hours (8-5, Mon-Fri.). Hunters are required to check in the skull only, for the purpose of inspection, tagging and removal of a tooth for aging.

(7) When the bear skull is presented at check-in information that must be provided includes:

(a) Date of harvest and location of harvest including Wildlife Management Unit, and

(b) Complete hunter information including tag number as found on the bear tag; a completed "Wildlife Transfer Record Form" as found in the current year's Oregon Big Game Regulations is an alternative for providing the required information.

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

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

Hist.: FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; 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 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 118-2007, f. 10-31-07, c. cert. ef. 1-1-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09; DFW 140-2009, f. 11-3-09, cert. ef. 1-1-10; DFW 142-2009, f. 11-12-09, cert. ef. 1-1-10; DFW 159-2011, f. 12-14-11, cert. ef. 1-1-12; DFW 147-2012, f. 12-18-12, cert. ef. 1-1-13; DFW 138-2013, f. & cert. ef. 12-20-13; DFW 81-2016, f. & cert. ef. 6-27-16; DFW 18-2016, f. & cert. ef. 3-21-16; DFW 20-2017, f. & cert. ef. 3-2-17

635-066-0020

Controlled Seasons

(1) Controlled hunt tags shall be issued by a controlled hunt drawing following the procedures established in OAR chapter 635, division 060. Controlled hunt tag numbers for 2017 are listed in Table 1 and are adopted and incorporated into OAR chapter 635, division 066 by reference.

(2) The number of tags issued to nonresidents will be limited to no more than three percent of the total tags authorized for each hunt. Persons receiving a controlled black bear tag may also purchase a general season black bear tag and one SW Oregon additional bear tag and one "leftover" controlled spring bear tag.

(3) No person shall use dogs to hunt or pursue black bear.

(4) No person shall use bait to attract or hunt black bear.

(5) The skull of any bear taken must be presented to an ODFW office or designated collection site. The person who took the animal is responsible to have it presented, within 10 days of the kill, to be checked and marked. Skull must be unfrozen when presented for check-in. Check-in at ODFW offices must occur during normal business hours (8-5, Mon-Fri.).

Hunters are required to check in the skull only for the purpose of inspection, tagging and removal of a tooth for aging.

(6) When the bear skull is presented at check-in information that must be provided includes: 1) date of harvest and location of harvest including Wildlife Management Unit, and 2) complete hunter information including tag number as found on the bear tag; a completed "Wildlife Transfer Record Form" as found in the current year's Oregon Big Game Regulations is an alternative for providing the required information.

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

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

Hist.: FWC 9-1997, f. & cert. ef. 2-27-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 118-2007, f. 10-31-07, c. cert. ef. 1-1-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09; DFW 147-2012, f. 12-18-12, cert. ef. 1-1-13; DFW 20-2017, f. & cert. ef. 3-2-17

635-067-0000

Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods, and other restrictions for hunting pronghorn antelope, cougar, bighorn sheep, and Rocky Mountain goat pursuant to ORS Chapter 496.

(2) OAR chapter 635, division 067 incorporates, by reference, the requirements for hunting pronghorn antelope, cougar, bighorn sheep, and Rocky Mountain goat set out in the document entitled "2017 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2017 Oregon Big Game Regulations" in addition to OAR chapter 635, to determine all applicable requirements for hunting pronghorn antelope, cougar, bighorn sheep, and Rocky Mountain goat. The annual Oregon Big Game Regulations are available at authorized license agents and regional, district and headquarters offices and website of the Oregon Department of Fish and Wildlife.

(3) Additional regulation information is available on the Oregon Department of Fish and Wildlife website at www.odfw.com.

(4) Controlled hunt tags shall be issued by a controlled hunt drawing following the procedures established in OAR chapter 635, division 060. Permitted weapons and ammunition are established in OAR chapter 635, division 065. Controlled hunt tag numbers for 2016 and 2017 are listed in Tables 1, 2, and 3 and are adopted and incorporated into OAR chapter 635, division 067 by reference.

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

[Publications: Publications referenced are available from the agency.]

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

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

Hist.: FWC 65-1989, f. & cert. ef. 8-15-89; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 53-2004, f. & cert. ef. 6-16-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 41-2006, f. & cert. ef. 6-14-06; DFW 127-2006, f. 12-7-06, cert. ef. 1-1-07; DFW 42-2007, f. & cert. ef. 6-14-07; DFW 118-2007, f. 10-31-07, c. cert. ef. 1-1-08; DFW 60-2008, f. & cert. ef. 6-12-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09; DFW 66-2009, f. & cert. ef. 6-10-09; DFW 140-2009, f. 11-3-09, cert. ef. 1-1-10; DFW 83-2010, f. & cert. ef. 6-15-10; DFW 85-2010(Temp), f. & cert. ef. 6-21-10 thru 12-17-10; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11; DFW 62-2011, f. & cert. ef. 6-3-11; DFW 159-2011, f. 12-14-11, cert. ef. 1-1-12; DFW 58-2012, f. & cert. ef. 6-11-12; DFW 147-2012, f. 12-18-12, cert. ef. 1-1-13; DFW 53-2013, f. & cert. ef. 6-10-13; DFW 138-2013, f. & cert. ef. 12-20-13; DFW 63-2014, f. & cert. ef. 6-10-14; DFW 1-2015, f. & cert. ef. 1-6-15; DFW 69-2015, f. & cert. ef. 6-11-15; DFW 18-2016, f. & cert. ef. 3-21-16; DFW 81-2016, f. & cert. ef. 6-27-16; DFW 20-2017, f. & cert. ef. 3-2-17

635-068-0000

Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods and other restrictions for hunting western Oregon deer pursuant to ORS Chapter 496.

(2) Controlled hunt tag numbers for 2016 and 2017 are listed in Tables 1 and 2 and are adopted and incorporated into OAR chapter 635, division 068 by reference.

(3) OAR chapter 635, division 068 incorporates, by reference, the requirements for hunting western Oregon deer set out in the document entitled "2017 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2017 Oregon Big Game Regulations" in addition to OAR chapter 635, to determine all applicable requirements for hunting western Oregon deer. The annual Oregon Big Game Regulations are available at authorized license agents and regional, district, and headquarters offices of the Oregon Department of Fish and Wildlife.

ADMINISTRATIVE RULES

(4) Additional regulation information is available on the Oregon Department of Fish and Wildlife website at www.odfw.com.

[ED. NOTE: Tables & publications referenced are available from the agency.]
Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 39-1988, f. & cert. ef. 6-13-88; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. & cert. ef. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. & cert. ef. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 121-2001, f. & cert. ef. 12-24-01, cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 3-2003, f. & cert. ef. 1-17-03, cert. ef. 1-20-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 121-2003, f. & cert. ef. 12-4-03, cert. ef. 1-19-04; DFW 53-2004, f. & cert. ef. 6-16-04; DFW 124-2004, f. & cert. ef. 12-21-04, cert. ef. 3-1-05; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 131-2005, f. & cert. ef. 12-1-05, cert. ef. 3-1-06; DFW 41-2006, f. & cert. ef. 6-14-06; DFW 125-2006, f. & cert. ef. 12-4-06, cert. ef. 3-1-07; DFW 42-2007, f. & cert. ef. 6-14-07; DFW 116-2007, f. & cert. ef. 10-31-07, cert. ef. 3-1-08; DFW 60-2008, f. & cert. ef. 6-12-08; DFW 13-2009, f. & cert. ef. 2-19-09, cert. ef. 3-1-09; DFW 66-2009, f. & cert. ef. 6-10-09; DFW 14-2010, f. & cert. ef. 2-16-10, cert. ef. 3-1-10; DFW 83-2010, f. & cert. ef. 6-15-10; DFW 14-2011, f. & cert. ef. 2-15-11, cert. ef. 3-1-11; DFW 62-2011, f. & cert. ef. 6-3-11; DFW 15-2012, f. & cert. ef. 2-10-12, cert. ef. 3-1-12; DFW 58-2012, f. & cert. ef. 6-11-12; DFW 14-2013, f. & cert. ef. 2-15-13, cert. ef. 3-1-13; DFW 53-2013, f. & cert. ef. 6-10-13; DFW 122-2013, f. & cert. ef. 10-25-13; DFW 16-2014, f. & cert. ef. 2-27-14; DFW 63-2014, f. & cert. ef. 6-10-14; DFW 15-2015, f. & cert. ef. 2-26-15; DFW 69-2015, f. & cert. ef. 6-11-15; DFW 18-2016, f. & cert. ef. 3-21-16; DFW 81-2016, f. & cert. ef. 6-27-16; DFW 20-2017, f. & cert. ef. 3-2-17

635-069-0000

Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods and other restrictions for hunting eastern Oregon deer pursuant to ORS Chapter 496.

(2) Controlled hunt tag numbers for 2016 and 2017 are listed in Tables 1 and 2 and are adopted and incorporated into OAR Chapter 635, Division 069 by reference.

(3) OAR chapter 635, division 069 incorporates, by reference, the requirements for hunting eastern Oregon deer set out in the document entitled “2017 Oregon Big Game Regulations,” into Oregon Administrative Rules. Therefore, persons must consult the “2017 Oregon Big Game Regulations” in addition to OAR Chapter 635, to determine all applicable requirements for hunting eastern Oregon deer. The annual Oregon Big Game Regulations are available at hunting license agents and regional, district and headquarters offices and website of the Oregon Department of Fish and Wildlife.

(4) Additional regulation information is available on the Oregon Department of Fish and Wildlife website at www.odfw.com.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 40-1988, f. & cert. ef. 6-13-88; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 32-1999(Temp), f. & cert. ef. 5-4-99 thru 10-31-99; DFW 34-1999(Temp), f. & cert. ef. 5-12-99 thru 10-31-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. & cert. ef. 12-8-99, cert. ef. 1-1-00; DFW 20-2000(Temp), f. & cert. ef. 4-12-00, cert. ef. 4-12-00 thru 6-30-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. & cert. ef. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 121-2001, f. & cert. ef. 12-24-01, cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 7-2003, f. & cert. ef. 1-17-03, cert. ef. 2-1-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 122-2003, f. & cert. ef. 12-4-03, cert. ef. 2-2-04; DFW 53-2004, f. & cert. ef. 6-16-04; DFW 123-2004, f. & cert. ef. 12-21-04, cert. ef. 2-1-05; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 130-2005, f. & cert. ef. 12-1-05, cert. ef. 4-1-06; DFW 41-2006, f. & cert. ef. 6-14-06; DFW 124-2006, f. & cert. ef. 12-7-06, cert. ef. 2-1-07; DFW 42-2007, f. & cert. ef. 6-14-07; DFW 117-2007, f. & cert. ef. 10-31-07, cert. ef. 2-1-08; DFW 60-2008, f. & cert. ef. 6-12-08; DFW 8-2009, f. & cert. ef. 2-3-09; DFW 66-2009, f. & cert. ef. 6-10-09; DFW 4-2010, f. & cert. ef. 1-12-10, cert. ef. 2-1-10; DFW 83-2010, f. & cert. ef. 6-15-10; DFW 7-2011, f. & cert. ef. 1-31-11, cert. ef. 2-1-11; DFW 62-2011, f. & cert. ef. 6-3-11; DFW 3-2012, f. & cert. ef. 1-13-12, cert. ef. 2-1-12; DFW 58-2012, f. & cert. ef. 6-11-12; DFW 4-2013, f. & cert. ef. 1-15-13, cert. ef. 2-1-13; DFW 53-2013, f. & cert. ef. 6-10-13; DFW 3-2014, f. & cert. ef. 1-22-14; DFW 63-2014, f. & cert. ef. 6-10-14; DFW 15-2015, f. & cert. ef. 2-26-15; DFW 69-2015, f. & cert. ef. 6-11-15; DFW 18-2016, f. & cert. ef. 3-21-16; DFW 81-2016, f. & cert. ef. 6-27-16; DFW 20-2017, f. & cert. ef. 3-2-17

635-070-0000

Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods and other restrictions for hunting Cascade and Coast elk pursuant to ORS Chapter 496.

(2) Controlled hunt tag numbers for 2016 and 2017 are listed in Table 1 and are adopted and incorporated into OAR Chapter 635, Division 070 by reference.

(3) OAR chapter 635, division 070 incorporates, by reference, the requirements for hunting western Oregon elk set out in the document entitled “2017 Oregon Big Game Regulations,” into Oregon Administrative Rules. Therefore, persons must consult the “2017 Oregon Big Game Regulations” in addition to OAR Chapter 635, to determine all applicable requirements for hunting western Oregon elk. The annual Oregon Big Game Regulations are available at hunting license agents and regional, dis-

trict and headquarters offices of the Oregon Department of Fish and Wildlife.

(4) Additional regulation information is available on the Oregon Department of Fish and Wildlife website at www.odfw.com.

[ED. NOTE: Tables referenced are available from the agency.]
[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 41-1988, f. & cert. ef. 6-13-88; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. & cert. ef. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. & cert. ef. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 121-2001, f. & cert. ef. 12-24-01, cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 9-2003(Temp), f. & cert. ef. 1-28-03 thru 6-16-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 119-2003, f. & cert. ef. 12-4-03, cert. ef. 4-1-04; DFW 130-2003(Temp), f. & cert. ef. 12-24-03 thru 3-1-04; DFW 6-2004(Temp), f. & cert. ef. 2-2-04 thru 7-31-04; DFW 53-2004, f. & cert. ef. 6-16-04; DFW 107-2004(Temp), f. & cert. ef. 10-18-04 thru 11-27-04; DFW 131-2004, f. & cert. ef. 4-1-05; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 132-2005, f. & cert. ef. 12-1-05, cert. ef. 4-1-06; DFW 41-2006, f. & cert. ef. 6-14-06; DFW 126-2006, f. & cert. ef. 4-1-07; DFW 42-2007, f. & cert. ef. 6-14-07; DFW 115-2007, f. & cert. ef. 10-31-07, cert. ef. 4-1-08; DFW 60-2008, f. & cert. ef. 6-12-08; DFW 31-2009, f. & cert. ef. 4-1-09; DFW 66-2009, f. & cert. ef. 6-10-09; DFW 22-2010, f. & cert. ef. 3-1-10, cert. ef. 4-1-10; DFW 31-2010, f. & cert. ef. 3-12-10, cert. ef. 4-1-10; DFW 83-2010, f. & cert. ef. 6-15-10; DFW 62-2011, f. & cert. ef. 6-3-11; DFW 22-2012, f. & cert. ef. 3-14-12, cert. ef. 4-1-12; DFW 58-2012, f. & cert. ef. 6-11-12; DFW 21-2013, f. & cert. ef. 4-1-13; DFW 53-2013, f. & cert. ef. 6-10-13; DFW 19-2014, f. & cert. ef. 3-11-14; DFW 63-2014, f. & cert. ef. 6-10-14; DFW 25-2015, f. & cert. ef. 4-8-15; DFW 69-2015, f. & cert. ef. 6-11-15; DFW 28-2016, f. & cert. ef. 4-6-16; DFW 81-2016, f. & cert. ef. 6-27-16; DFW 20-2017, f. & cert. ef. 3-2-17

635-071-0000

Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods and other restrictions for hunting Rocky Mountain elk pursuant to ORS Chapter 496.

(2) Controlled hunt tag numbers for 2016 and 2017 are listed in Table 1 and are adopted and incorporated in OAR Chapter 635, Division 071 by reference.

(3) OAR chapter 635, division 071 incorporates, by reference, the requirements for hunting Rocky Mountain elk set out in the document entitled “2017 Oregon Big Game Regulations,” into Oregon Administrative Rules. Therefore, persons must consult the “2017 Oregon Big Game Regulations” in addition to OAR Chapter 635, to determine all applicable requirements for hunting Rocky Mountain elk. The annual Oregon Big Game Regulations are available at hunting license agents and regional, district and headquarters offices of the Oregon Department of Fish and Wildlife.

(4) Additional regulation information is available on the Oregon Department of Fish and Wildlife website at www.odfw.com.

[ED. NOTE: Tables referenced are available from the agency.]
[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 42-1988, f. & cert. ef. 6-13-88; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. & cert. ef. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. & cert. ef. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, 6-13-01; DFW 121-2001, f. & cert. ef. 12-24-01, cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 50-2003, f. & cert. ef. 1-17-03; DFW 9-2003(Temp), f. & cert. ef. 1-28-03 thru 6-16-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 118-2003, f. & cert. ef. 12-4-03, cert. ef. 1-1-04; DFW 1-2004(Temp), f. & cert. ef. 1-13-04 thru 7-9-04; DFW 53-2004, f. & cert. ef. 6-16-04; DFW 105-2004(Temp), f. & cert. ef. 10-13-04 thru 11-15-04; Administrative correction 11-22-04; DFW 131-2004, f. & cert. ef. 12-21-04, cert. ef. 4-1-05; DFW 59-2005, f. & cert. ef. 6-11-05; DFW 132-2005, f. & cert. ef. 12-1-05, cert. ef. 4-1-06; DFW 22-2006(Temp), f. & cert. ef. 4-7-06 thru 10-4-06; DFW 41-2006, f. & cert. ef. 6-14-06; DFW 126-2006, f. & cert. ef. 12-7-06, cert. ef. 4-1-07; DFW 42-2007, f. & cert. ef. 6-14-07; DFW 115-2007, f. & cert. ef. 10-31-07, cert. ef. 4-1-08; DFW 60-2008, f. & cert. ef. 6-12-08; DFW 31-2009, f. & cert. ef. 3-23-09, cert. ef. 4-1-09; DFW 66-2009, f. & cert. ef. 6-10-09; DFW 22-2010, f. & cert. ef. 3-1-10, cert. ef. 4-1-10; DFW 31-2010, f. & cert. ef. 3-12-10, cert. ef. 4-1-10; DFW 83-2010, f. & cert. ef. 6-15-10; DFW 62-2011, f. & cert. ef. 6-3-11; DFW 22-2012, f. & cert. ef. 3-14-12, cert. ef. 4-1-12; DFW 58-2012, f. & cert. ef. 6-11-12; DFW 21-2013, f. & cert. ef. 3-11-13, cert. ef. 4-1-13; DFW 53-2013, f. & cert. ef. 6-10-13; DFW 19-2014, f. & cert. ef. 3-11-14; DFW 63-2014, f. & cert. ef. 6-10-14; DFW 25-2015, f. & cert. ef. 4-8-15; DFW 69-2015, f. & cert. ef. 6-11-15; DFW 28-2016, f. & cert. ef. 4-6-16; DFW 81-2016, f. & cert. ef. 6-27-16; DFW 20-2017, f. & cert. ef. 3-2-17

635-072-0000

Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, and other restrictions for hunting western gray squirrels pursuant to ORS Chapter 496.

(2) OAR chapter 635, division 072 incorporates, by reference, the requirements for hunting western gray squirrel set out in the document entitled “2017 Oregon Big Game Regulations,” into Oregon Administrative Rules. Therefore, persons must consult the “2017 Oregon Big Game Regulations” in addition to OAR chapter 635, to determine all applicable requirements for hunting western gray squirrel. The annual Oregon Big

ADMINISTRATIVE RULES

Game Regulations are available at hunting license agents and regional, district and headquarters offices of the Oregon Department of Fish and Wildlife.

(3) Additional regulation information is available on the Oregon Department of Fish and Wildlife website at www.odfw.com.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 43-1988, f. & cert. ef. 6-13-88; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 1-1999, f. & cert. 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 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 127-2006, f. 12-7-06, cert. ef. 1-1-07; DFW 118-2007, f. 10-31-07, c cert. ef. 1-1-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09; DFW 140-2009, f. 11-3-09, cert. ef. 1-1-10; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11; DFW 159-2011, f. 12-14-11, cert. ef. 1-1-12; DFW 147-2012, f. 12-18-12, cert. ef. 1-1-13; DFW 138-2013, f. & cert. ef. 12-20-13; DFW 1-2015, f. & cert. ef. 1-6-15; DFW 18-2016, f. & cert. ef. 3-21-16; DFW 20-2017, f. & cert. ef. 3-2-17

Rule Caption: Update Furtaker Regulations to Reflect New Reporting Options

Adm. Order No.: DFW 21-2017(Temp)

Filed with Sec. of State: 3-9-2017

Certified to be Effective: 3-9-17 thru 9-4-17

Notice Publication Date:

Rules Amended: 635-050-0045

Subject: Current Furtaker Regulations require mandatory reporting of harvest and effort to occur via mailed or faxed reports. These revised OARs amend the rules to include online reporting via the internet as an option for mandatory furtaker reporting. This rule change is necessary to provide furtakers the opportunity to complete their mandatory reporting of harvest and effort online.

Rules Coordinator: Michelle Tate—(503) 947-6044

635-050-0045

General Furbearer Regulations

The following general regulations apply to furbearer seasons:

(1) The appropriate furtaker's license or hunting license for furbearers must be in possession to hunt and/or trap furbearers.

(2) Any person possessing a valid furtaker's license or hunting license for furbearers is required to fill out and submit a completed harvest report to the Department online, by fax to (503)-947-6117, or by mail at 4034 Fairview Industrial Drive SE, Salem, OR 97302. The form shall be submitted online, received by fax, or postmarked by April 15, 2017 for the 2016–2017 seasons and April 15, 2018 for the 2017–2018 seasons. Failure to do so shall deny the license holder the opportunity to purchase a hunting license for furbearers or furtaker's license for the following furbearer season, unless the non-compliant licensee pays a fee of \$50.00 and completes and returns the harvest report form prior to the requested license being issued.

(3) Any person may sell or exchange the hide, carcass, or any part thereof, of any legally taken furbearing or unprotected mammal.

(4) All traps and snares, whether set for furbearing or other unprotected mammals, shall be legibly marked or branded with the owner's license (brand) number that has been assigned by the Department; except that unmarked traps or snares may be set for nongame mammals unprotected by law or Department regulations by any person or member of his immediate family upon land of which he is the lawful owner. A landowner is required to register the location of such land with the Department and shall possess each year a free landowner's license before hunting or trapping furbearing mammals.

(5) No branded trap or snare may be sold unless accompanied by a uniform bill of sale.

(6) Bobcat, raccoon and opossum may be hunted with the aid of an artificial light provided the light is not cast from or attached to a motor vehicle or boat.

(7) An artificial light may be used to provide light to aid in the dispatch of animals legally restrained in a trap or snare.

(8) Use of dogs is permitted to hunt or pursue bobcat, raccoon, fox, and unprotected mammals.

(9) It is unlawful for any person to trap for furbearers, predatory animals or unprotected mammals using:

(a) A steel foothold trap with a jaw spread greater than 9 inches.

(b) A No. 3 or larger foothold trap or any foothold trap with an inside jaw spread at dog greater than 6" not having a jaw spacing of at least 3/16 of one inch when the trap is sprung (measurement excludes pads on padded

jaw traps) and when the trap is placed in a manner that is not capable of drowning a trapped animal.

(c) The flesh of any game bird, game fish, game mammal for trap bait.

(d) Any killing trap having a jaw spread of 9 inches or more in any land set.

(e) Any killing trap having a jaw spread of 7.5 inches or more but less than 9 inches, in a land set on public lands, at a distance greater than 50 feet from a permanent water source or a seasonal water source when water is present except when authorized by the Oregon Department of Fish and Wildlife.

(f) Any toothed trap, or trap with a protuberance on the facing edge of the jaws that is intended to hold the animal (except pads on padded jaw traps).

(g) Or possessing the branded traps or snares of another unless in possession of written permission from the person to whom the brand is registered.

(h) Sight bait within 15 feet of any foothold trap set for carnivores.

(10) Except for persons authorized to enforce the wildlife laws, it is unlawful to disturb or remove the traps or snares of any licensed trapper while he is trapping on public lands or on land where he has permission to trap.

(11) All traps or snares set or used for the taking of furbearing or unprotected mammals shall be inspected at least every 48 hours and all trapped animals removed. This regulation does not apply to the taking of predatory animals.

(12) Any person setting a trap for predatory animals, as defined in ORS 610.002, must check the trap as follows:

(a) For killing traps and snares, at least once every 30 days and remove all animals;

(b) For restraining traps and snares, at least once every 76 hours and remove all animals. However, restraining traps and snares set by a person owning, leasing, occupying, possessing or having charge of or dominion over any land, place, building, structure, wharf, pier or dock or their agent, and set for predatory animals damaging land, livestock or agricultural or forest crops, shall be checked at least once every 7 days. Any person(s) acting as an agent for a landowner shall have in their possession written authority from the landowner or lawful occupant of the land. Such written authority shall contain at least all of the following:

(A) The date of issuance of the authorization;

(B) The name, address, telephone number and signature of the person granting the authorization;

(C) The name, address and telephone number of the person to whom the authorization is granted; and

(D) The expiration date of the authorization, which shall be not later than one year from the date of issuance of the authorization.

(13) A "killing trap" means a device used to kill a mammal as part of a killing trap system. A killing trap system is a system set with the intent to kill a mammal comprising a combination of: equipment (the trap and trigger configuration), and set (including site modifications, lures, baits, location and other relevant requirements).

(14) A "restraining trap" means a device used to capture and restrain (but not kill) a mammal as part of a restraining trap system. A restraining trap system is a system set with the intent to capture and restrain (but not kill) a mammal comprising a combination of: equipment (the trap and the trigger configuration), and set (including site modifications, lures, baits, location and other relevant requirements).

(15) These general furbearer regulations do not apply to the trapping of gophers, moles, ground squirrels and mountain beaver.

(16) When any furbearer or raw furbearer pelt is transferred to the possession of another person, a written record indicating the name and address of the person from whom the raw pelt was obtained shall accompany such transfer and remain with same so long as preserved in raw pelt form.

(17) It is unlawful for any person to damage or destroy any muskrat house at any time except where such muskrat house is an obstruction to a private or public ditch or watercourse.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 59-1989, f. & cert. ef. 8-15-89; FWC 70-1990, f. & cert. ef. 7-25-90; FWC 60-1992, f. & cert. ef. 7-30-92; FWC 49-1994, f. & cert. ef. 8-12-94; FWC 43-1996, f. & cert. ef. 8-12-96; DFW 62-1998, f. & cert. ef. 8-10-98; DFW 39-2000, f. & cert. ef. 7-25-00; DFW 73-2002, f. & cert. ef. 7-16-02; DFW 9-2004, f. & cert. ef. 2-11-04; DFW 31-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 67-2004, f. & cert. ef. 7-13-04; DFW 60-2006, f. & cert. ef. 7-12-06; DFW 83-2008, f. & cert. ef. 7-25-08; DFW 82-2010, f. & cert. ef. 6-15-10; DFW 127-2010, f. & cert. ef. 9-10-10; DFW 70-2011, f. 6-15-11, cert. ef. 7-1-11; DFW 56-2012, f. & cert. ef. 6-11-12; DFW 151-2014, f. & cert. ef. 10-17-14; DFW 21-2017(Temp), f. & cert. ef. 3-9-17 thru 9-4-17

ADMINISTRATIVE RULES

Rule Caption: Amend Rules for Protected Wildlife, Holding and Propagating

Adm. Order No.: DFW 22-2017

Filed with Sec. of State: 3-9-2017

Certified to be Effective: 3-9-17

Notice Publication Date: 12-1-2016

Rules Amended: 635-044-0500

Subject: Correction to 044-0500, Exhibit 1, Enclosure and Caging Standards for Holding Wildlife. The following text on page six was removed: "Bobcats and raccoons acquired by transfer or new holding application after June 13, 2016, shall only be held at Oregon AZA accredited facilities or as approved by the Director."

Rules Coordinator: Michelle Tate—(503) 947-6044

635-044-0500

Requirements for Care of Wildlife Held in Captivity

(1) All wildlife held in captivity, including, but not limited to, wildlife held under any permit, license, or condition listed in 635-044-0460 and 635-044-0480 or under a Game Bird Propagation license must provide minimum care sufficient to preserve the health and well-being of the held wildlife (except for emergencies or circumstances beyond the reasonable control of the holder), including, but is not limited to, the following requirements:

(a) Appropriate food for each held species of sufficient quantity and quality to allow for normal growth or maintenance of body weight.

(b) Open or adequate access to potable water in sufficient quantity and quality to satisfy the animal's needs.

(c) Shelter sufficient to protect from adverse elements, protect from predators, prevent escape, prevent other wildlife from entry, and prevent injury. Any other requirement particular to the survival of the specific animal shall also be provided.

(d) Veterinary care deemed necessary by a reasonably prudent person to relieve distress from injury, neglect or disease.

(e) Daily access to an area:

(A) With adequate space for exercise necessary for the health of the animal (except when transporting);

(B) With air temperature suitable for the species of animal; and

(C) Shall be kept free from excess food or fecal waste or other contaminants which could affect the health of the animal

(f) Captive wildlife may not be restrained with a chain, rope, hobbles or similar restraint method. Tethering of raptors is permitted.

(2) It is unlawful for any person possessing wildlife in their care and possession to cause or allow such wildlife to be chased, injured, harmed, harassed, or neglected.

(3) Wildlife held on a Wildlife Holding Permit may not be released in Oregon without prior approval by the Department.

(4) Wildlife listed in this section and captured from the wild and held for more than 48 hours in captivity or held on a Wildlife Holding Permit must remain in captivity for the life of the animal and may not be returned to the wild following capture without prior approval by the Department.

(5) Facilities housing wildlife must meet ODFW minimum standards for species defined in the ODFW Enclosure and Caging Standards for Holding Wildlife for Wildlife Held in Captivity (Exhibit 1); and

(a) Enclosed within suitable structures to prevent escape or prevent other wildlife from entry;

(b) Applicants of Wildlife Holding Permits and holders of wildlife in captivity must demonstrate equivalency of facility construction with Department approval of all proposed facility construction design, materials, and specifications equivalent or exceeding the ODFW Enclosure and Caging Standards for Holding Wildlife.

(c) Inspection of facilities by Department personnel may be conducted prior to approval of the permit.

Stat. Auth.: ORS 167.305, 167.310, 167.312, 167.315, 167.320, 167.322, 167.333, 167.334, 167.335, 167.340, 167.343, 167.345, 167.347, 167.349, 167.355, 167.390, 496.012, 496.138, 496.146, 497.298, 497.308, 497.312, 497.318, 498.006, 498.022, 498.029, 498.052, 498.222, 498.242

Stats. Implemented: ORS 496.012, 496.138, 496.146, 497.298, 497.308, 497.312, 497.318, 498.022, 498.029, 498.052, 498.222, 498.242, 167.310

Hist.: DFW 3-2017, f. & cert. ef. 1-24-17; DFW 22-2017, f. & cert. ef. 3-9-17

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Rule Caption: Close 2017 Winter Commercial Platform and Hook and Line and Gillnet Treaty Indian Fisheries.

Adm. Order No.: DFW 23-2017(Temp)

Filed with Sec. of State: 3-14-2017

Certified to be Effective: 3-17-17 thru 3-31-17

Notice Publication Date:

Rules Amended: 635-041-0065

Subject: This amended rule closes the Treaty Indian winter commercial gill net season in The Bonneville Pool and the Zone 6 commercial platform and hook and line effective 6:00 p.m. March 17, 2017 Modifications are consistent with action taken February 21, 2017 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 Season

(1) Treaty Indian Winter Gillnet Commercial Fishery

(a) Fish may be taken for subsistence or commercial purposes from 6:00 a.m. Monday March 6, 2017 through 6:00 p.m. Friday March 17, 2017.

(b) The open area is Bonneville Pool.

(c) Allowable sales include salmon (all species), steelhead, shad, legal sized white sturgeon, walleye, carp, bass, and yellow perch. Legal-sized white sturgeon in Bonneville Pool are between 38-54 inches fork length.

(d) Gear is restricted to gillnets with no mesh size restrictions.

(2) Treaty Indian Platform and Hook and Line Commercial Fishery

(a) Fish may be taken for commercial purposes from 6:00 a.m. Wednesday February 1, 2017 through 6:00 p.m. Friday March 17, 2017.

(b) The open area is all of Zone 6.

(c) Allowable sales include salmon (all species), steelhead, shad, walleye, carp, bass, and yellow perch. Legal-sized white sturgeon may also be sold but only if landed during open commercial gillnet periods for that pool. Legal-sized white sturgeon are between 38-54 inches fork length in Bonneville Pool and between 43-54 inches fork length in The Dalles and John Day pools.

(d) Gear is restricted to hoop nets, dip nets, and rod and reel with hook and line.

(3) Closed areas as set forth in OAR 635-041-0045 remain in effect with the exception of Spring Creek Hatchery sanctuary.

(4) Fish landed during an open commercial fishing period may be sold after the period concludes.

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 7-1986(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; FWC 8-1998(Temp), f. & cert. ef. 2-5-98 thru 2-28-98; FWC 14-1998, f. & cert. ef. 3-3-98; FWC 20-1998(Temp), f. & cert. ef. 3-13-98 thru 3-20-98; FWC 23-1998(Temp), f. & cert. ef. 3-20-98 thru 6-30-98; FWC 2-1999(Temp), f. & cert. ef. 2-1-99 through 2-19-99; FWC 9-1999, f. & cert. ef. 2-26-99; FWC 14-1999(Temp), f. 3-5-99, cert. ef. 3-6-99 thru 3-20-99; Administrative correction 11-17-99; FWC 6-2000(Temp), f. & cert. ef. 2-1-00 thru 2-29-00; FWC 9-2000, f. & cert. ef. 2-25-00; FWC 19-2000, f. 3-18-00, cert. ef. 3-18-00 thru 3-21-00; FWC 26-2000(Temp), f. 5-4-00, cert. ef. 5-6-00 thru 5-28-00; Administrative correction 5-22-00; FWC 3-2001, f. & cert. ef. 2-6-01; FWC 14-2001(Temp), f. 3-12-01, cert. ef. 3-14-01 thru 3-21-01; Administrative correction 6-20-01; FWC 9-2002, f. & cert. ef. 2-1-02; FWC 11-2002(Temp), f. & cert. ef. 2-8-02 thru 7-7-02; FWC 17-2002(Temp), f. 3-7-02, cert. ef. 3-8-02 thru 9-1-02; FWC 18-2002(Temp), f. 3-13-02, cert. ef. 3-15-02 thru 9-11-02; FWC 134-2002(Temp), f. & cert. ef. 12-19-02 thru 4-1-03; FWC 20-2003(Temp), f. 3-12-03, cert. ef. 3-13-03 thru 4-1-03; FWC 131-2003(Temp), f. 12-26-03, cert. ef. 1-1-04 thru 4-1-04; FWC 5-2004(Temp), f. 1-26-04, cert. ef. 2-2-04 thru 4-1-04; FWC 15-2004(Temp), f. 3-8-04, cert. ef. 3-10-04 thru 4-1-04; FWC 130-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 4-1-05; FWC 4-2005(Temp), f. & cert. ef. 1-31-05 thru 4-1-05; FWC 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05; Administrative correction 4-20-05; FWC 3-2006(Temp), f. & cert. ef. 1-27-06 thru 3-31-06; Administrative correction 4-19-06; FWC 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; FWC 9-2007, f. & cert. ef. 2-14-07; FWC 14-2007(Temp), f. & cert. ef. 3-9-07 thru 9-4-07; FWC 15-2007(Temp), f. & cert. ef. 3-14-07 thru 9-9-07; Administrative correction 9-16-07; FWC 6-2008(Temp), f. 1-29-08, cert. ef. 1-31-08 thru 7-28-08; FWC 20-2008(Temp), f. 2-28-08, cert. ef. 2-29-08 thru 7-28-08; FWC 21-2008(Temp), f. & cert. ef. 3-5-08 thru 7-28-08; FWC 22-2008(Temp), f. 3-7-08, cert. ef. 3-10-08 thru 7-28-08; Administrative correction 8-21-08; FWC 142-2008, f. & cert. ef. 11-21-08; FWC 6-2009(Temp), f. 1-30-09, cert. ef. 2-2-09 thru 8-1-09; FWC 11-2009(Temp), f. 2-13-09, cert. ef. 2-16-09 thru 7-31-09; FWC 22-2009(Temp), f. 3-5-09, cert. ef. 3-6-09 thru 7-31-09; Administrative correction 8-21-09; FWC 9-2010(Temp), f. & cert. ef. 2-3-10 thru 8-1-10; FWC 12-2010(Temp), f. 2-10-10, cert. ef. 2-11-10 thru 8-1-10; FWC 18-2010(Temp), f. 2-24-10, cert. ef. 2-26-10 thru 4-1-10; FWC 24-2010(Temp), f. 3-2-10, cert. ef. 3-3-10 thru 4-1-10; Administrative correction 4-21-10; FWC 8-2011(Temp), f. 1-31-11, cert. ef. 2-1-11 thru 4-1-11; FWC 9-2011(Temp), f. 2-9-11, cert. ef. 2-10-11 thru 4-1-11; FWC 23-2011, f. & cert. ef. 3-21-11; FWC 5-2012(Temp), f. 1-30-12, cert. ef. 2-1-12 thru 3-31-12; FWC 18-

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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; Administrative correction, 4-29-16; DFW 50-2016(Temp), f. 5-12-16, cert. ef. 5-16-16 thru 7-31-16; DFW 55-2016(Temp), f. 5-24-16, cert. ef. 5-25-16 thru 7-31-16; DFW 65-2016(Temp), f. & cert. ef. 6-6-16 thru 7-31-16; Administrative correction, 8-29-16; DFW 5-2017(Temp), f. 1-31-17, cert. ef. 2-1-17 thru 3-31-17; DFW 10-2017(Temp), f. & cert. ef. 2-7-17 thru 3-31-17; DFW 16-2017(Temp), f. & cert. ef. 2-15-17 thru 3-31-17; DFW 19-2017(Temp), f. & cert. ef. 3-1-17 thru 3-31-17; DFW 23-2017(Temp), f. 3-14-17, cert. ef. 3-17-17 thru 3-31-17

Rule Caption: 2017 White Sturgeon Recreational Fishery in The Dalles/Bonneville Pool Closed

Adm. Order No.: DFW 24-2017(Temp)

Filed with Sec. of State: 3-14-2017

Certified to be Effective: 3-25-17 thru 9-20-17

Notice Publication Date:

Rules Amended: 635-023-0095

Subject: This amended rule closes the recreational white sturgeon fishery in The Dalles and Bonneville pools effective 12:01 a.m. Saturday March 25, 2017. The annual guideline for The Dalles Pool has been attained. Bonneville Pool will re-open for a summer fishery. Revisions are consistent with action taken March 14, 2017 by the Departments of Fish and Wildlife for the States of Oregon and Washington at a meeting of the Columbia River Compact.

Rules Coordinator: Michelle Tate—(503) 947-6044

635-023-0095

Sturgeon Season

(1) The **2017 Oregon Sport Fishing Regulations** provide requirements for the Columbia River Zone and the Snake River Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the **2017 Oregon Sport Fishing Regulations**.

(2) Retention of sturgeon in Zone 6 of the mainstem Columbia River is prohibited as follows:

(a) From The Dalles Dam upstream to John Day Dam (The Dalles Pool), including adjacent tributaries, beginning 12:01 a.m. Saturday March 25, 2017.

(b) From Bonneville Dam upstream to The Dalles Dam (Bonneville Pool), including adjacent tributaries, beginning 12:01 Saturday March 25, 2017.

Stat. Auth.: ORS 183.325, 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: DFW 129-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 2-28-05; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 22-2005(Temp), f. 4-1-05, cert. ef. 4-30-05 thru 7-31-05; DFW 50-2005(Temp), f. 6-3-05, cert. ef. 6-11-05 thru 11-30-05; DFW 60-2005(Temp), f. 6-21-05, cert. ef. 6-24-05 thru 12-21-05; DFW 65-2005(Temp), f. 6-30-05, cert. ef. 7-10-05 thru 12-31-05; DFW 76-2005(Temp), f. 7-14-05, cert. ef. 7-18-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 19-2006(Temp), f. 4-6-06, cert. ef. 4-8-06 thru 7-31-06; DFW 54-2006(Temp), f. 6-29-06, cert. ef. 7-1-06 thru 12-27-06; DFW 62-2006(Temp), f. 7-13-06, cert. ef. 7-24-06 thru 12-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 131-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 6-29-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 20-2007(Temp), f. 3-26-07, cert. ef. 3-28-07 thru 7-30-07; DFW 38-2007(Temp), f. & cert. ef. 5-31-07 thru 11-26-07; DFW 59-2007(Temp), f. 7-18-07, cert. ef. 7-29-07 thru 12-31-07; DFW 75-2007(Temp), f. 8-17-07, cert. ef. 8-18-07 thru 12-31-07; DFW 102-2007(Temp), f. 9-28-07, cert. ef. 10-1-07 thru 12-31-07; DFW 135-2007(Temp), f. 12-28-07, cert. ef. 1-1-08 thru 6-28-08; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 8-2008, f. & cert. ef. 2-11-08; DFW 23-2008(Temp), f. 3-12-08, cert. ef. 3-15-08 thru 9-10-08; DFW 28-2008(Temp), f. 3-24-08, cert. ef. 3-26-08 thru 9-10-08; DFW 72-2008(Temp), f. 6-30-08, cert. ef. 7-10-08 thru 12-31-08; DFW 78-2008(Temp), f. 7-9-08, cert. ef. 7-12-08 thru 12-31-08; DFW 86-2008(Temp), f. & cert. ef. 7-25-08 thru 12-31-08; DFW 148-2008(Temp), f. 12-19-08, cert. ef. 1-1-09 thru 6-29-09; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 18-

2009, f. & cert. ef. 2-26-09; DFW 33-2009(Temp), f. 4-2-09, cert. ef. 4-13-09 thru 10-9-09; DFW 63-2009(Temp), f. 6-3-09, cert. ef. 6-6-09 thru 10-9-09; DFW 83-2009(Temp), f. 7-8-09, cert. ef. 7-9-09 thru 12-31-09; DFW 86-2009(Temp), f. 7-22-09, cert. ef. 7-24-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 13-2010(Temp), f. 2-16-10, cert. ef. 2-21-10 thru 7-31-10; DFW 19-2010(Temp), f. 2-26-10, cert. ef. 3-1-10 thru 8-27-10; DFW 34-2010, f. 3-16-10, cert. ef. 4-1-10; DFW 49-2010(Temp), f. 4-27-10, cert. ef. 4-29-10 thru 7-31-10; DFW 50-2010(Temp), f. 4-29-10, cert. ef. 5-6-10 thru 11-1-10; DFW 88-2010(Temp), f. 6-25-10, cert. ef. 6-26-10 thru 7-31-10; DFW 91-2010(Temp), f. 6-29-10, cert. ef. 8-1-10 thru 12-31-10; DFW 99-2010(Temp), f. 7-13-10, cert. ef. 7-15-10 thru 12-31-10; DFW 165-2010(Temp), f. 12-28-10, cert. ef. 1-1-11 thru 6-29-11; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 11-2011(Temp), f. 2-10-11, cert. ef. 2-11-11 thru 7-31-11; DFW 23-2011, f. & cert. ef. 3-21-11; DFW 26-2011(Temp), f. 4-5-11, cert. ef. 4-10-11 thru 9-30-11; DFW 74-2011(Temp), f. 6-24-11, cert. ef. 6-27-11 thru 7-31-11; DFW 87-2011(Temp), f. 7-8-11, cert. ef. 7-9-11 thru 7-31-11; DFW 96-2011(Temp), f. 7-20-11, cert. ef. 7-30-11 thru 12-31-11; DFW 129-2011(Temp), f. 9-15-11, cert. ef. 9-30-11 thru 12-31-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 1-2012(Temp), f. & cert. ef. 1-5-12 thru 7-2-12; DFW 10-2012, f. & cert. ef. 2-7-12; DFW 16-2012(Temp), f. 2-14-12, cert. ef. 2-18-12 thru 7-31-12; DFW 44-2012(Temp), f. 5-1-12, cert. ef. 5-20-12 thru 7-31-12; DFW 73-2012(Temp), f. 6-29-12, cert. ef. 7-1-12 thru 8-31-12; DFW 97-2012(Temp), f. 7-30-12, cert. ef. 8-1-12 thru 12-31-12; DFW 129-2012(Temp), f. 10-3-12, cert. ef. 10-20-12 thru 12-31-12; DFW 140-2012(Temp), f. 10-31-12, cert. ef. 11-4-12 thru 12-31-12; DFW 152-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 154-2012(Temp), f. 12-28-12, cert. ef. 1-1-13 thru 2-28-13; DFW 12-2013(Temp), f. 2-12-13, cert. ef. 2-28-13 thru 7-31-13; DFW 23-2013(Temp), f. 3-20-13, cert. ef. 4-1-13 thru 9-27-13; DFW 47-2013(Temp), f. 5-30-13, cert. ef. 6-14-13 thru 9-30-13; DFW 59-2013(Temp), f. 6-19-13, cert. ef. 6-21-13 thru 10-31-13; DFW 64-2013(Temp), f. 6-27-13, cert. ef. 6-29-13 thru 10-31-13; DFW 104-2013(Temp), f. 9-13-13, cert. ef. 10-19-13 thru 12-31-13; DFW 126-2013(Temp), f. 10-31-13, cert. ef. 11-12-13 thru 12-31-13; DFW 135-2013(Temp), f. 12-12-13, cert. ef. 1-1-14 thru 1-31-14; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 5-2014(Temp), f. 1-30-14, cert. ef. 2-1-14 thru 7-30-14; DFW 14-2014(Temp), f. 2-20-14, cert. ef. 2-24-14 thru 7-31-14; DFW 27-2014(Temp), f. 3-28-14, cert. ef. 5-1-14 thru 7-31-14; DFW 56-2014(Temp), f. 6-9-14, cert. ef. 6-13-14 thru 7-31-14; DFW 87-2014(Temp), f. 7-2-14, cert. ef. 7-11-14 thru 12-31-14; DFW 94-2014(Temp), f. & cert. ef. 7-14-14 thru 12-31-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15; DFW 166-2014(Temp), f. 12-18-14, cert. ef. 1-1-15 thru 3-1-15; Administrative correction, 3-23-15; DFW 41-2015(Temp), f. & cert. ef. 5-12-15 thru 7-31-15; DFW 54-2015(Temp), f. 5-28-15, cert. ef. 6-3-15 thru 7-31-15; DFW 89-2015(Temp), f. 7-16-15, cert. ef. 7-18-15 thru 9-30-15; Temporary suspended by DFW 122-2015(Temp), f. 8-31-15, cert. ef. 9-1-15 thru 9-30-15; Administrative correction, 10-22-15; DFW 167-2015, f. 12-29-15, cert. ef. 1-1-16; DFW 7-2016(Temp), f. 1-28-16, cert. ef. 2-8-16 thru 8-05-16; DFW 36-2016(Temp), f. 4-26-16, cert. ef. 5-1-16 thru 7-31-16; DFW 42-2016(Temp), f. 4-27-16, cert. ef. 4-30-16 thru 7-31-16; DFW 56-2016(Temp), f. 5-25-16, cert. ef. 5-29-16 thru 11-24-16; DFW 79-2016(Temp), f. 6-23-16, cert. ef. 6-30-16 thru 12-26-16; DFW 153-2016, f. 12-28-16, cert. ef. 1-1-17; DFW 24-2017(Temp), f. 3-14-17, cert. ef. 3-25-17 thru 9-20-17

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

Rule Caption: Implementation of Federal Child Care and Development Block Grant Requirements; Updates to Mandatory Exclusions

Adm. Order No.: DHSD 3-2017(Temp)

Filed with Sec. of State: 3-15-2017

Certified to be Effective: 3-15-17 thru 9-10-17

Notice Publication Date:

Rules Amended: 407-007-0210, 407-007-0250, 407-007-0279, 407-007-0320, 407-007-0330

Subject: Oregon is implementing the Child Care and Development Block Grant's reauthorization and regulatory changes issued 9/23/2016. These changes need to be added to the rules immediately to meet requirements under federal regulations. Rule updates include:

- Clarification of who is considered a childcare provider subject individual (OAR 407-007-0210);

- New requirement for all childcare provider subject individuals to have a national fingerprint based criminal records check (OAR 407-007-0250); and

- Guidelines for convictions leading to mandatory exclusion of childcare provider subject individuals and the available appeal rights (OAR 407-007-0279, 407-007-0330).

Additional language is added in OAR 407-007-0279 to clarify the different mandatory exclusions in place.

Proposed rules are available on the Department of Human Services website: <http://www.oregon.gov/DHS/POLICIES/Pages/ss-admin-rules.aspx>. For hardcopy requests, call: (503) 947-5250.

Rules Coordinator: Jennifer Bittel—(503) 947-5250

407-007-0210

Definitions

In addition to the definitions in OAR 125-007-0210 and 407-007-0010, the following definitions apply to OAR 407-007-0200 to 407-007-0370:

ADMINISTRATIVE RULES

(1) "Appointing authority" means an individual designated by the qualified entity (QE) who is responsible for appointing QE designees (QEDs). Examples include but are not limited to human resources staff with the authority to offer and terminate employment, a business owner, a member of the board of directors, a director, or a program administrator.

(2) "Ineligible due to ORS 443.004" means BCU has determined that an SI, subject to ORS 443.004 and either OAR 407-007-0275 or 407-007-0277, has one or more convictions that prohibit the SI from holding the position listed in the background check request.

(3) "Mandatory exclusion" means BCU has determined that an SI, subject to federal law or regulation, has one or more convictions or conditions that prohibit the SI from holding the position listed in the background check request.

(4) "Proctor foster parent" means an individual who is an applicant for certification or recertification of a proctor foster home by a child-caring agency pursuant to OAR 413-215-0301 to 413-215-0396.

(5) "Qualified entity (QE)" means a community mental health or developmental disability program, local health department, or an individual, business, or organization, whether public, private, for-profit, nonprofit, or voluntary, that provides care, including a business or organization that licenses, certifies, or registers others to provide care (see ORS 181A.200).

(6) "QE designee (QED)" means an approved SI appointed by the QE's appointing authority to handle background checks on behalf of the QE.

(7) "QE Initiator (QEI)" means an approved SI to whom BCU has granted access to the Criminal Information Management System (CRIMS) for one QE for the purpose of entering background check request data.

(8) "Subject individual (SI)" means an individual on whom BCU conducts a criminal records check and an abuse check, and from whom BCU may require fingerprints for the purpose of conducting a national criminal records check.

(a) An SI includes any of the following:

(A) An individual who is licensed, certified, registered, or otherwise regulated or authorized for payment by the Department or Authority and who provides care.

(B) An employee, contractor, temporary worker, or volunteer who provides care or has access to clients, client information, or client funds within or on behalf of any entity or agency licensed, certified, registered, or otherwise regulated by the Department or Authority.

(C) Any individual who is paid directly or indirectly with public funds who has or will have contact with recipients of:

(i) Services within an adult foster home (defined in ORS 443.705); or
(ii) Services within a residential facility (defined in ORS 443.400).

(D) Any individual who works in a facility and provides care or has access to clients, client information, or client funds secured by any residential care or assisted living facility through the services of a personnel services or staffing agency.

(E) Any individual who works in a facility and provides care, or has access to clients, client information, or client funds secured by any nursing facility through the services of a personnel services or staffing agency.

(F) Except as excluded in section (8)(b)(C) and (D) of this rule, an individual who lives in a facility that is licensed, certified, registered, or otherwise regulated by the Department to provide care. The position of this SI includes but is not limited to resident manager, household member, or boarder.

(G) For child foster homes licensed by the Department's DD programs, or child foster or adoptive homes governed by OAR chapter 413 division 215:

(i) A foster parent or proctor foster parent;
(ii) An adoptive parent applicant or an approved adoptive parent;
(iii) A household member in an adoptive or foster home 18 years of age and over;

(iv) A household member in an adoptive or foster home under 18 years of age if there is reason to believe that the household member may pose a risk to children placed in the home; and

(v) A respite care provider.

(H) An individual with contact with clients, client information, or client funds, who is an employee, contractor, or volunteer for a child-caring agency governed by OAR chapter 413 division 215; an In-Home Safety and Reunification Services (ISRS) program; a Strengthening, Preserving and Reunifying Families (SPRF) provider; or a system of care contractor providing child welfare services pursuant to ORS chapter 418.

(I) A homecare worker as defined in ORS 410.600, a personal support worker as defined in ORS 410.600, a personal care services provider, or an independent provider employed by a Department or Authority client who

provides care to the client if the Department or Authority helps pay for the services.

(J) Pursuant to OAR 461-165-0180, a child care provider reimbursed through the Department's child care program, associated individuals, and other individuals in child care facilities that are exempt from certification or registration by the Office of Child Care of the Oregon Department of Education. Childcare provider SIs include:

(i) The childcare provider;

(ii) Employees of the childcare provider;

(iii) Any individual the childcare provider uses to supervise a child in the absence of the childcare provider;

(iv) Each individual 16 years of age or older who lives in the provider's home if child care is provided in the home;

(v) Each individual who visits the provider's home during the hours care is provided and may have unsupervised access to a child in care.

(K) An appointing authority, QED, or QEI associated with any entity or agency licensed, certified, registered, otherwise regulated by the Department, or subject to these rules.

(L) An individual providing on the job certified nursing assistant classes to staff within a long term care facility.

(M) A student enrolled in a Board of Nursing approved nursing assistant training program in which the instruction and training occurs solely in a nursing facility.

(N) Except for those excluded under section (8)(b)(B), a student or intern who provides care or has access to clients, client information, or client funds within or on behalf of a QE.

(O) Any individual serving as an owner, operator, or manager of a room and board facility pursuant to OAR chapter 411, division 68.

(P) An employee providing care to clients of the Department's Aging and People with Disabilities (APD) programs who works for an in-home care agency as defined by ORS 443.305 which has a contract with the Department's APD programs.

(Q) Any individual who is required to complete a background check pursuant to Department or Authority program rules or a contract with the Department or Authority, if the requirement is within the Department or Authority's statutory authority. Specific statutory authority or reference to these rules and the positions under the contract subject to a background check must be specified in the contract. The exceptions in section (8)(b) do not apply to these SIs.

(b) An SI does not include:

(A) Any individual under 16 years of age.

(B) A student or intern in a clinical placement at a clinical training setting subject to administrative rules implemented under ORS 413.435 and OAR 409-030-0100 to 409-030-0250.

(C) Department, Authority, or QE clients. The only circumstance in which BCU shall allow a check to be performed on a client pursuant to this paragraph is if the client falls within the definition of "subject individual" as listed in sections (8)(a)(A)-(E) and (8)(a)(G)-(Q) of this rule, or if the facility is dually licensed for different populations of vulnerable individuals.

(D) Individuals working in child care facilities certified or registered by OED.

(E) Volunteers providing any care or services for a QE's special event lasting no more than 2 weeks whose access to clients is no more than three days within the two-week period. These volunteers must always be actively supervised in accordance with OAR 407-007-0315 and have no unsupervised contact with clients.

(F) Individuals employed by a private business that provides services to clients and the general public and is not regulated by the Department or Authority.

(G) Individuals employed by a business that provides appliance or structural repair for clients and the general public and who are temporarily providing these services in a licensed or certified QE. The QE shall ensure active supervision of these individuals while on QE property and the QE may not allow unsupervised contact with QE clients or residents. This exclusion does not apply to a business that receives funds from the Department or Authority for care provided by an employee of the business.

(H) Individuals employed by a private business in which a client of the Department or Authority is working as part of a Department- or Authority-sponsored employment service program. This exclusion does not apply to an employee of a business that receives funds from the Department or Authority for care provided by the employee.

(I) Employees, contractors, students, interns, and volunteers working in hospitals, ambulatory surgical centers, outpatient renal dialysis facilities,

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and freestanding birthing centers, as defined in ORS 442.015, and special inpatient care facilities as defined by the Authority in administrative rule.

(J) Employees, contractors, students, interns, and volunteers working in home health agencies, in-home care agencies, or hospice programs as defined by the Authority in administrative rule.

(K) Volunteers, who are not under the direction and control of a licensed, certified, registered, or otherwise regulated QE.

(L) Individuals employed or volunteering in a Medicare-certified health care business which is not subject to licensure or certification by the State of Oregon.

(M) Individuals working in restaurants or at public swimming pools.

(N) Hemodialysis technicians.

(O) Employees, contractors, temporary workers, or volunteers who provide care, or have access to clients, client information, or client funds of an alcohol and drug program that is certified, licensed, or approved by the Authority's Health Systems Division to provide prevention, evaluation, or treatment services. This exclusion does not apply to programs specifically required by other Authority program rules to conduct criminal records checks in accordance with these rules.

(P) Individuals working for a transit service provider which conducts background checks pursuant to ORS 267.237.

(Q) Emergency medical technicians and first responders certified by the Authority's Emergency Medical Services and Trauma Systems program.

(R) Employees, contractors, temporary workers, or volunteers of continuing care retirement communities registered under OAR chapter 411, division 67.

(S) Individuals hired by or on behalf of a resident in a QE to provide care privately to the resident.

(T) An employee, contractor, temporary worker, or volunteer who provides care or has access to specific clients, client information, or client funds within or on behalf of any entity or agency licensed, certified, registered, or otherwise regulated by the Department or Authority, where the clients served permanently reside in another state.

Stat. Auth.: ORS 181A.200, 409.027 & 409.050

Stats. Implemented: ORS 181A.195, 181A.200, 409.010, 409.027, 443.004, & OL 2016, chapter 106, section 6

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 77-2004(Temp), f. & cert. ef. 10-1-04 thru 3-29-05; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0210, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; Hist.: DHSD 2-2008(Temp), f. & cert. ef. 3-31-08 thru 9-26-08; DHSD 7-2008, f. 8-29-08, cert. ef. 9-1-08; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09; DHSD 10-2009, f. 12-31-09, cert. ef. 1-1-10; DHSD 8-2010(Temp), f. & cert. ef. 8-12-10 thru 2-7-11; DHSD 10-2010, f. 10-29-10, cert. ef. 10-31-10; DHSD 1-2011(Temp), f. & cert. ef. 4-15-11 thru 10-11-11; DHSD 7-2011(Temp), f. & cert. ef. 10-12-11 thru 11-1-11; DHSD 8-2011, f. 10-28-11, cert. ef. 11-1-11; DHSD 2-2012(Temp), f. & cert. ef. 2-27-12 thru 8-24-12; DHSD 4-2012, f. & cert. ef. 8-1-12; DHSD 1-2013(Temp), f. & cert. ef. 2-5-13 thru 8-2-13; DHSD 3-2013, f. & cert. ef. 8-1-13; DHSD 2-2014, f. & cert. ef. 12-1-14; DHSD 1-2016(Temp), f. & cert. ef. 1-14-16 thru 7-11-16; DHSD 5-2016, f. 6-10-16, cert. ef. 6-15-16; DHSD 6-2016(Temp), f. & cert. ef. 7-1-16 thru 12-27-16; DHSD 9-2016, f. & cert. ef. 12-1-16; DHSD 3-2017(Temp), f. & cert. ef. 3-15-17 thru 9-10-17

407-007-0250

Background Check Process

(1) A QE and SI shall use CRIMS to request a background check. In addition to information required in OAR 125-007-0220, the background check request shall include the following information regarding an SI:

(a) Position title and description of duties to be considered;

(b) Indication of the SI's direct contact with any of the following:

(A) Children (for a child-caring agency governed by OAR chapter 413 division 215, children includes an individual who is under 21 years of age who is residing in or receiving care or services);

(B) Adults;

(C) Seniors (65 years and older);

(D) Confidential information;

(E) Secure Facilities;

(F) Finances or financial records; or

(G) Information Technology Systems.

(c) Worksite location or locations where the SI will be working;

(d) Disclosure of all criminal history;

(A) The SI must disclose all arrests, charges, and convictions regardless of outcome or when the arrests, charges, or convictions occurred. Disclosure includes any juvenile record of arrests, charges, or the outcome of arrests or charges against a juvenile.

(B) The disclosed crimes and the dates must reasonably match the SI's criminal offender information and other criminal records information, as determined by BCU.

(e) Disclosure of other information to be considered in the event of a weighing test.

(A) The SI may provide mitigating information for BCU to review in a weighing test.

(B) BCU may require the SI to provide other information as needed to conduct the weighing test.

(f) For an SI who is a proctor foster parent:

(A) The SI must provide a release of information allowing the Department to provide the QE with information regarding the open or pending abuse investigations or founded or substantiated allegations of abuse against the SI.

(B) The SI must also disclose:

(i) Any currently open or pending child or adult abuse investigations in which the SI is reported or alleged to be responsible for the abuse;

(ii) Any child or adult abuse investigations with an outcome of founded or substantiated in which the SI is determined to have been responsible for the abuse; and

(iii) Any restraining order or protective orders against the SI.

(C) If the SI has any of the following, the Department shall provide the QE notification:

(i) Information regarding the open or pending abuse investigations in which the SI is a reported or alleged perpetrator.

(ii) Information regarding substantiated allegations of abuse against the SI.

(iii) Confirmation of the SI being certified or licensed by the Department as a child foster home parent.

(g) For childcare provider SIs listed in OAR 407-007-0210(8)(a)(J), the SI must disclose any involvement in protective services or abuse investigations regarding children or vulnerable adults.

(2) The background check request shall include the following notices to the SI:

(a) A notice regarding disclosure of Social Security number indicating that:

(A) The SI's disclosure is voluntary; and

(B) The Department requests the Social Security number solely for the purpose of positively identifying the SI during the criminal records check process.

(b) A notice that the SI may be subject to fingerprinting as part of a criminal records check.

(c) A notice that BCU shall conduct an abuse check on the SI. Unless required by rule, an SI is not required to disclose any history of potentially disqualifying abuse, but may provide BCU with mitigating or other information.

(3) Using identifying information submitted in a background check request, BCU shall conduct an abuse check to determine if the SI has potentially disqualifying abuse.

(4) BCU shall conduct an Oregon criminal records check. Using information submitted on the background check request, BCU may obtain criminal offender information from LEDS and may request other criminal records information as needed.

(5) BCU shall handle criminal offender information in accordance with applicable OSP requirements in ORS chapter 181 and the rules adopted pursuant thereto (see OAR chapter 125, division 007 and chapter 257, division 15).

(6) BCU may conduct a fingerprint-based national criminal records check.

(a) A fingerprint-based national criminal records check may be completed under any of the following circumstances:

(A) The SI has been outside Oregon for 60 or more consecutive days during the previous five years for all other SIs.

(B) The LEDS check, SI disclosures, or any other criminal records information obtained by BCU indicate there may be criminal records outside of Oregon.

(C) The SI has an out-of-state driver license or out-of-state identification card.

(D) BCU or the QE has reason to question the identity of the SI or the information on the criminal record found in LEDS.

(E) A fingerprint-based criminal records check is required by federal or state laws or regulations, other Department or Authority rules, or by contract with the Department or Authority.

(F) The SI is an employee of an agency which the Centers for Medicare and Medicaid Services has designated high risk pursuant to 42 CFR 424.518.

(G) Any SI applying to be or renewing the position with regard to child adoption or children in foster care licensed by the Department or child-caring agencies. Renewing SIs do not need a fingerprint-based criminal records check if BCU has a record of a previous fingerprint-based

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criminal records checks that is within three years from the date of the current background check request. Applicable SI positions include:

(i) A relative caregiver, foster parent, proctor foster parent, or adoptive parent in Oregon;

(ii) An adult household member in an adoptive or child foster home 18 years of age and over;

(iii) A household member in an adoptive or child foster home under 18 years of age if there is reason to believe that the household member may pose a risk to children placed in the home; or

(iv) A respite care provider in an adoptive or child foster home.

(H) BCU has reason to believe that fingerprints are needed to make a final fitness determination.

(b) BCU shall request a fingerprint capture for an SI under the age of 18 in accordance with OAR 125-007-0220(3).

(c) The SI shall complete and submit a fingerprint capture when requested by BCU within the time frame indicated in a written notice. BCU shall send the request to the QE and the QED shall notify the SI.

(A) BCU shall give the SI notice regarding the Social Security number as set forth in section (2)(a) of this rule.

(B) BCU may require new fingerprint capture and its submission if previous fingerprint captures result in a rejection by OSP or the FBI.

(7) For childcare provider SIs listed in OAR 407-007-0210(8)(a)(J), a background check shall include:

(a) A fingerprint-based national criminal records check;

(b) A search of the National Crime Information Center's National Sex Offender Registry and the Oregon state sex offender registry (these checks are included in the Oregon and fingerprint based national criminal records check); and

(c) In any state where the SI has resided for 60 or more consecutive days during the previous five years:

(A) A criminal records check;

(B) An abuse check;

(C) A state sex offender registry check.

(8) BCU may also conduct a state-specific criminal records check instead of or in addition to a national criminal records check. Reasons for a state-specific criminal records check include but are not limited to:

(a) When BCU has reason to believe that out-of-state criminal records may exist and a national criminal records check cannot be accomplished.

(b) When BCU has been unable to complete a national criminal records check due to illegible fingerprints.

(c) When the national criminal records check results show incomplete information about charges or criminal records without final disposition.

(d) When there is indication of residency or criminal records in a state that does not submit all criminal records to the FBI.

(e) When, based on available information, BCU has reason to believe that a state-specific criminal records check is necessary.

(9) In order to complete a background check and fitness determination, BCU may require additional information from the SI including but not limited to additional criminal, judicial, other background information, or proof of identity.

(10) If BCU determines that an SI has additional potentially disqualifying convictions or conditions which have occurred after receiving the background check request, BCU shall provide the SI, if available, the opportunity to disclose criminal records, potentially disqualifying conditions, and other information as indicated in OAR 407-007-0300 before completion of the final fitness determination.

(11) BCU may conduct a background check in situations of imminent danger.

(a) If the Department or Authority determines there is indication of criminal or abusive behavior that could more likely than not pose an immediate risk to vulnerable individuals, BCU shall conduct a new criminal records check on an SI without the completion of a new background check request.

(b) If BCU determines that a fitness determination based on the new background check would be adverse to the SI, BCU shall provide the SI, if available, the opportunity to disclose criminal records, potentially disqualifying conditions, and other information as indicated in OAR 407-007-0300 before completion of the final fitness determination.

(12) All criminal records checks conducted under this rule shall be documented.

Stat. Auth.: ORS 181A.200, 409.027 & 409.050

Stats. Implemented: ORS 181A.195, 181A.200, 409.010, & OL 2016, chapter 106, section 6
Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0250, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09; DHSD 10-2009, f. 12-31-09, cert. ef. 1-1-10; DHSD 10-2010, f. 10-29-10, cert. ef. 10-31-10; DHSD 1-2011(Temp) f. & cert. ef. 4-15-11 thru 10-11-11; DHSD 7-

2011(Temp), f. & cert. ef. 10-12-11 thru 11-1-11; DHSD 8-2011, f. 10-28-11, cert. ef. 11-1-11; DHSD 2-2012(Temp), f. & cert. ef. 2-27-12 thru 8-24-12; DHSD 4-2012, f. & cert. ef. 8-1-12; DHSD 3-2013, f. & cert. ef. 8-1-13; DHSD 2-2014, f. & cert. ef. 12-1-14; DHSD 1-2016(Temp), f. & cert. ef. 1-14-16 thru 7-11-16; DHSD 5-2016, f. 6-10-16, cert. ef. 6-15-16; DHSD 6-2016(Temp), f. & cert. ef. 7-1-16 thru 12-27-16; DHSD 9-2016, f. & cert. ef. 12-1-16; DHSD 3-2017(Temp), f. & cert. ef. 3-15-17 thru 9-10-17

407-007-0279

Federal Mandatory Exclusions

(1) Convictions and conditions under 42 USC 1320a-7(a) (Exclusion of certain individuals and entities from participation in Medicare and State health programs) result in mandatory exclusion for SIs if they occurred within five years from the date the final fitness determination. If the convictions and conditions under 42 USC 1320a-7(a) occurred after five years from the date the final fitness determination, the individual is subject to a fitness determination under OAR 125-007-0260 and 407-007-0320.

(a) Section (1) of this rule applies to an SI who is:

(A) A home care worker or personal support worker as defined in ORS 410.600; or

(B) Employed by:

(i) A residential facility as defined in ORS 443.400 that receives Medicare or state health care funds;

(ii) An in-home care agency as defined in ORS 443.005 that receives Medicare or state health care funds;

(iii) A home health agency as defined in ORS 443.005 that receives Medicare or state health care funds;

(b) If BCU determines that an individual is subject to this rule and has an exclusion listed in 42 USC 1320a-7, BCU shall make the determination of mandatory exclusion. Convictions or conditions requiring mandatory exclusion include:

(A) Convictions related to the delivery of Medicare or State health care program services.

(B) Convictions related to the abuse of a client or patient.

(C) Felony convictions related to health care fraud.

(D) Felony convictions related to the manufacture, delivery, prescription or dispensing of a controlled substance.

(c) Under OAR 125-007-0260, the determination of mandatory exclusion is considered an incomplete fitness determination. A fitness determination with a weighing test is not required regardless of any other potentially disqualifying convictions and conditions the SI has.

(d) A determination of mandatory exclusion is subject to appeal rights only if allowed under 42 USC 1320a-7(c) or 42 USC 1320a-7(d). If allowed, appeals shall comply with OAR 125-007-0300, 943-007-0335 and 943-007-0501.

(2) Convictions and conditions under 42 USC 12645g (Criminal history checks under the National and Community Service State Grant Program) result in mandatory exclusion for SIs.

(a) Section (2) of this rule applies to an SI who is working or volunteering under the National and Community Service Act of 1990 as amended by the Serve America Act, including participants and employees in:

(A) Americorps;

(B) Foster Grandparents;

(C) Senior Companions; or

(D) Any other programs funded under national service laws.

(b) If BCU determines that an individual is subject to this rule and has an exclusion listed in 42 USC 12645g, BCU shall make the determination of mandatory exclusion. Exclusions include:

(A) Listing on, or requirement to be listed on a sex offender registry;

(B) Conviction for murder.

(C) Refusal to complete the background check.

(D) False statement by the SI in connection with criminal history disclosure.

(c) Under OAR 125-007-0260(2)(d), the determination of mandatory exclusion is considered an incomplete fitness determination. A fitness determination with a weighing test is not required regardless of any other potentially disqualifying convictions and conditions the SI has.

(d) A determination of "mandatory exclusion" due to 42 USC 12645g is not subject to appeal rights under OAR 125-007-0300, 407-007-0330, 407-007-0335, 943-007-0335, or 943-007-0501.

(3) Prohibitions under 45 USC 9858f (Criminal background checks under the Child Care and Development Block Grant) result in mandatory exclusion for SIs.

(a) Section (3) of this rule applies to childcare provider SI under OAR 407-007-0210(8)(a)(J).

(b) If BCU determines that an individual is subject to this rule and has an exclusion listed in 45 USC 9858f, BCU shall make the determination of mandatory exclusion. Exclusions include:

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- (A) Refusal to complete the background check;
- (B) Knowingly making a materially false statement in connection with the SI's criminal records check;
- (B) Listing on, or requirement to be listed on, a sex offender registry;
- (C) Felony conviction consisting of:
 - (i) Murder;
 - (ii) Child abuse or neglect;
 - (iii) A crime against children, including child pornography;
 - (iv) Spousal abuse;
 - (v) Rape or sexual assault;
 - (vi) Kidnapping;
 - (vii) Arson
 - (viii) Physical assault or battery; or
 - (ix) A drug-related offense, if it occurred within five years from the date the final decision; and
- (D) Conviction of a violent misdemeanor as an adult against a child including but not limited to:
 - (i) Child abuse;
 - (ii) Child endangerment;
 - (iii) Sexual assault; or
 - (iv) Child pornography.

(C) A fitness determination with a weighing test is not required if the SI has an exclusion listed in this section (with the exception of a drug-related offense within five years from the date the final decision), regardless of any other potentially disqualifying convictions and conditions the SI has. BCU shall make the determination of mandatory exclusion.

(d) If the SI has only the exclusion of a drug-related offense within five years from the date of the final decision, and no other exclusions listed in this section, BCU shall conduct a weighing test pursuant to OAR 407-007-0300 in making a final decision. If the weighing test determines that the SI is a risk to the well-being of vulnerable individuals, BCU shall make the determination of mandatory exclusion.

(e) Pursuant to OAR 125-007-0260(2)(d), the determination of mandatory exclusion is considered an incomplete fitness determination.

(f) A determination of mandatory exclusion due to 45 USC 9858f is not subject to appeal rights under OAR 125-007-0300, 407-007-0335, 943-007-0335, or 943-007-0501. The SI may appeal only to challenge the accuracy or completeness of the criminal records check.

(A) The SI may not hold the position during an appeal.

(B) If the mandatory exclusion is changed at any time during the appeal process, the change does not guarantee placement of the SI, or the SI childcare provider.

(C) An SI may represent himself or herself or have legal representation during the appeal process. For the purpose of this rule, the term "SI" shall be considered to include the SI's legal representative.

(D) To request an appeal, the SI shall complete and sign the Child Care Provider Hearing Request form, and submit it to BCU via mail or fax within 45 calendar days after the effective date of the mandatory exclusion. In the event an appeal is not timely by the date of receipt or by the date of postmark, BCU shall determine, based on a written statement from the SI and available information, if there is good cause to proceed with the appeal.

(E) BCU may conduct additional criminal records checks during the appeal process to update or verify the SI's potentially disqualifying convictions or conditions. If BCU finds new potentially disqualifying convictions and conditions during the appeal resulting in mandatory exclusion, BCU shall amend the notice of fitness determination while still maintaining the original hearing rights and deadlines.

(F) BCU shall provide notice to the SI, indicating its efforts to verify the completeness of the criminal records check and the accuracy of the information challenged by the SI. If BCU determines that the criminal records check was incomplete or inaccurate, BCU shall rectify these issues during the appeal or explain to the SI the issues preventing BCU. If the mandatory exclusion is maintained, the SI has no other appeal rights through BCU.

(G) BCU shall ensure the appeal is completed in a timely manner.

Stat. Auth.: ORS 181A.195 & 409.050

Stats. Implemented: ORS 181A.195

Hist.: DHSD 5-2016, f. 6-10-16, cert. ef. 6-15-16; DHSD 6-2016(Temp), f. & cert. ef. 7-1-16 thru 12-27-16; DHSD 9-2016, f. & cert. ef. 12-1-16; DHSD 3-2017(Temp), f. & cert. ef. 3-15-17 thru 9-10-17

407-007-0320

Final Fitness Determinations

(1) A final fitness determination pursuant to OAR 125-007-0260 and these rules will be made after all necessary background checks have been received and a weighing test, if necessary, has been completed. For the pur-

pose of a final fitness determination as defined in OAR 407-007-0010(18), an authorized designee includes:

(a) A BCU staff trained to make a final fitness determination;

(b) A BCU hearing representative if a fitness determination is contested under OAR 407-007-0330, 407-007-0335, or 943-007-0501; or

(c) An administrative law judge if a contested fitness determination results under a contested case hearing through the Office of Administrative Hearings.

(2) The final fitness determination results in one of the following outcomes:

(a) The authorized designee may approve an SI if:

(A) The SI has no potentially disqualifying convictions or potentially disqualifying conditions; or

(B) The SI has potentially disqualifying convictions or potentially disqualifying conditions and, after a weighing test, the authorized designee determines that more likely than not, the SI poses no risk to the physical, emotional, or financial well-being of vulnerable individuals.

(b) The authorized designee may approve an SI with restrictions if the SI has potentially disqualifying convictions or potentially disqualifying conditions and, after a weighing test, the authorized designee determines that more likely than not the SI poses no risk to the physical, emotional, or financial well-being of vulnerable individuals if certain restrictions are placed on the SI. Restrictions may include but are not limited to restrictions to one or more specific clients, job duties, or environments. A new background check and fitness determination shall be completed on the SI before removing a restriction.

(c) The authorized designee shall deny an SI if the SI has potentially disqualifying convictions or potentially disqualifying conditions and, after a weighing test, the authorized designee determines more likely than not the SI poses a risk to the physical, emotional, or financial well-being of vulnerable individuals.

(d) In the following situations the SI shall have no hearing rights and the authorized designee shall consider a background check to have an outcome of incomplete fitness determination:

(A) The QE or SI discontinues the application or fails to cooperate with the background check or fitness determination process, including but not limited to failure to disclose all requested criminal, abuse or other information, refusal to be fingerprinted or failing to respond in a timely manner to written correspondence from BCU. The background check request is considered closed.

(B) BCU determines that the SI is ineligible due to ORS 443.004 in accordance with OAR 407-007-0275 or 407-007-0277. The background check request is considered completed.

(C) BCU or the QE withdraws or closes the background check request before a final fitness determination for any reason. The background check request is considered closed.

(D) The SI withdraws the application, leaves the position prior to completion of the background check, or the Department cannot locate or contact the SI. The background check request is considered closed.

(E) The SI is determined to be ineligible for the position by the QE for reasons other than the background check. The background check request is considered closed.

(F) The SI who is a proctor foster parent and fails to provide a release of information, the background check request is considered closed.

(G) The authorized designee determines that the final fitness determination is a mandatory exclusion due to the SI being subject to OAR 407-007-0279 and having a conviction or condition listed in OAR 407-007-0279. The background check request is considered completed. The SI has hearing rights only if the determination of mandatory exclusion is made pursuant to OAR 407-007-0279(3)(c) or 407-007-0279(3)(d).

(H) The SI is a childcare provider and BCU makes a finding of failed in accordance with OAR 461-165-0180. The background check request is considered closed.

(e) BCU shall issue an intent to deny if the final fitness determination meets the criteria in OAR 407-007-0335(1). The SI has expedited hearings rights under OAR 407-007-0335.

(3) Upon completion of a final fitness determination, BCU or the QE shall provide notice to the SI.

(a) If approved, BCU shall provide notice to the QE through CRIMS. The QE shall provide the SI a copy of the notice or CRIMS documentation.

(b) If the final fitness determination is a denial based on potentially disqualifying abuse under OAR 407-007-0290(11)(d) and there are no other potentially disqualifying convictions or conditions, BCU shall issue a Notice of Intent to Deny and provide the SI hearing rights under OAR 407-007-0335.

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(c) Except as required by section (3)(a) of this rule, if denied or approved with restrictions, BCU shall issue a notice of fitness determination to the SI which includes the potentially disqualifying convictions or conditions that the outcome was based upon, information regarding appeal rights, and the notice becoming a final order in the event of a withdrawal or failure to appear at the hearing.

(d) The effective date of action shall be recorded on the notice or CRIMS documentation.

(4) BCU shall provide the QE notification of the final fitness determination when the SI is being denied or approved with restrictions.

(5) BCU shall provide the childcare provider notification of the final fitness determination when an SI associated with the childcare provider is being denied. If the childcare provider has denied associated SIs and has not also been denied or mandatorily excluded, BCU shall fail the childcare provider in accordance with OAR 461-165-0180.

(6) BCU shall provide the childcare provider notification of the final decision when an SI associated with the childcare provider has a determination of mandatory exclusion. If the childcare provider has mandatorily excluded associated SIs and has not also been denied or mandatorily excluded, BCU shall fail the childcare provider in accordance with OAR 461-165-0180.

(7) When an SI is denied or the background check results in an incomplete fitness determination, the SI shall not be allowed to work, volunteer, be employed, or otherwise perform in the position listed on the background check request. A denial applies only to the position and application in question. A denial or incomplete fitness determination shall result in immediate termination, dismissal, or removal of the SI.

(8) When an SI is approved with restrictions, the SI shall only be allowed to work, volunteer, be employed, or otherwise perform in the position listed on the background check request and only under the stated restrictions. A restricted approval applies only to the position and application in question. A restricted approval shall result in immediate implementation of the restrictions.

(9) BCU shall maintain any documents obtained or created during the background check process.

(10) BCU shall make new fitness determinations for each background check request. The outcome of previous fitness determinations does not set a precedent for subsequent fitness determinations.

Stat. Auth.: ORS 181A.200, 409.027 & 409.050
Stats. Implemented: ORS 181A.195, 181A.200, 409.010, 409.027, 443.004, & OL 2016, chapter 106, section 6
Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0320, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09; DHSD 10-2009, f. 12-31-09, cert. ef. 1-1-10; DHSD 10-2010, f. 10-29-10, cert. ef. 10-31-10; DHSD 1-2011(Temp) f. & cert. ef. 4-15-11 thru 10-11-11; DHSD 7-2011(Temp), f. & cert. ef. 10-12-11 thru 11-1-11; DHSD 8-2011, f. 10-28-11, cert. ef. 11-1-11; DHSD 2-2012(Temp), f. & cert. ef. 2-27-12 thru 8-24-12; DHSD 4-2012, f. & cert. ef. 8-1-12; DHSD 3-2013, f. & cert. ef. 8-1-13; DHSD 1-2016(Temp), f. & cert. ef. 1-14-16 thru 7-11-16; DHSD 5-2016, f. 6-10-16, cert. ef. 6-15-16; DHSD 6-2016(Temp), f. & cert. ef. 7-1-16 thru 12-27-16; DHSD 9-2016, f. & cert. ef. 12-1-16; DHSD 3-2017(Temp), f. & cert. ef. 3-15-17 thru 9-10-17

407-007-0330 Contesting a Fitness Determination

(1) An SI may contest a final fitness determination of denied or approved with restrictions pursuant to OAR 125-007-0300 unless already granted contested case hearing rights under OAR 407-007-0335.

(2) If an SI is determined to have a mandatory exclusion pursuant to federal law and OAR 407-007-0279, the SI may have hearing rights only if allowed by federal law. For the purpose of this rule the term "adverse fitness determination" includes a mandatory exclusion pursuant to OAR 407-007-0279(1) if hearing rights are allowed by federal law.

(3) If an SI is denied or mandatorily excluded, the SI may not hold the position, provide services or be employed, licensed, certified, or registered, or otherwise perform in positions covered by these rules. An SI appealing a restricted approval may only work under the terms of the restriction during the appeal.

(4) If an adverse outcome is changed at any time during the appeal process, the change does not guarantee employment or placement.

(5) An SI may represent himself or herself or have legal representation during the appeal process. For the purpose of this rule, the term "SI" shall be considered to include the SI's legal representative.

(a) An SI who is appealing an adverse outcome regarding the position of homecare worker as defined in ORS 410.600 or personal support worker as defined in ORS 410.600 may be represented by a labor union representative pursuant to ORS 183.459.

(b) For all other SIs, the SI may not be represented by a lay person.

(6) An SI may contest an adverse fitness determination by requesting a contested case hearing. The contested case hearing process is conducted in accordance with OAR 125-007-0300, ORS 183.411 to 183.497 and the Attorney General's Uniform and Model Rules of Procedure for the Office of Administrative Hearings (OAH), OAR 137-003-0501 to 137-003-0700.

(a) To request a contested case hearing, the SI shall complete and sign the Hearing Request form.

(b) The completed and signed form must be received by the Department within 45 calendar days after the effective date of action.

(c) BCU shall accept a properly addressed hearing request that was not timely filed if it was postmarked within the time specified for timely filing.

(d) In the event an appeal is not timely by the date of receipt or by the date of postmark, BCU shall determine, based on a written statement from the SI and available information, if there is good cause to proceed with the appeal.

(e) BCU may refer an untimely request to the OAH for a hearing on the issue of timeliness.

(7) BCU may conduct an administrative review before referring the appeal to the OAH.

(a) The SI must participate in the administrative review. Participation may include but is not limited to providing additional information or additional documents requested by the BCU within a specified amount of time.

(b) The administrative review is not open to the public.

(8) BCU may conduct additional criminal records checks or abuse checks during the contested case hearing process to update or verify the SI's potentially disqualifying convictions or conditions and factors to consider in the weighing test. If BCU finds new potentially disqualifying convictions and conditions during the administrative review, BCU shall make a new final fitness determination and amend the notice of fitness determination while still maintaining the original hearing rights and deadlines.

(9) The Department shall be represented by a hearing representative in contested case hearings. The Department may also be represented by the Office of the Attorney General.

(a) The administrative law judge shall make a new final fitness determination based on evidence and the contested case hearing record.

(b) The only remedy an administrative law judge may grant is a final fitness determination that the SI is approved, approved with restrictions, denied, or mandatorily excluded pursuant to OAR 407-007-0279(1). Under no circumstances shall the Department or the QE be required to place an SI in any position, nor shall the Department or the QE be required to accept services or enter into a contractual agreement with an SI.

(10) The notice of final fitness determination issued is final as if the SI never requested a hearing in the following situations:

(a) The SI failed to request a hearing in the time allotted in this rule. No other document will be issued after the notice of final fitness determination.

(b) The SI withdraws the request for hearing at any time during the appeal process.

(11) BCU may make an informal disposition based on the administrative review. The Department shall issue a final order and new notice of final fitness determination. If the resulting fitness determination is an adverse outcome, the appeal shall proceed to a contested case hearing.

(12) BCU shall issue a dismissal order in the following situations:

(a) The SI may withdraw a hearing request verbally or in writing at any time before the issuance of a final order. A dismissal order due to the withdrawal is effective the date the withdrawal is received by BCU or the OAH. The SI may cancel the withdrawal in writing within 14 calendar days after the date of withdrawal.

(b) BCU shall dismiss a hearing request when the SI fails to participate in the administrative review. Failure to participate in the administrative review shall result in termination of hearing rights. The order is effective on the due date for participation in the administrative review. BCU shall review a good cause request to reinstate hearing rights if received in writing by BCU within 14 calendar days.

(c) BCU shall dismiss a hearing request when the SI fails to appear at the time and place specified for the contested case hearing. The order is effective on the date scheduled for the hearing. BCU shall review a good cause request to reinstate hearing rights if received in writing by BCU within 14 calendar days of the order.

(13) After a hearing, the administrative law judge shall issue a proposed and final order.

(a) If no written exceptions are received by BCU within 14 calendar days after the service of the proposed and final order, the proposed and final order becomes the final order.

ADMINISTRATIVE RULES

(b) If timely written exceptions to the proposed and final order are received by BCU, the Department's Director or designee shall consider the exceptions and serve a final order, or request a written response or a revised proposed and final order from the administrative law judge.

(14) Final orders, including dismissal and default orders, are subject to reconsideration or rehearing petitions within 60 calendar days after the order is served, pursuant to OAR 137-003-0675.

(15) BCU may provide the QED with the results of the appeal.

Stat. Auth.: ORS 181A.200, 183.459, 409.027 & 409.050

Stats. Implemented: ORS 181A.195, 181A.200, 183.459, 409.010, 409.027 & 443.004

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0330, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 2-2008(Temp), f. & cert. ef. 3-31-08 thru 9-26-08; DHSD 7-2008, f. 8-29-08, cert. ef. 9-1-08; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09; DHSD 10-2009, f. 12-31-09, cert. ef. 1-1-10; DHSD 10-2010, f. 10-29-10, cert. ef. 10-31-10; DHSD 1-2011(Temp) f. & cert. ef. 4-15-11 thru 10-11-11; DHSD 7-2011(Temp), f. & cert. ef. 10-12-11 thru 11-1-11; DHSD 8-2011, f. 10-28-11, cert. ef. 11-1-11; DHSD 2-2012(Temp), f. & cert. ef. 2-27-12 thru 8-24-12; DHSD 4-2012, f. & cert. ef. 8-1-12; DHSD 2-2014, f. & cert. ef. 12-1-14; DHSD 1-2016(Temp), f. & cert. ef. 1-14-16 thru 7-11-16; DHSD 5-2016, f. 6-10-16, cert. ef. 6-15-16; DHSD 9-2016, f. & cert. ef. 12-1-16; DHSD 3-2017(Temp), f. & cert. ef. 3-15-17 thru 9-10-17

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

Rule Caption: ODDS: Case Management Services and Community Living Supports for Individuals with Intellectual or Developmental Disabilities

Adm. Order No.: APD 2-2017

Filed with Sec. of State: 2-21-2017

Certified to be Effective: 2-28-17

Notice Publication Date: 12-1-2016

Rules Amended: 411-415-0020, 411-415-0060, 411-415-0070, 411-450-0020, 411-450-0030, 411-450-0060, 411-450-0070

Subject: The Department of Human Services (Department), Office of Developmental Disabilities Services (ODDS) is permanently updating the rules for case management services in OAR chapter 411, division 415 and community living supports in OAR chapter 411, division 450, to take action to more efficiently align service authorization with individuals' needs and to incorporate appropriate limits as directed in the 2016 Legislative Session SB5701A Budget Note.

OAR 411-415-0020 about definitions and acronyms is amended to —

- Specify that if the same word or term in OAR 411-415-0020 is defined differently than the general definitions in OAR 411-317-000, the definition in OAR 411-415-0020 applies.

- Remove the definition for functional needs assessment and the In-Home Expenditure Guidelines. The definitions for functional needs assessment and the In-Home Expenditure Guidelines are now located in the general definitions, OAR 411-317-0000.

OAR 411-415-0060 about assessment and reassessment activities is amended to —

- Specify a functional needs assessment must be completed within 45 days from the date a case management entity acquires information that the support needs of an individual may have changed significantly enough to change the current service level.

- Allow the Department the ability to conduct or assign an alternate assessor to conduct a functional needs assessment in lieu of a case manager.

- Specify a functional needs assessment must be conducted face-to-face.

OAR 411-415-0070 about service planning is amended to —

- Require that an ISP for community living supports be developed based on assessed need and within the service level as defined in OAR 411-450-0020 and as determined by an Adult Needs Assessment (ANA) or Children's Needs Assessment (CNA).

- Specify an ISP must authorize the hours for personal support workers consistent with the payment limitations described in OAR 411-375-0040.

- Include family support services under the services a CDDP may authorize.

OAR 411-450-0020 about definitions and acronyms is amended to —

- Specify that if the same word or term in OAR 411-450-0020 is defined differently than the general definitions in OAR 411-317-000, the definition in OAR 411-450-0020 applies.

- Define Adult In-Home Support Needs Assessment, Version C (ANA-C); Adult In-Home Support Needs Assessment, Version D (ANA-D); ANA/CNA Manual; Child In-Home Support Needs Assessment, Version C (CNA-C); Child In-Home Support Needs Assessment, Version D (CNA-D); and Service Level.

- Update the definition of functional needs assessment.

- Remove the definition for the In-Home Expenditure Guidelines.

OAR 411-450-0030 about eligibility for community living supports is amended to require an individual to participate in a functional needs assessment and provide information necessary to complete the functional needs assessment, as a condition of eligibility for community living supports.

OAR 411-450-0060 about community living supports is amended to —

- Clearly outline service limits.

- Specify —

o The ANA-D or CNA-D must be used to develop an initial ISP after September 1, 2016.

o The ANA-D or CNA-D must be used to renew an annual ISP that has a start date on or after November 1, 2016.

o The ANA-D or CNA-D must be used for all functional needs assessment conducted after October 31, 2016.

o A change in service level must be based on a reassessment.

- Provide the criteria for when the Department may approve a service level greater than was determined by a functional needs assessment.

OAR 411-450-0070 about community living support providers and provider requirements is amended to remove the specific limitations on hours for personal support workers delivering supports to a child in children's intensive in-home services (CIIS). Hours for all personal support workers must be consistent with the payment limitations in OAR 411-375-0040.

In addition, the Department has also made additional edits to ensure consistent terminology, update statutory and rule references, correct formatting and punctuation, and improve ease of reading

Rules Coordinator: Kimberly Colkitt-Hallman—(503) 945-6398

411-415-0020

Definitions and Acronyms

OAR 411-317-0000 includes general definitions for words and terms frequently used in OAR chapter 411, division 415. In addition to the definitions in OAR 411-317-0000, the following definitions apply specifically to the rules in OAR chapter 411, division 415. If the same word or term is defined differently in OAR 411-317-0000, the definition in this rule applies.

(1) "Affiliated Entity" means an individual, a trust or estate, a partnership, a corporation (including associations, joint stock companies, and insurance companies), or a political subdivision or instrumentality (including a municipal corporation of a state), that has an incident of ownership in the CME.

(2) "Case Management Contact" means a reciprocal interaction between a case manager and an individual or their legal or designated representative (as applicable).

(3) "Case Management Services" mean the functions performed by a case manager that are funded by the Department. Case management services include, but are not limited to the following:

(a) Assessment of support needs.

(b) Developing an ISP or Annual Plan that may include authorized services.

(c) Information and referral for services.

(d) Monitoring the effectiveness of services and supports.

(4) "CDDP" means "Community Developmental Disabilities Program".

(5) "CIIS" means "Children's Intensive In-Home Services".

ADMINISTRATIVE RULES

(6) "CME" means "Case Management Entity". A CME includes the following:

- (a) A CDDP.
- (b) A Brokerage.
- (c) CHS.
- (d) The Children's Residential Program of the Department.

(7) "Geographic Service Area" means the area within the state of Oregon where a CME is approved to provide developmental disabilities services. The geographic service area for a CDDP is the county.

(8) "IEP" means "Individualized Education Program".

(9) "Incident of Ownership" means an ownership interest, an indirect ownership interest, or a combination of direct and indirect ownership interests.

(10) "Indirect Ownership Interest" means an ownership interest in an entity that has an ownership interest in another entity. Indirect ownership interest includes an ownership interest in an entity that has an indirect ownership interest in another entity.

(11) "Initial ISP" means the first ISP:

(a) For an individual who is newly entered into case management services; or

(b) Following a period when the individual did not have an authorized ISP.

(12) "Initial Level of Care" means the first level of care determination:

(a) For an individual who is newly accessing Community First Choice state plan or waiver services; or

(b) Following a period when the individual was not determined to meet level of care.

(13) "ISP" means "Individual Support Plan".

(14) "Level of Care" means ICF/IID Level of Care, Hospital Level of Care, or Nursing Facility Level of Care, as defined in OAR 411-317-0000.

(15) "OHP" means "Oregon Health Plan".

(16) "Owner" means a person with an ownership interest.

(17) "Ownership Interest" means the possession of equity in the capital, stock, or profits of an entity.

(18) "SSI" means "Supplemental Security Income".

(19) "These Rules" mean the rules in OAR chapter 411, division 415.

(20) "Transition Period" means the first 60 days after an individual enters a new program type, setting, or CME.

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

Stats. Implemented: ORS 427.005, 427.007, 427.101, 427.154-427.163, 430.212, 430.610, 430.620, 430.662-430.695

Hist.: APD 28-2016, f. & cert. ef. 6-29-16; APD 35-2016(Temp), f. 8-31-16, cert. ef. 9-1-16 thru 2-27-17; APD 2-2017, f. 2-21-17, cert. ef. 2-28-17

411-415-0060

Assessment and Reassessment Activities

(1) LEVEL OF CARE DETERMINATION.

(a) A case manager must assure an individual has an initial level of care determination prior to accessing Community First Choice state plan or waiver services. The level of care determination must be made using a Department prescribed form based on a face-to-face contact. An initial level of care determination must be submitted to the Department within 30 days of the date the individual or their legal representative signed the completed level of care determination.

(b) A case manager must assure a level of care determination is reviewed for every individual receiving Community First Choice state plan or waiver services:

(A) Within 12 months from the previous annual review.

(i) The first annual review must be completed no later than 12 months from the date of the approval of the Diagnosis and Evaluation Coordinator (D & E Coordinator), appropriate Department administrator or designee, or medical director, as required.

(ii) The annual review date may be reset for a date earlier than 12 months from the date of the approval of the D & E Coordinator, Department administrator or designee, or Department medical director, as required, but no later than 12 months from the date of the review of the D & E Coordinator.

(B) No earlier than 60 days prior to the implementation of a renewed ISP.

(C) Any time there is a significant change in a condition that qualified the individual for the level of care.

(c) When a case manager completes an initial level of care determination, the case manager must ensure an individual enrolled to a Medicaid Title XIX Benefit Package is:

(A) Offered and advised of all services available for which the individual is eligible including, but not limited to, the choice of institutional or home and community-based services.

(B) Provided a Notification of Rights (form APD 0948).

(d) The occasion of the level of care determination, including a statement the determination was based on a face-to-face contact with the individual, must be documented in a progress note in the service record for the individual.

(2) FUNCTIONAL NEEDS ASSESSMENT. A case manager must assure a functional needs assessment is conducted initially and at least annually for each individual who has or is expected to have an ISP.

(a) The functional needs assessment must be completed within the following timelines:

(A) Within 45 days from the date the individual submitted a completed application or the date the CME learns of the eligibility of the individual for a Medicaid Title XIX Benefit Package if the eligibility for Medicaid Title XIX Benefit package happens after the date the completed application was submitted.

(B) Prior to, but not more than 60 days prior to, the authorization of an initial ISP or the annual renewal of an ISP.

(C) Within 45 days from the date an individual, or as applicable their legal or designated representative, requests a new functional needs assessment.

(D) Within 45 days from the date the CME acquires information that the support needs of an individual may have changed significantly enough to change the current service level as defined in OAR 411-450-0020.

(b) No fewer than 14 days prior to conducting a functional needs assessment to determine the service level, the CME must mail a notice of the assessment process to the individual to be assessed. The notice must include a description and explanation of the assessment process and an explanation of the process for appealing the results of the assessment.

(c) At the discretion of the Department, the Department may conduct or assign an alternate assessor to conduct a functional needs assessment in lieu of a case manager.

(d) The functional needs assessment must include a face-to-face assessment of the individual's needs by the case manager or alternate assessor.

(3) An assessment for State Plan Personal Care must be completed by a case manager as described in OAR 411-034-0070.

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

Stats. Implemented: ORS 427.005, 427.007, 427.101, 427.154-427.163, 430.212, 430.610, 430.620, 430.662-430.695

Hist.: APD 28-2016, f. & cert. ef. 6-29-16; APD 35-2016(Temp), f. 8-31-16, cert. ef. 9-1-16 thru 2-27-17; APD 2-2017, f. 2-21-17, cert. ef. 2-28-17

411-415-0070

Service Planning

This rule prescribes standards for the development and implementation of an ISP or Annual Plan.

(1) An ISP must meet the following requirements:

(a) Be developed based on assessed need.

(b) For community living supports, be developed and based on assessed need and within the service level as defined in OAR 411-450-0020 and as determined by an ANA or CNA (as applicable).

(c) Be developed using a person-centered planning process consistent with OAR 411-004-0030(1) and in a manner that addresses issues of independence, integration, and provides opportunities to seek employment and work in competitive integrated employment settings, in order to assist with establishing outcomes, planning for supports, and reviewing and redesigning support strategies.

(d) Be designed to enhance the quality of life of the individual.

(e) Be consistent with the following principles:

(A) Adult individuals have the right to make informed choices about the level of family member participation.

(B) The preferences of the individual, and when applicable the family of a child, must serve to guide the ISP team. The case manager must facilitate active participation of the individual throughout the planning process.

(C) The planning process is designed to identify the types of services and supports necessary to achieve the preferences of the individual, and when applicable the family of a child, identify the barriers to providing those preferred services, and develop strategies for reducing the barriers.

(D) Specify cost-effective arrangements for obtaining the required supports and applying public, private, formal, and alternative resources available to the eligible individual.

(E) When planning for a child in a 24-hour residential program or foster home, the following must apply:

ADMINISTRATIVE RULES

(i) Unless contraindicated, there must be a goal for family reunification.

(ii) The number of moves or transfers must be kept to a minimum.

(iii) Unless contraindicated, if the placement of a child is distant from their family, the case manager must continue to seek a placement that brings the child closer to their family.

(2) An individual enrolled in waiver or Community First Choice state plan services must have an ISP, completed on a Department approved document, consistent with the outcome of the person-centered planning process and OAR 411-004-0030(2).

(a) The initial ISP:

(A) May begin a transition period; and

(B) Must be authorized no more than 90 days from the date a completed application is submitted to the CDDP as described in OAR 411-320-0080.

(b) An initial ISP has a duration of 12 full months, beginning the month following the authorization of the ISP.

(c) The duration of an annual ISP may not exceed 12 months. With the consent of an individual, or as applicable their legal or designated representative, a new start date for an ISP may be established within the 12 months when the individual enters or exits any of the following:

(A) A 24-hour residential program as described in OAR chapter 411, division 325. A transfer to a new setting within the same 24-hour residential program may not cause a new start date for an ISP.

(B) A supported living program as described in OAR chapter 411, division 328. A transfer to a new setting within the same supported living program may not cause a new start date for an ISP.

(C) A foster home as described in OAR chapter 411, division 346 for children or OAR chapter 411, division 360 for adults.

(D) A CIIS program.

(d) During a transition period, the ISP must include the minimum necessary services and supports for an individual upon entry to a new program type, setting, or CME. The ISP during a transition period must include, at a minimum, an authorization of necessary services, the supports needed to facilitate adjustment to the services offered, the supports necessary to ensure health and safety, and the assessments and consultations necessary for further ISP development.

(e) All Department-funded developmental disabilities services included in an ISP must be consistent with the ISP manual, Department policy, and the In-Home Expenditure Guidelines when applicable.

(f) For Community First Choice state plan and waiver services, the supports included in an ISP must address a need that has been determined to be necessary by a functional needs assessment and the identified goals and preferences of the individual.

(g) An initial or annual ISP authorized to begin on or after March 1, 2017 must include any individually-based limitations as described in OAR 411-004-0040. All individually-based limitations must be included in the ISP no later than February 28, 2018.

(3) CAREER DEVELOPMENT PLAN.

(a) A Career Development Plan must be completed as part of the ISP:

(A) When the individual is working-age; or

(B) Prior to the expected exit from school for students eligible for services under the Individuals with Disabilities Education Act (I.D.E.A.). If a student leaves school prior to the expected exit, the student must have the opportunity to have a Career Development Plan within one year of the unexpected exit.

(b) The Career Development Plan must meet the following requirements:

(A) For an individual who uses employment services under OAR chapter 411, division 345, include goals and objectives related to obtaining, maintaining, or advancing in competitive integrated employment, or, at minimum, exploring competitive integrated employment or developing skills that may be used in competitive integrated employment.

(B) Be developed based on a presumption that, with the right support and job match, the individual may succeed and advance in an integrated employment setting and earn minimum wage or better.

(C) Prioritize competitive integrated employment in the general workforce.

(D) For an individual who has competitive integrated employment, person-centered planning must focus on maintaining employment, maximizing the number of hours an individual works consistent with their preferences and interests, improving wages and benefits, and promoting additional career or advancement opportunities.

(E) For an individual using job coaching or job development services, the Career Development Plan must document either a goal or discussion

regarding opportunities for maximizing work hours and other career advancement opportunities. The recommended standard for planning job coaching and job development is the opportunity to work at least 20 hours per week. Individualized planning should ultimately be based on individual choice, preferences, and circumstances, and recognize that an individual may choose to pursue working full-time, part-time, or another goal identified by the individual.

(F) Document all employment service options presented, including the option to use employment services in a non-disability specific setting, meaning a setting that is not owned, operated, or controlled by a provider of home and community-based services.

(G) For individuals who use employment services in sheltered workshop settings, the Career Development Plan must document the individual has been encouraged to choose a community-based employment service option and not a sheltered workshop setting option.

(4) ISP REVIEWS.

(a) An ISP must be reviewed, revised, and re-authorized as needed:

(A) No more than 30 days following a functional needs assessment conducted pursuant to sections (2)(a)(C) or (D) of OAR 411-415-0060.

(B) Prior to the expiration of the ISP.

(C) No later than the end of a transition period.

(D) When the circumstances or needs of an individual change significantly.

(E) At the request of an individual or as applicable their legal or designated representative.

(b) For an individual who changes CME, but remains in an in-home setting, the ISP authorized by the previous CME may be used as authorization for available services for the new CME for up to 60 days when the services in the new setting remain appropriate.

(5) TEAM PROCESS IN PERSON-CENTERED PLANNING. This section applies to an ISP developed for an individual receiving services in a residential program.

(a) The ISP is developed by the individual, their legal or designated representative (as applicable), and the services coordinator. Others may be included as a part of the ISP team at the invitation of the individual and as applicable their legal or designated representative. In order to assure adequate planning, provider representatives are necessary informants to the ISP team even when not ISP team members.

(b) In circumstances where an individual is unable to express their opinion or choice using words, behaviors, or other means of communication and the individual does not have a legal or designated representative, the following apply:

(A) On behalf of the individual, the ISP team is empowered to make a decision the ISP team feels best meets the health, safety, and assessed needs of the individual.

(B) Consensus amongst ISP team members is prioritized. When consensus may not be reached, majority agreement is used. For purposes of reaching a majority agreement each interested party, which may be represented by more than one person, is considered as one member of the ISP team. Interested parties may include, but are not limited to, the provider, family, services coordinator, and designated representative.

(C) No one member of an ISP team has the authority to make decisions for the ISP team.

(c) Any objections to decisions of the ISP team by a member of the ISP team must be documented in the ISP.

(d) A services coordinator must track the ISP timelines and coordinate the resolution of complaints and conflicts arising from ISP discussions.

(6) ISP AUTHORIZATION.

(a) An initial and annual ISP must be authorized prior to implementation.

(b) A revision to an initial or annual ISP that involves the types of developmental disabilities services paid using Department funds must be authorized prior to implementation.

(c) A revision to an initial or annual ISP that does not involve the types of developmental disabilities services paid using Department funds does not require authorization. Documented agreement to the revision by the individual, or as applicable their legal or designated representative, is required prior to implementation of the revision.

(d) An initial ISP, and a revision to an initial or annual ISP requiring authorization, is authorized on the date:

(A) The signature of the individual, or as applicable their legal or designated representative, is present on the ISP, or documentation is present explaining the reason an individual who does not have a legal or designated representative may be unable to sign the ISP.

ADMINISTRATIVE RULES

(i) Acceptable reasons for an individual without a legal or designated representative not to sign the ISP include physical or behavioral inability to sign the ISP.

(ii) Unavailability is not an acceptable reason for an individual, or as applicable their legal or designated representative, not to sign the ISP.

(iii) Documented oral agreement may substitute for a signature for up to 10 business days when a revision to an initial or annual ISP is in response to an immediate, unexpected change in circumstance, and the revision is necessary to prevent injury or harm to the individual.

(B) The signature of the case manager involved in the development of, or revision to, the ISP is present on the ISP.

(e) A renewing ISP signed as described in this section, is authorized to begin the first day after the previous ISP expired.

(f) After September 1, 2018, newly authorized developmental disabilities services may only be authorized to occur in a setting consistent with OAR 411-004-0020. By March 17, 2019, all authorized developmental disabilities services must occur in a setting consistent with OAR 411-004-0020.

(g) Community First Choice state plan and waiver services are only funded by the Department when the services are authorized on an ISP developed in a manner consistent with this rule.

(h) A legal or designated representative responsible for directing the development of the ISP on behalf of an individual (as applicable) may not be authorized to be a paid provider for the individual.

(i) An ISP must authorize the hours for personal support workers consistent with the payment limitations described in OAR 411-375-0040.

(j) The CME may not authorize a service provider, setting, or a combination of services selected by an eligible individual or the representative of the individual when:

(A) The setting has dangerous conditions that jeopardize the health or safety of the individual and necessary safeguards are not available to improve the setting;

(B) Services may not be provided safely or adequately by the service provider based on:

- (i) The extent of the service needs of the individual; or
- (ii) The choices or preferences of the eligible individual or as applicable their legal or designated representative.

(C) Dangerous conditions in the service setting jeopardize the health or safety of the service provider authorized and paid for by the Department, and necessary safeguards are not available to minimize the dangers; or

(D) The individual does not have the ability to express their informed decision, does not have a designated representative to make decisions on their behalf, and the Department or CME are unable to take necessary safeguards to protect the safety, health, and welfare of the individual.

(k) The case manager must present the individual, or as applicable their legal or designated representative, with information on service alternatives and provide assistance to assess other choices when the service provider or service setting selected by the individual, or as applicable their legal or designated representative, is not authorized.

(l) The ISP for an adult enrolled in a foster home under OAR chapter 411, division 360, must include at least six hours of activities each week that are of interest to the individual that do not include television or movies made available by the provider. Activities are those available in the community and made available or offered by the provider or the CDDP.

(A) Activities may include the following:

- (i) Recreational and leisure activities.
- (ii) Other activities required to meet the needs of an individual as described in the ISP for the individual.

(B) Activities that contribute to the six hours may not include any of the following:

- (i) Rehabilitation.
- (ii) Educational services.
- (iii) Employment services.

(m) Not more than two weeks after authorization, the CME must provide a copy of the most current ISP to the individual, their legal and designated representative (as applicable), and others as identified by the individual. The ISP must be made available using language, format, and presentation methods appropriate for effective communication according to the needs and abilities of the individual receiving services and the people important in supporting the individual. When an authorized ISP must be translated from English, translation must be initiated within two weeks of authorization and the translated document must be provided to the individual by the CME upon receipt.

(7) DEVELOPMENTAL DISABILITIES SERVICE AUTHORIZATIONS.

(a) Developmental disabilities services may not be authorized when:
(A) The individual does not meet the service eligibility requirements in the program rule corresponding to the service.

(B) The case manager is not permitted to conduct a monitoring visit to the home as required in OAR 411-415-0090.

(b) A services coordinator employed by a CDDP, or a sub-contractor of a CDDP contracted to deliver case management, may authorize an eligible individual to receive the following developmental disabilities services:

(A) Community First Choice 1915(k) state plan services.

(B) Services described in the ICF/IDD Comprehensive 1915(c) waiver.

(C) State Plan Personal Care as described in OAR chapter 411, division 034.

(D) Home delivered meals as described in OAR chapter 411, division 040.

(E) Private duty nursing as described in OAR chapter 410, division 132 and OAR 411-300-0150.

(F) Family support services as described in OAR chapter 411, division 305.

(c) A personal agent may authorize an eligible individual to receive the following developmental disabilities services:

(A) Community First Choice 1915(k) state plan services, except services delivered as part of a residential program.

(B) Services described in the Support Services 1915(c) waiver.

(C) State Plan Personal Care as described in OAR chapter 411, division 034.

(D) Home delivered meals as described in OAR chapter 411, division 040.

(E) Private duty nursing as described in OAR chapter 410, division 132 and OAR 411-300-0150.

(d) A CIIS services coordinator may authorize an eligible individual to receive the following developmental disabilities services:

(A) Community First Choice 1915(k) state plan services.

(B) Services described in the following 1915(c) waivers:

- (i) Medically Involved Children's Waiver.
- (ii) Medically Fragile (Hospital) Model Waiver.
- (iii) ICF/ID Behavioral Model Waiver.

(C) State Plan Personal Care as described in OAR chapter 411, division 034.

(D) Private duty nursing as described in OAR chapter 410, division 132 and OAR 411-300-0150.

(e) The Department authorizes entry for children into residential programs, CIIS, and the Stabilization and Crisis Unit.

(8) ANNUAL PLANS. Individuals enrolled in case management services, but not accessing Community First Choice state plan or waiver services must have an Annual Plan.

(a) A case manager must develop an Annual Plan within 90 days of the enrollment of an individual into case management services, and annually thereafter if the individual is not enrolled in any Community First Choice state plan or waiver services.

(b) An Annual Plan must be developed as follows:

(A) For an adult, a written Annual Plan must be documented as an Annual Plan or as a comprehensive progress note in the service record for the individual and consist of the following:

- (i) A review of the current living situation of the individual.
- (ii) A review of the employment status of the individual and a summary of any related support needs.
- (iii) A review of any personal health, safety, or behavioral concerns.
- (iv) A summary of the support needs of the individual.
- (v) Actions to be taken by the case manager and others.

(B) For a child receiving family support services, a services coordinator must coordinate with the child and their family or guardian in the development of an Annual Plan. The Annual Plan for a child receiving family support services must be in accordance with OAR 411-305-0225.

(c) An Annual Plan must be kept current. A case manager must ensure that a current Annual Plan is maintained for each individual receiving services.

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

Stats. Implemented: ORS 427.005, 427.007, 427.101, 427.154-427.163, 430.212, 430.610, 430.620, 430.662-430.695

Hist.: APD 28-2016, f. & cert. ef. 6-29-16; APD 35-2016(Temp), f. 8-31-16, cert. ef. 9-1-16 thru 2-27-17; APD 2-2017, f. 2-21-17, cert. ef. 2-28-17

411-450-0020

Definitions and Acronyms

OAR 411-317-0000 includes general definitions for words and terms frequently used in OAR chapter 411, division 450. In addition to the defi-

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nitions in OAR 411-317-0000, the following definitions apply specifically to the rules in OAR chapter 411, division 450. If the same word or term is defined differently in OAR 411-317-0000, the definition in this rule applies.

(1) “ADL” means “Activities of Daily Living”.

(2) “Adult In-Home Support Needs Assessment, Version C (ANA-C)” means the Adult In-Home Support Needs Assessment in use through October 31, 2016. The ANA-C was developed prior to the action of the Department to implement the legislative direction found in the 2016 Legislative Session SB5701A Budget Note to more efficiently align service levels with the needs of individuals and to incorporate appropriate limits.

(a) The Department incorporates the ANA-C into these rules by this reference. The ANA-C is maintained by the Department at: http://www.dhs.state.or.us/spd/tools/dd/cm/ANA%20-%20Adult%20In-home%20-%20v_C.47r.xlsm.

(b) A printed copy of the assessment tool may be obtained by calling (503) 945-6398 or writing the Department of Human Services, Developmental Disabilities, ATTN: Rules Coordinator, 500 Summer Street NE, E-48, Salem, OR 97301.

(3) “Adult In-Home Support Need Assessment, Version D (ANA-D)” means the Adult In-Home Support Needs Assessment that implements the legislative direction to the Department found in the 2016 Legislative Session SB5701A Budget Note to more efficiently align service levels with the needs of individuals and to incorporate appropriate limits. The service level determined by the ANA-D is based on data that showed service levels determined by the ANA-C exceeded the number of hours required for an individual to meet identified support needs.

(a) The Department incorporates the ANA-D into these rules by this reference. The ANA-D is maintained by the Department at: <http://www.dhs.state.or.us/spd/tools/dd/cm/ANA-Adult-In-Home-Version-D.xlsm>.

(b) A printed copy of the assessment tool may be obtained by calling (503) 945-6398 or writing the Department of Human Services, Developmental Disabilities, ATTN: Rules Coordinator, 500 Summer Street NE, E-48, Salem, OR 97301.

(4) “ANA-C” means “Adult In-Home Support Needs Assessment, Version C”.

(5) “ANA-D” means “Adult In-Home Support Needs Assessment, Version D”.

(6) “ANA/CNA Manual” means the document that describes how to administer an ANA and CNA.

(a) The Department incorporates the ANA/CNA Manual, Version 2 into these rules by this reference. The ANA/CNA Manual is maintained by the Department at: <http://www.dhs.state.or.us/spd/tools/dd/bpa/ana-cna-manual.pdf>.

(b) A printed copy of the ANA/CNA Manual may be obtained by calling (503) 945-6398 or writing the Department of Human Services, Developmental Disabilities, ATTN: Rules Coordinator, 500 Summer Street NE, E-48, Salem, OR 97301.

(7) “CDDP” means “Community Developmental Disabilities Program”.

(8) “Child In-Home Support Needs Assessment, Version C (CNA-C)” means the Child In-Home Assessment in use through October 31, 2016. The CNA-C was developed prior to the action of the Department to implement the legislative direction found in the 2016 Legislative Session SB5701A Budget Note to more efficiently align service levels with the needs of individuals and to incorporate appropriate limits.

(a) The Department incorporates the CNA-C into these rules by this reference. The CNA-C is maintained by the Department at: http://www.dhs.state.or.us/spd/tools/dd/cm/CNA%20-%20Child%20In-home%20-%20v_C.47r.xlsm.

(b) A printed copy of the assessment tool may be obtained by calling (503) 945-6398 or writing the Department of Human Services, Developmental Disabilities, ATTN: Rules Coordinator, 500 Summer Street NE, E-48, Salem, OR 97301.

(9) “Child In-Home Support Needs Assessment, Version D (CNA-D)” means the Child In-Home Assessment that implements the legislative direction to the Department found in the 2016 Legislative Session SB5701A Budget Note to more efficiently align service levels with the needs of individuals and to incorporate appropriate limits. The service level determined by the CNA-D is based on data that showed service levels determined by the CNA-C exceeded the number of hours required for a child to be supported in a manner typical of non-disabled peers and was under accounting for normal parental responsibility.

(a) The Department incorporates the CNA-D into these rules by this reference. The CNA-D is maintained by the Department at: <http://www.dhs.state.or.us/spd/tools/dd/cm/CNA-Child-In-Home-Version-D.xlsm>.

(b) A printed copy of the assessment tool may be obtained by calling (503) 945-6398 or writing the Department of Human Services, Developmental Disabilities, ATTN: Rules Coordinator, 500 Summer Street NE, E-48, Salem, OR 97301.

(10) “CNA-C” means “Child In-Home Support Needs Assessment, Version C”.

(11) “CNA-D” means “Child In-Home Support Needs Assessment, Version D”.

(12) “Facility-Based” means a service operated at a fixed site owned, operated, or controlled by a service provider where an individual has few or no opportunities to interact with people who do not have a disability except for paid staff.

(13) “Family”:

(a) Means a unit of two or more people that includes at least one individual, found to be eligible for developmental disabilities services, where the primary caregiver is:

(A) A family member as defined in OAR 411-317-0000; or

(B) In a domestic relationship where partners share the following:

(i) A permanent residence.

(ii) Joint responsibility for the household in general, such as child-rearing, maintenance of the residence, and basic living expenses.

(iii) Joint responsibility for supporting the individual when the individual is related to one of the partners by blood, marriage, or legal adoption.

(b) The term “family” is defined as described above for purposes of determining the service eligibility of an individual for community living supports as a resident in the family home.

(14) “Functional Needs Assessment”:

(A) Means the comprehensive assessment or re-assessment that:

(a) Measures the level of support required by an individual in the areas of:

(i) ADL/IADL care.

(ii) Care related to health supports.

(iii) Nighttime needs.

(iv) Social supports and behavior management.

(B) Determines the service level, including the maximum number of hours that may be authorized.

(b) The functional needs assessment required for an adult who is not enrolled in a residential program to access community living supports is known as the ANA-C or ANA-D depending upon the conditions described in OAR 411-450-0060.

(c) The functional needs assessment required for a child who is not enrolled in a residential program to access community living supports is known as the CNA-C or CNA-D depending upon the conditions described in OAR 411-450-0060.

(d) A printed copy of the assessment tool may be obtained by calling (503) 945-6398 or writing the Department of Human Services, Developmental Disabilities, ATTN: Rules Coordinator, 500 Summer Street NE, E-48, Salem, OR 97301.

(15) “IADL” means “Instrumental Activities of Daily Living”.

(16) “ISP” means “Individual Support Plan”.

(17) “OCCS” means the “Office of Client and Community Services”.

(18) “OSIPM” means “Oregon Supplemental Income Program-Medical”.

(19) “Primary Caregiver” means the person identified in an ISP as providing the majority of services and support for an individual in the home of the individual.

(20) “PSW” means “Personal Support Worker”.

(21) “Service Level” means the maximum number of hours available to an individual for any combination of attendant care, skills training services, or state plan personal care. The service level is determined by a formula embedded in the functional needs assessment. The formula uses the individual items within the areas measured by the assessment to generate the service level.

(22) “These Rules” mean the rules in OAR chapter 411, division 450. Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-430.670

Hist.: APD 27-2016, f. & cert. ef. 6-29-16; APD 35-2016(Temp), f. 8-31-16, cert. ef. 9-1-16 thru 2-27-17; APD 2-2017, f. 2-21-17, cert. ef. 2-28-17

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411-450-0030

Eligibility for Community Living Supports

(1) An individual may not be denied community living supports or otherwise discriminated against on the basis of age, diagnostic or disability category, race, color, creed, national origin, citizenship, income, or duration of Oregon residence.

(2) To be eligible for community living supports, an individual must meet the following:

(a) Be an Oregon resident.

(b) Be determined eligible for developmental disabilities services by the CDDP of the county of origin as described in OAR 411-320-0080, except for those enrolled in the Medically Involved Children's Waiver or the Medically Fragile Children's Program as described in OAR chapter 411, division 300.

(c) Choose to use a case management entity for assistance with the design and management of developmental disabilities services.

(d) Be receiving a Medicaid Title XIX benefit package through OSIPM or the OCCS Medical Program.

(A) An adult is eligible for community living supports if the adult had been receiving community living supports as a child up to their 18th birthday and has not become ineligible due to section (2)(d)(B) of this rule.

(B) Eligibility for community living supports based on section (2)(d)(A) of this rule ends if:

(i) The individual does not apply for a disability determination and Medicaid within 10 business days of their 18th birthday;

(ii) The Social Security Administration or the Presumptive Medicaid Disability Determination Team of the Department finds the individual does not have a qualifying disability; or

(iii) The individual is determined by the state of Oregon to be ineligible for a Medicaid Title XIX benefit package through OSIPM or the OCCS Medical Program.

(C) Individuals receiving Medicaid Title XIX under OCCS medical coverage for services in a nonstandard living arrangement as defined in OAR 461-001-0000 are subject to the requirements in the same manner as if they were requesting these services under OSIPM, including the rules regarding:

(i) The transfer of assets as set forth in OAR 461-140-0210 to 461-140-0300.

(ii) The equity value of a home, which exceeds the limits in OAR 461-145-0220.

(e) Be determined to meet the level of care defined in OAR 411-415-0020.

(f) POST ELIGIBILITY TREATMENT OF INCOME Individuals with excess income must contribute to the cost of service pursuant to OAR 461-160-0610 and OAR 461-160-0620.

(g) Participate in a functional needs assessment and provide information necessary to complete the functional needs assessment and reassessment annually prior to the end date of the ISP for the individual and as required by the Department.

(A) Failure to participate in the functional needs assessment or to provide information necessary to complete the functional needs assessment or reassessment within the applicable time frame results in the denial of service eligibility. In the event service eligibility is denied, a written Notification of Planned Action must be provided as described in OAR chapter 411, division 318.

(B) The Department may allow additional time if circumstances beyond the control of the individual prevents timely participation in the functional needs assessment or timely submission of information necessary to complete the functional needs assessment or reassessment.

(h) A child receiving supports and services under the family support program as described in OAR 411-305-0235 is not eligible to receive community living supports.

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-430.670

Hist.: APD 27-2016, f. & cert. ef. 6-29-16; APD 35-2016(Temp), f. 8-31-16, cert. ef. 9-1-16 thru 2-27-17; APD 2-2017, f. 2-21-17, cert. ef. 2-28-17

411-450-0060

Community Living Supports

(1) Department funds may be used to purchase the following community living supports available through the Community First Choice state plan:

(a) Attendant care as described in section (2) of this rule.

(b) Skills training as described in section (3) of this rule.

(c) Relief care as described in section (4) of this rule.

(2) ATTENDANT CARE SERVICES. Attendant care services include direct support provided to an individual in the home or community of the individual by a qualified provider. ADL and IADL services provided through attendant care must be necessary to permit an individual to live independently in a community-based setting.

(a) ADL services include, but are not limited to the following:

(A) Basic personal hygiene — providing or assisting with needs such as bathing (tub, bed, bath, shower), hair care, grooming, shaving, nail care, foot care, dressing, skin care, or oral hygiene.

(B) Toileting, bowel, and bladder care — assisting to and from the bathroom, on and off toilet, commode, bedpan, urinal, or other assistive device used for toileting, changing incontinence supplies, following a toileting schedule, managing menses, cleansing an individual or adjusting clothing related to toileting, emptying a catheter, drainage bag, or assistive device, ostomy care, or bowel care.

(C) Mobility, transfers, and repositioning — assisting with ambulation or transfers with or without assistive devices, turning an individual or adjusting padding for physical comfort or pressure relief, or encouraging or assisting with range-of-motion exercises.

(D) Eating — assisting with adequate fluid intake or adequate nutrition, assisting with food intake (feeding), monitoring to prevent choking or aspiration, assisting with adaptive utensils, cutting food, and placing food, dishes, and utensils within reach for eating.

(E) Cognitive assistance or emotional support provided to an individual due to an intellectual or developmental disability — helping the individual cope with change and assisting the individual with decision-making, reassurance, orientation, memory, or other cognitive functions.

(b) IADL services include, but are not limited to the following:

(A) Light housekeeping tasks necessary to maintain an individual in a healthy and safe environment — cleaning surfaces and floors, making their bed, cleaning dishes, taking out the garbage, dusting, and laundry.

(B) Grocery and other shopping necessary for the completion of other ADL and IADL tasks.

(C) Meal preparation and special diets.

(D) Support with participation in the community:

(i) Support with community participation — assisting an individual in acquiring, retaining, and improving skills to use available community resources, facilities, or businesses, and improving self-awareness and self-control.

(ii) Support with communication — assisting an individual in acquiring, retaining, and improving expressive and receptive skills in verbal and non-verbal language, social responsiveness, social amenities, and interpersonal skills, and the functional application of acquired reading and writing skills.

(c) Assistance with ADL, IADL, and health-related tasks may include cueing, monitoring, reassurance, redirection, set-up, hands-on, or standby assistance. Assistance may be provided through human assistance or the use of electronic devices or other assistive devices. Assistance may also require verbal reminding to complete any of the IADL tasks described in subsection (b) of this section.

(A) "Cueing" means giving verbal, audio, or visual clues during an activity to help an individual complete the activity without hands-on assistance.

(B) "Hands-on" means a provider physically performs all or parts of an activity because an individual is unable to do so.

(C) "Monitoring" means a provider observes an individual to determine if assistance is needed.

(D) "Reassurance" means to offer an individual encouragement and support.

(E) "Redirection" means to divert an individual to another more appropriate activity.

(F) "Set-up" means the preparation, cleaning, and maintenance of personal effects, supplies, assistive devices, or equipment so an individual may perform an activity.

(G) "Stand-by" means a provider is at the side of an individual ready to step in and take over the task if the individual is unable to complete the task independently.

(d) For a child, the primary caregiver is expected to be present or available during the provision of attendant care. ADL and IADL services provided through attendant care must support the child to live as independently as appropriate for the age of the child and support, but not supplant, the family in their primary caregiver role.

(3) SKILLS TRAINING. Skills training is specifically tied to accomplishing ADL, IADL, and other health-related tasks as identified by the

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functional needs assessment and ISP and permitting an individual to live independently in a community-based setting.

(a) Skills training may be applied to the use and care of assistive devices and technologies.

(b) Skills training is authorized when:

(A) The anticipated outcome of the skills training, as documented in the ISP, is measurable.

(B) Timelines for measuring progress towards the anticipated outcome are established in the ISP.

(C) Progress towards the anticipated outcomes are measured and the measurements are evaluated by a case manager no less frequently than every six months, based on the start date of the initiation of the skills training.

(c) When anticipated outcomes are not achieved within the timeframe outlined in the ISP, the case manager must reassess or redefine the use of skills training with the individual for that particular goal.

(d) For a child, the primary caregiver is expected to be present or available during the provision of skills training. ADL and IADL services provided through skills training must support the child to live as independently as appropriate for the age of the child and support, but not supplant, the family in their primary caregiver role.

(e) Skills training may not replace or supplant the services of the educational system in fulfilling its obligation to educate an individual.

(4) RELIEF CARE.

(a) Relief care may not be characterized as daily or periodic services provided solely to allow a primary caregiver to attend school or work. Daily relief care may be provided in segments that are sequential. Daily relief care delivered by a personal support worker may not exceed seven consecutive days without permission from the Department.

(b) Relief care may be provided in any of the following:

(A) The home of an individual.

(B) A licensed or certified setting.

(C) The home of a qualified provider, chosen by the individual or their representative, that is a safe setting for the individual.

(D) The community, during the provision of ADL, IADL, health-related tasks, and other supports identified in the ISP for the individual.

(c) No other community living supports may be provided to an individual during a 24-hour unit of daily relief care.

(5) Community living supports may be delivered:

(a) Individually or in a group as indicated by the outcome of the person-centered planning process for the individual.

(b) In the home, community, or a facility.

(A) Community living supports are facility-based if delivered at a fixed site outside of the home of the individual operated, owned, or controlled by a service provider.

(B) Facility-based community living supports must, at minimum, provide on-going opportunities and encouragement to individuals for going out into the broader community. Providers initially certified or endorsed by the Department or the Oregon Health Authority on or after January 1, 2016, must comply with this requirement prior to being certified and endorsed to provide services under these rules. Existing providers certified and endorsed prior to January 1, 2016, must make measurable progress toward compliance with this requirement, consistent with a Department-approved transition plan, and be in full compliance with these rules by September 1, 2018.

(6) SETTING LIMITATIONS.

(a) An individual who lives in their own home or family home is eligible for the community living supports described in these rules for which the individual has an assessed need and the person-centered planning process determines to be appropriate unless:

(A) The Department determines the health and safety of the individual may not be reasonably assured through the delivery of community living supports; or

(B) Dangerous conditions in the service setting jeopardize the health or safety of the individual or provider, and the individual, or their legal or designated representative, is unable or unwilling to implement necessary safeguards to minimize the dangers.

(b) An individual enrolled to a residential program, an adult foster home licensed under OAR chapter 411, division 050, or an assisted living facility licensed under OAR chapter 411, division 054 is not eligible for the following:

(A) Community living supports provided by a personal support worker.

(B) Community living supports delivered in the home of the individual, whether the home is a licensed setting or not.

(C) Relief care.

(c) A child living in a Behavior Rehabilitation Services (BRS) program as described in OAR 410-170-0000 through 410-170-0120, or Psychiatric Residential Treatment Services (PRTS) as defined in OAR 309-022-0100, is not eligible for community living supports.

(7) SERVICE LIMITS.

(a) All community living supports must be authorized in an ISP as described in OAR 411-415-0070.

(b) For an individual residing in their own home or family home, the amount of community living supports in any plan year is limited to the service level determined by a functional needs assessment when conducted as described in the ANA/CNA Manual. A service level determined by an ANA-C or CNA-C is available until an ISP is implemented using a service level determined by an ANA-D or CNA-D.

(A) All functional needs assessments conducted in order to develop an initial ISP after September 1, 2016 must use the ANA-D or CNA-D.

(B) All functional needs assessments conducted to renew an annual ISP that has a start date on or after November 1, 2016 must use the ANA-D or CNA-D.

(C) All functional needs assessments conducted after October 31, 2016 must use the ANA-D or CNA-D.

(c) A change in service level must be based on a reassessment.

(d) The functional needs assessment determines the following:

(A) The service level. The service level may not be exceeded without prior approval from the Department. The service level applies to hours used for the following:

(i) Attendant care as described in this rule.

(ii) Skills training as described in this rule.

(iii) State plan personal care service hours as described in OAR chapter 411, division 034.

(B) The need for two staff to be available simultaneously to provide community living supports to an individual. When such a need is identified, the functional needs assessment determines the maximum number of hours two staff may be simultaneously available.

(e) The Department may approve a service level greater than was determined by the functional needs assessment if the individual is unable to have their support needs met within the assessed service level because the individual has:

(A) Intermittent needs that cannot be scheduled that must be met throughout the day to keep the individual healthy and safe;

(B) A specific support that takes an exceptional amount of time and there is justification of the amount of time needed; or

(C) Support needs that must be met in order to prevent a serious risk of institutionalization.

(f) The Department may put limits on how Department funds and resources are used, as long as those limited funds and resources are adequate to meet the needs of the individual.

(g) For an individual enrolled in a residential program, an adult foster home licensed under OAR chapter 411, division 050, or an assisted living facility licensed under OAR chapter 411, division 054, receipt of any combination of job coaching, supported employment - small group employment support, employment path services, and community living supports may not exceed a combined average of 25 hours per week. Individuals residing in these settings who do not receive employment services, may receive up to 25 hours of community living supports per week.

(h) No more than 14 days of relief care in a plan year are allowed without approval from the Department. Each day of respite services described in and provided under OAR 411-070-0043(5) contributes to the 14-day limit for relief care.

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-430.670

Hist.: APD 27-2016, f. & cert. ef. 6-29-16; APD 35-2016(Temp), f. 8-31-16, cert. ef. 9-1-16 thru 2-27-17; APD 37-2016(Temp), f. & cert. ef. 9-15-16 thru 2-27-17; APD 2-2017, f. 2-21-17, cert. ef. 2-28-17

411-450-0070

Community Living Supports Providers and Provider Requirements

Delivery of community living supports is limited to the following provider types:

(1) A PSW who meets the standards described in OAR chapter 411, division 375.

(a) A PSW is not an available provider type when there is not a common law employer as described in OAR 411-375-0070.

(b) A PSW may not provide community living supports to an individual when the PSW and individual reside together unless:

(A) The PSW is a family member;

(B) The PSW does not own or control the property; or

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(C) The individual and the PSW have equal homeowner or rental property rights.

(2) A provider agency certified according to OAR chapter 411, division 323 with an endorsement to these rules.

(3) A home health agency with a current license issued under ORS 443.015.

(4) An in-home care agency with a current license issued under ORS 443.315.

(5) A provider organization currently certified under OAR chapter 411, division 340 whose certificate was issued or applied for prior to January 1, 2016.

(6) A provider agency certified under OAR chapter 411, division 323 and endorsed to OAR 411-340-0170 between January 1, 2016 and June 29, 2016.

(7) An agency certified under OAR chapter 411, division 323 and endorsed to OAR chapter 411, division 328 for supported living programs or to OAR chapter 411, division 325 for 24-hour residential programs or OAR chapter 411, division 345 for employment may provide community living supports without an endorsement to these rules until the agency's certification is renewed following the adoption of these rules.

(8) An adult foster home licensed under OAR chapter 411, division 360. This provider type may only deliver community living supports:

(a) When they are in or based out of the licensed setting. An adult foster home provider may not provide community living supports to an individual in or based out of the home of the individual.

(b) To an adult.

(9) A child foster home licensed under OAR chapter 411, division 346. This provider type may only deliver community living supports:

(a) When they are in or based out of the licensed setting. A child foster home provider may not provide community living supports to a child in or based out of the home of the child.

(b) To a child.

(10) An agency certified under OAR chapter 411, division 323 and endorsed to OAR chapter 411, division 325 for 24-hour residential programs does not require endorsement to these rules to deliver community living supports when they are in or based out of the licensed setting. A provider of a 24-hour residential program may not provide community living supports to an individual in or based out of the home of the individual.

(11) Providers qualified to deliver community living supports under sections (5) through (10) of this rule are subject to OAR 411-450-0040, 411-450-0050, 411-450-0060, and sections (6) through (23) of 411-450-0080 when delivering community living supports.

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-430.670

Hist.: APD 27-2016, f. & cert. ef. 6-29-16; APD 2-2017, f. 2-21-17, cert. ef. 2-28-17

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

Adm. Order No.: APD 3-2017

Filed with Sec. of State: 2-21-2017

Certified to be Effective: 2-28-17

Notice Publication Date: 12-1-2016

Rules Amended: 411-380-0020, 411-380-0030, 411-380-0060, 411-380-0090

Subject: The Department of Human Services (Department), Office of Developmental Disabilities Services (ODDS) is permanently updating the rules for direct nursing services for adults with intellectual or developmental disabilities in OAR chapter 411, division 380.

OAR 411-380-0020 about definitions and acronyms is amended to —

- Specify that if the same word or term in OAR 411-380-0020 is defined differently than the general definitions in OAR 411-317-000, the definition in OAR 411-380-0020 applies.

- Include acronyms related to Medicaid eligibility.

OAR 411-380-0030 about eligibility and limitations for direct nursing services is amended to align service eligibility with the financial eligibility requirements in the waiver.

OAR 411-380-0060 about qualifications for providers of direct nursing services is amended to specify that background check

approval is effective for two years from the initial fitness determination.

OAR 411-380-0090 about provider billing and payment is amended to correct rule references.

In addition, the Department has also made additional edits to ensure consistent terminology, update statutory and rule references, correct formatting and punctuation, and improve ease of reading.

Rules Coordinator: Kimberly Colkitt-Hallman—(503) 945-6398

411-380-0020

Definitions and Acronyms

OAR 411-317-0000 includes general definitions for words and terms frequently used in OAR chapter 411, division 380. In addition to the definitions in OAR 411-317-0000, the following definitions apply specifically to the rules in OAR chapter 411, division 380. If the same word or term is defined differently in OAR 411-317-0000, the definition in this rule applies.

(1) "Acuity Level" means the amount of the medically related support needs of an individual as measured by an assessment.

(2) "Authorization" means the approval of a case management entity for the planning, provision, and payment of direct nursing services.

(3) "Case Management Entity" means the Community Developmental Disabilities Program or Support Services Brokerage contracted to deliver the functions of case management.

(4) "Complex Health Management Support Needs" mean those medical or nursing tasks, activities, or duties in response to a health condition or series of conditions that impacts all aspects of the care of an individual, requiring oversight by a nurse and physician.

(5) "Direct Nursing Services" mean the services described in OAR 411-380-0050 determined medically necessary to support an individual with complex health management support needs in their home and community. Direct nursing services are provided on a shift staffing basis.

(6) "Direct Nursing Services Criteria" means the assessment to measure the acuity and support level of nursing tasks to determine eligibility for direct nursing services.

(7) "Enrolled Medicaid Provider" means an RN or LPN that meets and completes all the requirements in these rules, OAR 407-120-0300 to 407-120-0400, and OAR chapter 410, division 120, as applicable.

(8) "Home Health Agency" has the meaning given that term in ORS 443.005.

(9) "Individual" means an adult applying for, or determined eligible for, Department-funded developmental disabilities services.

(10) "In-Home Care Agency" has the meaning given that term in ORS 443.305.

(11) "ISP" means "Individual Support Plan".

(12) "LPN" means a licensed practical nurse who holds a current license from the Oregon State Board of Nursing pursuant to ORS chapter 678 and OAR chapter 851, division 045. An LPN providing direct nursing services under these rules is either an independent contractor who is an enrolled Medicaid provider or an employee of an in-home care or home health agency that is an enrolled Medicaid provider.

(13) "MMIS" means "Medicaid Management Information System". MMIS is the automated claims processing and information retrieval system for handling all Medicaid transactions. The objectives of the system include verifying provider enrollment and individual eligibility, managing health care provider claims and benefit package maintenance, and addressing a variety of Medicaid business needs.

(14) "Medicaid Provider Enrollment Agreement" means an agreement between the Department and a provider for the provision of covered services to covered individuals for payment.

(15) "National Provider Index Number" means a federally directed provider number mandated for use on Health Insurance Portability and Accountability Act (HIPAA) covered transactions by individuals, provider organizations, and subparts of provider organizations that meet the definition of health care provider (45 CFR 160.103) and who conduct HIPAA covered transactions electronically.

(16) "Nursing Intervention" means the actions deliberately designed, selected, and performed by a nurse to implement the Nursing Service Plan.

(17) "Nursing Service Plan" means the written guidelines developed by an RN as described in OAR 411-380-0050 that identifies the specific needs of an individual and the intervention or regiment to assist the individual to achieve optimal health potential. Developing the Nursing Service Plan includes a comprehensive and focused nursing assessment of the health status of the individual as part of the standards outlined in OAR 851-

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045-0040(2), establishing individual and nursing goals, and determining nursing interventions to meet care objectives.

(a) The Nursing Service Plan is specific to an individual and identifies the diagnoses and health needs of the individual and all direct nursing service needs.

(b) The Nursing Service Plan is separate from the ISP as well as any service plans developed by other health professionals.

(18) "OCCS" means "Office of Client and Community Services".

(19) "OHA" means "Oregon Health Authority".

(20) "OSIPM" means "Oregon Supplemental Income Program-Medical".

(21) "Prior Authorization for Services" means payment authorization for direct nursing services given by the Department, or contracted agencies of the Department, prior to provision of the service. A physician referral is not a prior authorization for services.

(22) "Provider" means an enrolled Medicaid provider who holds a current license from the Oregon State Board of Nursing as an RN or LPN pursuant to ORS chapter 678.

(23) "RN" means a registered nurse who holds a current license from the Oregon State Board of Nursing pursuant to ORS chapter 678 and OAR chapter 851, division 045. An RN providing direct nursing services under these rules is either an independent contractor who is an enrolled Medicaid provider or an employee of an in-home care or home health agency that is an enrolled Medicaid provider.

(24) "These Rules" mean the rules in OAR chapter 411, division 380.

(25) "Third Party Resources" means a medical or financial resource that, under law, is available and applicable to pay for medical services and items for an individual.

Stat. Auth.: ORS 409.050, 413.085, 427.104

Stats. Implemented: ORS 409.050, 413.085

Hist.: APD 28-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16; APD 14-2016, f. 6-28-16, cert. ef. 6-29-16; APD 34-2016(Temp), f. 8-30-16, cert. ef. 9-1-16 thru 2-27-17; APD 3-2017, f. 2-21-17, cert. ef. 2-28-17

411-380-0030

Eligibility and Limitations for Direct Nursing Services

(1) **ELIGIBILITY.** To be eligible for direct nursing services, an individual must meet the following requirements:

(a) Be 21 years of age or older.

(b) Be determined eligible for developmental disabilities services by a Community Developmental Disabilities Program in the county of origin as described in OAR 411-320-0080.

(c) Be receiving a Medicaid Title XIX benefit package through OSIPM or the OCCS Medical Program. Individuals receiving Medicaid Title XIX under OCCS medical coverage for services in a nonstandard living arrangement as defined in OAR 461-001-0000 are subject to the requirements in the same manner as if the individual requested these services under OSIPM, including the rules regarding:

(A) The transfer of assets as set forth in OAR 461-140-0210 to 461-140-0300; and

(B) The equity value of a home which exceeds the limits as set forth in OAR 461-145-0220.

(d) Be determined to meet the ICF/ID Level of Care as defined in OAR 411-317-0000.

(e) Based on a functional needs assessment, require oversight for complex health management support needs.

(f) Score 45 or higher on the Direct Nursing Services Criteria completed by the Department.

(g) Have health impairments requiring long-term direct nursing services determined medically necessary and appropriate based on the order of a physician.

(2) **ACUITY LEVELS.** The amount of hours available for direct nursing services is based on the following acuity levels as measured by the Direct Nursing Services Criteria:

(a) Level 1: Score of 75 or above and on a ventilator for 20 hours or more per day = up to a maximum of 554 hours per month for direct nursing services.

(b) Level 2: Score of 70 or above = up to a maximum of 462 hours per month for direct nursing services.

(c) Level 3: Score of 65 to 69 = up to a maximum of 385 hours per month for direct nursing services.

(d) Level 4: Score of 60 to 64 = up to a maximum of 339 hours per month for direct nursing services.

(e) Level 5: Score of 50 to 59 or if an individual requires ventilation for sleeping hours = up to a maximum of 293 hours per month for direct nursing services.

(f) Level 6: Score of 45 to 49 = up to a maximum of 140 hours per month for direct nursing services.

(3) **SERVICE DELIVERY.**

(a) Except as limited under section (4)(a) of this rule, direct nursing services may be delivered in the home of an individual, in an adult foster home, at an employment or day service site, or in the community.

(b) The hours for direct nursing services for individuals accessing other attendant care services at an employment setting or in the community, are prorated based on the acuity level of the individual between the employment setting and the home or adult foster home of the individual.

(4) **LIMITATIONS.**

(a) Direct nursing services are excluded for the following:

(A) An individual residing in a licensed 24-hour residential setting as described in OAR chapter 411, division 325.

(B) An individual while in a medical or psychiatric hospital.

(C) An individual residing in a school, nursing facility, assisted living facility, or residential care facility.

(b) Direct nursing services may not substitute for, or duplicate, other direct or private duty nursing services provided by State Plan or third party resources.

(c) Direct nursing services provided concurrently with hospice services provided under OAR 410-142-0240 or home health care services provided under OAR 410-127-0040 are not reimbursable under these rules.

(d) Direct nursing services are not covered in conjunction with any intravenous, enteral, or parenteral related skilled nursing services as described in OAR 410-148-0300.

(e) Direct nursing services may not duplicate school-based nursing services covered under the provision of the Individuals with Disabilities Education Act (IDEA).

(f) Direct nursing services do not include any of the following:

(A) Hours spent receiving professional training or career development.

(B) Administrative functions such as non-individual-specific services, quality assurance reviews, authoring health related agency policies and procedures, or providing general training for caregivers.

(C) Travel time spent in transit to or from the residence of the provider.

(D) Long-term care community nursing services, including nurse delegations, as described in OAR chapter 411, division 048.

Stat. Auth.: ORS 409.050, 413.085, 427.104

Stats. Implemented: ORS 409.050, 413.085

Hist.: APD 28-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16; APD 14-2016, f. 6-28-16, cert. ef. 6-29-16; APD 34-2016(Temp), f. 8-30-16, cert. ef. 9-1-16 thru 2-27-17; APD 3-2017, f. 2-21-17, cert. ef. 2-28-17

411-380-0060

Qualifications for Providers of Direct Nursing Services

(1) The direct nursing services provided under these rules may be delivered by the following enrolled Medicaid providers:

(a) Self-employed LPNs or RNS licensed under ORS 678.021.

(b) Home health agencies licensed under ORS 443.015 and meeting the requirements in OAR chapter 333, division 027.

(c) In-home care agencies licensed under ORS 443.315 and meeting the requirements in OAR chapter 333, division 536.

(d) An adult foster home provider as described in OAR 411-360-0140 and section (2) of this rule.

(e) A family member as described in section (2) of this rule.

(2) The decision to have an adult foster home provider or family member deliver direct nursing services must be made by the individual and the ISP team and may not be for the convenience of the adult foster home provider or family member.

(3) The legal representative of an individual is prohibited from providing direct nursing services.

(4) A provider of direct nursing services must:

(a) Be a licensed RN or LPN with a current and unencumbered license; and

(b) Meet and maintain provider enrollment requirements under OAR 407-120-0320 as follows:

(A) Providers delivering services prior to January 1, 2016 must meet the provider enrollment requirements under OAR 407-120-0320 no later than June 28, 2016.

(B) Provider applicants enrolling on or after January 1, 2016 must meet the provider enrollment requirements under OAR 407-120-0320 upon enrollment.

(5) Providers must submit a resume to the case management entity indicating the education, skills, and abilities necessary to provide nursing services in accordance with Oregon law. At least one year of experience

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working with individuals with intellectual or developmental disabilities is recommended, but not required.

(6) The provider must maintain, at the expense of the provider, professional liability insurance with a combined single limit of not less than \$1,000,000 for each claim, incident, or occurrence. Professional liability insurance is to cover damages caused by error, omission, or negligent acts related to the professional services.

(a) The provider must provide written evidence of insurance coverage to the Department prior to beginning work and at any time upon the request of the Department.

(b) There must be no cancellation of insurance coverage without 30 days prior written notice to the Department.

(7) PROVIDER ENROLLMENT.

(a) Providers must enroll through the MMIS system by:

(A) Completing and submitting the Medicaid Provider Enrollment Application that includes the Provider Enrollment Agreement;

(B) Completing a Criminal Background Check as described in OAR 407-007-0200 to 407-007-0370. Background check approval is effective for two years from the initial fitness determination; and

(C) Enrolling, receiving, and submitting a National Provider Index Number.

(b) An applicant listed in the exclusions database of the Office of the Inspector General is not eligible to become an enrolled Medicaid provider per OAR 410-120-1400(3)(b).

(8) All enrolled Medicaid providers must comply with federal, state, and Department conflict of interest regulations or policy.

Stat. Auth.: ORS 409.050, 413.085, 427.104

Stats. Implemented: ORS 409.050, 413.085

Hist.: APD 28-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16; APD 14-2016, f. 6-28-16, cert. ef. 6-29-16; APD 34-2016(Temp), f. 8-30-16, cert. ef. 9-1-16 thru 2-27-17; APD 3-2017, f. 2-21-17, cert. ef. 2-28-17

411-380-0090

Provider Billing and Payment

(1) AUTHORIZATION OF HOURS. Authorization for direct nursing service hours are:

(a) Based on acuity levels from the Direct Nursing Services Criteria.

(b) Authorized in the ISP by the case management entity.

(2) PRIOR AUTHORIZATION.

(a) Providers must request electronic authorization for direct nursing service hours through MMIS and have hours prior authorized by the Department.

(b) The Department may withdraw, modify, or deny prior authorizations in the event of any of the following:

(A) Change in the status of the individual, such as eligibility for direct nursing services, hospitalization, improvement in health status, or death.

(B) Decision of the individual, their family, or the legal representative, to change providers.

(C) Failure to comply with the delivery of direct nursing services and documentation.

(D) Failure to perform other expected duties.

(3) CLAIMS.

(a) A provider must comply with the rules for timely submission of claims as written in OAR 410-120-1300 and authorization of payment in OAR 410-120-1320. A provider must submit a claim for payment to the case management entity within 12 months of the date of service.

(b) A provider must follow all Department required documentation procedures for timesheets, invoices, and signatures and submit true and accurate information.

(c) Medicaid funds are the payer of last resort. A provider must bill all third party resources until all resources are exhausted.

(d) A provider may not submit any of the following to the Department or case management entity:

(A) A false billing form for payment.

(B) A billing form for payment that has been, or is expected to be, paid by another source.

(C) Any billing form for services that have not been provided.

(e) The billing form used to submit a claim must include the prior authorization number.

(f) A provider must sign the billing form acknowledging agreement with the terms and conditions of the claim and attesting that the hours were delivered as billed.

(g) The case management entity must review the claim and match the number of hours claimed by the provider against the number of hours prior authorized. The case management entity must review, approve, and forward the claim to the Department in a timely manner.

(4) PAYMENT.

(a) Payment for direct nursing services is made in accordance with the following:

(A) These rules.

(B) OAR 410-120-1300 for timely submission of claims.

(C) OAR 410-120-1320 for authorization of payment.

(D) OAR 410-120-1340 for payment.

(E) OAR 410-120-1380 for compliance with federal and state statutes.

(F) OAR 407-120-300 to 407-120-400 for provider enrollment and claiming.

(G) OAR 407-120-1505 for provider and contractor audits, appeals, and post payment recoveries.

(b) Funds may not be used to support, in whole or in part, a provider in any capacity who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(c) Payment for direct nursing services are fee-for-service with payment made subsequent to the delivery of the services.

(d) The Department does not pay for services that are not authorized in the ISP.

(e) Providers must be present with an individual in the delivery of direct nursing services in order to claim payments.

(f) Holidays are paid at the same rate as non-holidays.

(g) Overtime hours are not authorized.

(h) Payment by the Department for direct nursing services is considered payment in full for the services rendered under Medicaid. A provider may not demand or receive additional payment for direct nursing services from an individual, their family member, foster care provider, agency provider, or any other source, under any circumstances.

(i) Payment may be denied based on the provisions of these rules and OAR 410-120-1320.

(5) OVERPAYMENT. An overpayment occurs when a provider submits a claim or encounter, or received payment the provider is not properly entitled to. The determination of overpayment is based on OAR 410-120-1397(5)(a)–(h). The Department and OHA recoup all overpayments under OAR 410-120-1397.

Stat. Auth.: ORS 409.050, 413.085

Stats. Implemented: ORS 409.050, 413.085

Hist.: APD 28-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16; APD 14-2016, f. 6-28-16, cert. ef. 6-29-16; APD 34-2016(Temp), f. 8-30-16, cert. ef. 9-1-16 thru 2-27-17; APD 3-2017, f. 2-21-17, cert. ef. 2-28-17

Rule Caption: ODDS: Independent Providers Delivering Developmental Disabilities Services

Adm. Order No.: APD 4-2017

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Rules Amended: 411-375-0010, 411-375-0020, 411-375-0035, 411-375-0040, 411-375-0050, 411-375-0055, 411-375-0070

Subject: The Department of Human Services (Department), Office of Developmental Disabilities Services (ODDS) is permanently updating the rules for independent providers delivering developmental disabilities services in OAR chapter 411, division 375.

OAR 411-375-0000 about definitions and acronyms is amended to —

- Specify that if the same word or term in OAR 411-375-0010 is defined differently than the general definitions in OAR 411-317-000, the definition in OAR 411-375-0010 applies.

- Include claiming payment for hours that exceed limitations in the definition for fiscal improprieties.

- Define non-motorized transportation to be consistent with the rules for homecare workers.

- Remove definitions that are included in OAR 411-317-0000 or clearly defined within rule.

OAR 411-375-0020 about qualifications, exclusions, and enrollment responsibilities for independent providers is amended to specify —

- A Provider Enrollment Agreement is effective for two years from the date of signature unless the provider enrollment has been terminated or inactivated by the Department.

- An employee of the state of Oregon may not be authorized to deliver services as a personal support worker.

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- An independent provider must complete and submit properly completed paperwork and maintain valid contact information with the Department as a condition of maintaining an active provider number.

OAR 411-375-0035 about documentation and reporting requirements is amended to —

- Specify completed timesheets fulfill the requirement for date and time a service was delivered.

- Update the statutory references for mandatory reporters.

OAR 411-375-0040 about fiscal and accountability responsibility is amended to —

- Specify that Department funds may only be paid to personal support workers who properly complete all required paperwork for fiscal intermediary payments.

- Update payment limitations to reflect that a personal support worker may not work more than 40 hours in a workweek, inclusive of travel time and time worked with other Department programs as a personal support worker or homecare worker, unless the personal support worker meets specific criteria or an exception has been granted.

OAR 411-375-0050 about benefits and secondary expenses for personal support workers is amended to clarify that travel between worksites contributes to the limitation of hours a personal support worker may work in a workweek as described in OAR 411-375-0040.

OAR 411-375-0055 about standards for common law employers for personal support workers is amended to specify the legal or designated representative of an individual may be a common law employer.

OAR 411-375-0070 about inactivation and termination of independent providers is amended to include that an independent provider may be terminated if the independent provider fails to complete training required by the Department as a condition of retaining their provider number due to a violation of the rules.

In addition, the Department is also updating the rules to ensure consistent terminology, update statutory and rule references, correct formatting and punctuation, and improve ease of reading.

Rules Coordinator: Kimberly Colkitt-Hallman—(503) 945-6398

411-375-0010

Definitions and Acronyms

OAR 411-317-0000 includes general definitions for words and terms frequently used in OAR chapter 411, division 375. In addition to the definitions in OAR 411-317-0000, the following definitions apply specifically to the rules in OAR chapter 411, division 375. If the same word or term is defined differently in OAR 411-317-0000, the definition in this rule applies.

(1) “Active Provider Number” means an identifying number issued by the Department to an independent provider who has completed the qualification and enrollment conditions described in OAR 411-375-0020. An active provider number is a provider number not currently in inactivated or terminated status.

(2) “ADL” means “activities of daily living”.

(3) “Base Pay Rate” means the hourly wage to be paid to personal support workers, without any differentials, established in the Collective Bargaining Agreement.

(4) “Behaviorally-Driven Services and Supports” means the behavioral treatments an individual requires in addition to routine assessed ADL and IADL supports as identified in a functional needs assessment.

(5) “Burden of Proof” means the existence or nonexistence of a fact is established by a preponderance of the evidence.

(6) “CDDP” means “Community Developmental Disabilities Program”.

(7) “CIIS” means “Children’s Intensive In-Home Services”.

(8) “Collective Bargaining Agreement” means the ratified agreement between the Home Care Commission and the Service Employees International Union, Local 503, Oregon Public Employees Union regarding wages, hours, rules, and working conditions for personal support workers.

(9) “Common Law Employer” means the employer of record (EOR) responsible for the duties described in OAR 411-375-0055.

(10) “Community Transportation” means the non-medical transportation provided to an individual. “Community Transportation” is further defined in OAR 411-435-0020 and described in OAR 411-435-0050.

(11) “Confidentiality” means the conditions for use and disclosure of specific information governed by other laws and rules including, but not limited to, OAR 407-014-0000 to 407-014-0070.

(12) “Department Funds” means state public funds or Medicaid funds used to purchase developmental disabilities services and supports for individuals enrolled in developmental disabilities services.

(13) “Enhanced Personal Support Worker” means a personal support worker certified by the Home Care Commission to deliver services to individuals who require advanced medically-driven services and supports or behaviorally-driven services and supports, as identified in a functional needs assessment.

(14) “Evidence” means the testimony, writings, material objects, or other things presented to the senses, offered to prove the existence or nonexistence of a fact.

(15) “Exceptional Personal Support Worker” means a personal support worker certified by the Home Care Commission to deliver services to individuals who require extensive medically-driven services and supports or behaviorally-driven services and supports, as identified in a functional needs assessment and whose service needs also require staff to be awake more than 20 hours in a 24-hour period.

(16) “eXPRS” means “Express Payment and Reporting System”. eXPRS is the information system used by the Department to track and document service delivery of claims funded by the Department.

(17) “FICA” means “Federal Insurance Contributions Act”.

(18) “Fiscal Improprieties” means financial misconduct involving the money, property, or benefits of an individual.

(a) Fiscal improprieties include, but are not limited to, financial exploitation, borrowing money from an individual, taking property or money from an individual, having an individual purchase items for the independent provider, forging the signature of an individual, falsifying payment records, claiming payment for hours not worked, claiming payment for hours not prior authorized, claiming payment for hours that exceed limitations, or similar acts intentionally committed for financial gain.

(b) Fiscal improprieties do not include the exchange of money, gifts, or property between a personal support worker and an individual with whom the personal support worker is related unless an allegation of financial exploitation, as defined in OAR 411-020-0002 or 407-045-0260, has been substantiated based on an adult protective services investigation.

(19) “Fiscal Intermediary” means a person or entity that receives and distributes Department funds on behalf of an individual who employs or contracts with a personal support worker to deliver services.

(20) “IADL” means “instrumental activities of daily living”.

(21) “Imminent Danger” means there is reasonable cause to believe the life or physical, emotional, or financial well-being of an individual is in danger if no intervention is immediately initiated.

(22) “Inactivation” means an independent provider has a Department issued provider number that has been inactivated in accordance with OAR 411-375-0070.

(23) “Independent Provider” means a personal support worker, a person who is paid as a contractor, or a self-employed person. An agency or the employee of an agency is not an independent provider.

(24) “ISP” means “Individual Support Plan”.

(25) “Lack of Skills, Knowledge, or Ability to Adequately or Safely Provide Services” means an independent provider does not possess the physical, mental, or emotional skills or abilities necessary to deliver services and the lack of skills or abilities puts an individual at risk because the independent provider fails to perform, or learn to perform, the duties needed to adequately meet the needs of the individual.

(26) “Medically-Driven Services and Supports” means the medical treatments an individual requires in addition to routine assessed ADL and IADL supports as identified in a functional needs assessment.

(27) “Non-Motorized Transportation” means traveling on foot, riding a bicycle, traveling in a wheelchair or scooter, or other similar means of transportation.

(28) “Office of Administrative Hearings” means the office described in ORS 183.605 established within the Employment Department to conduct contested case proceedings on behalf of designated state agencies.

(29) “Personal Support Worker”:

(a) Means a person:

(A) Who has a Medicaid provider number.

(B) Who is hired or selected by an individual, their designated common law employer, or proxy.

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(C) Who receives money from the Department for the purpose of delivering services to the individual in the home or community of the individual.

(D) Whose compensation for providing services is provided in whole or in part through the Department.

(b) This definition of personal support worker is intended to be interpreted consistently with ORS 410.600.

(30) "Preponderance of the Evidence" in a contested case hearing means, the evidence of one party is more convincing than the evidence of the other party.

(31) "Protective Service and Abuse Rules" means any of the rules described in:

- (a) OAR chapter 411, division 020.
- (b) OAR chapter 407, division 045.
- (c) OAR chapter 413, division 015.
- (d) OAR chapter 943, division 045.

(32) "Proxy" means the common law employer proxy. The common law employer proxy is the person delegated specific tasks to assist a common law employer in the duties described in OAR 411-375-0055.

(33) "Provider Enrollment" means the process for enrolling an independent provider for the purpose of receiving payment for authorized services delivered to an individual. Provider enrollment includes the completion and submission of a Provider Enrollment Agreement before receiving a provider number.

(34) "Provider Number" means the identifying number issued to each qualified independent provider enrolled through the Department as a provider.

(35) "Restricted Personal Support Worker" means the Department, or the designee of the Department, has placed restrictions on the provider enrollment of a personal support worker as described in OAR 411-375-0020.

(36) "Termination" means an independent provider has a Department issued provider number that has been terminated in accordance with OAR 411-375-0070.

(37) "Travel Directly" means the travel time for a personal support worker from one worksite to another worksite is not interrupted for any of the following reasons:

- (a) Eat a meal.
 - (b) Purchase fuel for the vehicle being used for the travel.
 - (c) Use a restroom.
 - (d) Change buses, trains, or other modes of public transit.
- (38) "These Rules" mean the rules in OAR chapter 411, division 375.
- (39) "Violation of Protective Service and Abuse Rules" means a substantiated allegation of abuse or finding of abuse under the protective service and abuse rules or the violation of reporting or other requirements in the protective service and abuse rules.

(40) "Workday" means 12:00 AM through 11:59 PM.

(41) "Worksite" means the physical location where a personal support worker is authorized to deliver services to an individual. A worksite may be the home of an individual, the community of the individual, or a home and community-based setting.

(42) "Workweek" means 12:00 AM Sunday through 11:59 PM Saturday.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 410.600, 410.606-619, 427.007
Hist.: APD 30-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 48-2014, f. 12-26-14, cert. ef. 12-28-14; APD 29-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16; APD 29-2016, f. & cert. ef. 6-29-16; APD 33-2016(Temp), f. 8-30-16, cert. ef. 9-1-16 thru 2-27-17; APD 4-2017, f. 2-21-17, cert. ef. 2-28-17

411-375-0020

Qualifications, Exclusions, and Enrollment Responsibilities for Independent Providers

(1) QUALIFICATIONS. An independent provider who is qualified to provide services must meet the following requirements:

- (a) Be at least 18 years of age.
- (b) Have approval to work based on a background check completed by the Department as described in OAR 407-007-0200 to 407-007-0370 and section (3) of this rule.
- (c) Not have been convicted of any of the disqualifying crimes listed in OAR 407-007-0275, unless hired or contracted with prior to July 28, 2009 and remaining in the original position for which the independent provider was hired or contracted.
- (d) Be free of convictions, founded allegations of abuse, or substantiated allegations of abuse, by the appropriate agency including, but not limited to, the Department or case management entity.
- (e) Be legally eligible to work in the United States.

(f) Demonstrate by background, education, references, skills, and abilities, the independent provider is capable of safely and adequately performing the tasks specified in an ISP or Service Agreement, with such demonstration of the following confirmed in writing by the individual, or as applicable their legal or designated representative:

(A) Ability and sufficient education to follow oral and written instructions and keep any required records.

(B) Possess the physical health, mental health, good judgment, and good personal character determined necessary to deliver services.

(C) Ability to communicate with the individual.

(D) Training of a nature and type sufficient to ensure the independent provider has knowledge of emergency procedures specific to the individual.

(g) Maintain confidentiality and safeguard individual information. An independent provider may not share any personal information about the individual, including medical, social service, financial, public assistance, legal, or other personal details, unless given specific permission by the individual or as applicable their legal representative.

(h) Not be on the list of excluded or debarred providers maintained by the Office of the Inspector General (<http://exclusions.oig.hhs.gov/>).

(i) Complete and submit a Provider Enrollment Agreement to the Department and possess a current provider number issued by the Department. A Provider Enrollment Agreement is effective for two years from the date of signature, unless the provider enrollment is terminated or inactivated by the Department.

(j) Have a Taxpayer Identification Number or Social Security number that matches the legal name of the independent provider as verified by the Internal Revenue Service or Social Security Administration.

(k) If providing services requiring professional licensure, possess a current and unencumbered license. The individual, or as applicable their designated or legal representative or the case management entity, must check the status of the professional license to verify the license is current and unencumbered.

(l) If transporting an individual, have a valid driver's license and proof of insurance, as well as any other license or certification required under state and local law depending on the nature and scope of the transportation. Copies of a valid driver's license and proof of insurance, as well as any other license or certification (if applicable), must be made available to any case management entity upon authorization of community transportation and as requested.

(m) An independent provider delivering specific services must meet any additional qualifications required by applicable program rules relevant to the services being delivered.

(2) EXCLUSIONS.

(a) An employee of the State of Oregon may not be authorized to deliver services as a personal support worker.

(b) An independent provider may not be authorized to deliver services to an individual in any of the following circumstances:

(A) The individual is less than 18 years of age and the independent provider is the parent of the individual.

(B) The independent provider is the legal representative of the individual and has not appointed a designated representative to plan supports for the individual.

(C) The independent provider is the designated representative of the individual.

(D) The independent provider is the spouse of the individual.

(E) The independent provider is the common law employer or the proxy of the common law employer.

(3) BACKGROUND CHECKS.

(a) A subject individual as defined in OAR 407-007-0210 may be approved for one position to work statewide when the subject individual is working in the same employment role with the same population. The Background Check Request Form must be completed by the subject individual to show intent to work statewide.

(b) When an independent provider is approved without restrictions following a background check fitness determination, the approval must meet the provider enrollment requirements for the employment role of the independent provider.

(c) Background check approval is effective for two years from the date of fitness determination to provide services except in one or more of the following circumstances:

(A) A new fitness determination is conducted resulting in a change in approval status.

(B) The Department has terminated the provider enrollment for the independent provider.

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(d) The case management entity may conduct a background recheck more frequently based on any of the following:

(A) Additional information about the independent provider is discovered, such as possible criminal activity or other allegations.

(B) At the request of the individual, the common law employer, or their proxy. Upon request, a personal support worker must provide any additional information within 30 days to complete the background recheck.

(e) An independent provider must self-report any potentially disqualifying crimes under OAR 125-007-0270 and potentially disqualifying conditions under OAR 407-007-0290 to the case management entity within 24 hours.

(4) ENROLLMENT RESPONSIBILITIES.

(a) The Department may not complete provider enrollment in any of the following circumstances:

(A) The applicant has been suspended or terminated as a provider by another division within the Department or the Oregon Health Authority.

(B) The applicant has a history of violating the protective service and abuse rules or has a founded report of child abuse or substantiated adult abuse.

(C) The applicant has committed fiscal improprieties.

(D) The applicant has demonstrated a lack of skills, knowledge, or ability to adequately or safely provide services.

(E) The applicant has an unacceptable background check or the background check results in a closed case pursuant to OAR 407-007-0320.

(F) The applicant is on the list of excluded or debarred providers maintained by the Office of the Inspector General (<http://exclusions.oig.hhs.gov/>).

(G) The case management entity has documentation that the applicant is not capable of performing required services in a professionally competent, safe, legal, or ethical manner.

(H) The Taxpayer Identification Number or Social Security number for the applicant does not match the legal name of the applicant as verified by the Internal Revenue Service or Social Security Administration.

(b) CONTINUED ENROLLMENT.

(A) An independent provider is responsible for maintaining an active provider number by:

(i) Completing and submitting a new Provider Enrollment Agreement to the Department at least 55 calendar days prior to the end date of the Provider Enrollment Agreement.

(ii) Completing and submitting a Background Check Request Form and receiving approval to work by the Department at least 55 calendar days prior to the end of the background check approval period.

(iii) Completing and submitting properly completed paperwork at the request of the Department that is required to receive payment.

(iv) Maintaining valid contact information with the Department including current address, email address, and telephone number.

(v) Completing and submitting required paperwork at the request of the Department.

(B) An independent provider is responsible to attend trainings and maintain certifications as required by applicable program rules.

(5) The individual, or as applicable their legal or designated representative, has the right to choose any independent provider who meets all additional program qualifications for the services to be delivered and is enrolled as a provider as described in this rule.

(6) PERSONAL SUPPORT WORKERS.

(a) ORIENTATION. A personal support worker must attend a personal support worker orientation consistent with the Collective Bargaining Agreement.

(b) RESTRICTED PERSONAL SUPPORT WORKER PROVIDER ENROLLMENT.

(A) The Department may enroll an applicant as a restricted personal support worker. A restricted personal support worker may only provide services to a specific individual who is a family member, neighbor, or friend.

(i) After conducting a weighing test as described in OAR 407-007-0200 to 407-007-0370, the Department may approve a restricted enrollment for an applicant with a prior criminal record, unless under OAR 407-007-0275 the applicant has been found ineligible due to ORS 443.004.

(ii) The Department may approve a restricted enrollment for an applicant based on their lack of skills, knowledge, or ability to adequately or safely provide services.

(B) To remove restricted personal support worker status, the applicant must complete a new application and background check and be approved by the Department.

(c) ENHANCED AND EXCEPTIONAL PERSONAL SUPPORT WORKERS.

(A) ENHANCED PERSONAL SUPPORT WORKERS.

(i) A personal support worker must be certified by the Home Care Commission as an enhanced personal support worker to deliver services to individuals who require advanced medically-driven services and supports or behaviorally-driven services and supports, as identified by a functional needs assessment.

(ii) Enhanced personal support workers are paid for providing ADL and IADL services at the enhanced personal support worker rate set forth in the Collective Bargaining Agreement. The enhanced personal support worker rate is effective the first day of the month following the month in which both:

(I) The personal support worker is certified by the Oregon Home Care Commission to deliver services.

(II) The outcome of the functional needs assessment for an individual indicates the need for assistance with advanced medically-driven services and supports or behaviorally-driven services and supports.

(B) EXCEPTIONAL PERSONAL SUPPORT WORKER.

(i) A personal support worker must be certified by the Home Care Commission as an exceptional personal support worker to deliver services to individuals who require assistance with extensive medically-driven services and supports or behaviorally-driven services and supports, as identified by a functional needs assessment.

(ii) Exceptional personal support workers are paid for providing ADL and IADL services at the exceptional personal support worker rate set forth in the Collective Bargaining Agreement. The exceptional personal support worker rate is effective the first day of the month following the month in which both:

(I) The personal support worker is certified by the Oregon Home Care Commission to deliver services.

(II) The outcome of the functional needs assessment for an individual indicates the need for assistance with extensive medically-driven services and supports or behaviorally-driven services and supports, and at least 20 hours per day of attendant care support excluding 2:1 support hours.

(C) A personal support worker who has been certified by the Oregon Home Care Commission to provide enhanced or exceptional supports may not receive the enhanced or exceptional rate when providing services to an individual whose functional needs assessment does not indicate the need for assistance with advanced or extensive medically-driven services and supports or behaviorally-driven services and supports, except as required by the Collective Bargaining Agreement.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 410.600, 410.606-619, 427.007

Hist.: APD 30-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 48-2014, f. 12-26-14, cert. ef. 12-28-14; APD 29-2016, f. & cert. ef. 6-29-16; APD 29-2016, f. & cert. ef. 6-29-16; APD 33-2016(Temp), f. 8-30-16, cert. ef. 9-1-16 thru 2-27-17; APD 4-2017, f. 2-21-17, cert. ef. 2-28-17

411-375-0035

Documentation and Reporting Requirements

(1) SERVICE AGREEMENT.

(a) An independent provider may not provide services to an individual without a completed and authorized Service Agreement. For independent providers who are not personal support workers, the signature of the independent provider on the ISP for an individual may serve as the Service Agreement.

(b) An independent provider must maintain a copy of the authorized Service Agreement for the authorized service period.

(2) PROGRESS NOTES.

(a) Independent providers must maintain regular progress notes. The progress note must include, at minimum, the following information regarding the service rendered:

(A) Date and time the service was delivered.

(B) Information regarding progress towards achieving the intended ISP goal identified in the Service Agreement for which the service was delivered.

(b) For a personal support worker, progress notes must be submitted to the case management entity with their timesheet as part of their claim for payment, and additionally upon request from the case management entity. The completed timesheet fulfills the requirement for date and time the service was delivered.

(c) For an independent provider who is not a personal support worker, progress notes must be submitted as required by applicable program rules.

(3) INCIDENT REPORTING.

ADMINISTRATIVE RULES

(a) Independent providers must notify the case management entity of any injury, accident, act of physical aggression, or unusual incident involving an individual.

(b) Independent providers must notify the case management entity of any reasonable suspicion that an individual is the victim of abuse.

(c) Independent providers who are mandatory reporters must also make reports of suspected abuse consistent with the following:

(A) ORS 419B.010 and 419B.015 for abuse of a child.

(B) ORS 124.060 and 124.065 for abuse of an older adult 65 years of age or older.

(C) ORS 430.737 and 430.743 for abuse of an adult with an intellectual or developmental disability or mental illness.

(D) ORS 441.640 and 441.645 for abuse of a resident of a long-term care facility as defined in ORS 442.015.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 410.600, 410.606-410.619, 427.007

Hist.: APD 29-2016, f. & cert. ef. 6-29-16; APD 33-2016(Temp), f. 8-30-16, cert. ef. 9-1-16 thru 2-27-17; APD 4-2017, f. 2-21-17, cert. ef. 2-28-17

411-375-0040

Fiscal and Accountability Responsibility

(1) **DIRECT SERVICE PAYMENTS.** The Department, case management entity, or contracted fiscal intermediary makes payment to an independent provider on behalf of an individual for all services.

(a) Payment is considered full payment for the services rendered. The independent provider may not, under any circumstances, demand or receive additional payment for Department-funded services from the individual or any other source.

(b) The Department only makes payment for services authorized in an ISP, included in a Service Agreement, and delivered by a provider authorized in eXPRS to deliver the service.

(c) The Department does not make Department funds available to an individual or common law employer to pay an independent provider.

(d) The Department only makes payment to an enrolled provider who actually performs the authorized services. Federal regulations prohibit the Department from making payment to a collection agency.

(e) All Department funds paid to a personal support worker must come through a fiscal intermediary.

(f) Department funds may only be paid to a personal support worker who has properly completed all Department required paperwork for fiscal intermediary payments.

(2) **TIMELY SUBMISSION OF CLAIMS.** In accordance with 42 CFR 447.45, all claims for services must be submitted within 12 months from the date of services in order to be considered for payment. A claim submitted after 12 months from the date of services may not be considered for payment.

(3) CLAIM OR ENCOUNTER SUBMISSION.

(a) Submission of a claim, encounter, or other payment request document constitutes the agreement of an independent provider to all of the following:

(A) The services were delivered in compliance with the Service Agreement in effect on the date of service.

(B) The information on the claim, encounter, or other payment request document, regardless of the format, is true, accurate, and complete.

(C) The independent provider understands payment of the claim, encounter, or other payment request document is from Department funds and any falsification or concealment of a material fact may result in prosecution under federal and state laws.

(b) The independent provider must submit a claim for payment directly into eXPRS, unless an exception has been granted by the case management entity.

(A) Claims for payment submitted by independent providers who are not personal support workers must include documentation from the provider of services delivered.

(B) Claims for payment submitted by personal support workers must meet the requirements of a properly completed timesheet as defined by the Collective Bargaining Agreement including submission of progress notes as required by OAR 411-375-0035.

(4) **CLAIM OR ENCOUNTER AUTHORIZATION.** Authorization of a submitted claim, encounter, or other payment request document by the employer, constitutes agreement the independent provider delivered services in accordance with the claim.

(5) PAYMENT LIMITATIONS.

(a) Department funds may not pay for services delivered by an independent provider who does not possess an active provider number issued by the Department on the date services are delivered.

(b) An active provider number with the Department is not a guarantee that an independent provider shall receive any minimum amount of work or payment from the case management entity.

(c) Payment is not made for services delivered to any individual prior to the following:

(A) The return of a signed Service Agreement, specific to the individual, to the case manager of the individual.

(i) When the provider is a personal support worker, a completed Service Agreement must include a dated signature from the common law employer and the personal support worker.

(ii) When the provider is an independent provider, but not a personal support worker, a completed Service Agreement must include the name and dated signature of the individual or as applicable their legal or designated representative.

(B) Authorization of the services in eXPRS.

(d) A personal support worker may not work more than 40 hours in a workweek, inclusive of travel time and time worked with other Department programs, as a personal support worker or homecare worker unless the personal support worker meets the criteria in subsection (A) or (B) of this section.

(A) A personal support worker may work 50 hours per workweek, inclusive of travel time and time worked with other Department programs, if the personal support worker was paid for more than an average of 40 hours per workweek during the months of March, April, and May of 2016.

(B) A personal support worker may work more than 40 hours in a workweek if an exception has been granted by the case management entity or the Department. All determinations regarding exceptions to the limitation on workweek hours are final.

(6) ANCILLARY CONTRIBUTIONS FOR PERSONAL SUPPORT WORKERS.

(a) **FICA.** The case management entity or contracted fiscal intermediary applies applicable FICA regulations on behalf of the individual, including the following:

(A) Withholding the FICA contribution of the personal support worker from the payment to the personal support worker.

(B) Submitting the FICA contribution of the individual and the amounts withheld from the payment to the personal support worker to the Social Security Administration.

(b) **BENEFIT FUND ASSESSMENT.** The Workers' Benefit Fund pays for programs that provide direct benefits to an injured worker and the beneficiary of the injured worker and also assists an employer in helping an injured worker return to work. The Department of Consumer and Business Services sets the Workers' Benefit Fund assessment rate for each calendar year. The case management entity or contracted fiscal intermediary calculates the hours rounded up to the nearest whole hour and deducts an amount rounded up to the nearest cent. The case management entity or contracted fiscal intermediary performs the following duties on behalf of the individual:

(A) Deducts the share of the Benefit Fund assessment rate for the personal support worker for each hour or partial hour worked.

(B) Collects the share of the Benefit Fund assessment rate for the individual for each hour or partial hour of paid services received.

(C) Submits the contributions of the personal support worker and the individual to the Workers' Benefit Fund.

(c) The case management entity or contracted fiscal intermediary submits the unemployment tax.

(7) STATE AND FEDERAL INCOME TAX WITHHOLDING.

(a) The case management entity or contracted fiscal intermediary withholds state and federal income taxes on all payments to personal support workers, as indicated in the Collective Bargaining Agreement.

(b) Personal support workers must complete and return all applicable Internal Revenue Service (IRS) forms.

(A) Personal support workers working with individuals receiving services through a CDDP, Brokerage, or CIIS must return all applicable fiscal intermediary forms to the fiscal intermediary for the Department.

(B) The fiscal intermediary must apply standard income tax withholding practices in accordance with 26 CFR 31.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 410.600, 410.606-619, 427.007

Hist.: APD 30-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 48-2014, f. 12-26-14, cert. ef. 12-28-14; APD 29-2016, f. & cert. ef. 6-29-16; APD 33-2016(Temp), f. 8-30-16, cert. ef. 9-1-16 thru 2-27-17; APD 4-2017, f. 2-21-17, cert. ef. 2-28-17

411-375-0050

Personal Support Worker Benefits and Secondary Expenses

(1) The only benefits available to personal support workers are negotiated in the Collective Bargaining Agreement and provided in Oregon

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Revised Statute. The Collective Bargaining Agreement does not include participation in the Public Employees Retirement System or the Oregon Public Service Retirement Plan. Personal support workers are not employees of a case management entity.

(2) Workers' compensation, as defined in Oregon Revised Statute, is available to eligible personal support workers as described in the Collective Bargaining Agreement. In order to receive services delivered by a personal support worker, an individual, the designated common law employer, or the proxy must provide written authorization and consent to the Department for the provision of workers' compensation insurance for the personal support worker.

(3) **TRANSPORTATION REIMBURSEMENT.**

(a) **COMMUNITY TRANSPORTATION.**

(A) A personal support worker may be reimbursed for providing community transportation related to services if the community transportation is prior authorized by a case manager and reflected in the ISP for an individual in accordance with OAR 411-435-0050. A personal support worker providing community transportation must have a valid driver's license, a good driving record, and proof of insurance for the vehicle used to transport the individual, as well as any other license or certificate that may be required under state and local law depending on the nature and scope of the transportation. Copies of a valid driver's license and proof of insurance, as well as any other license or certification that may be required, must be made available to any case management entity upon authorization of community transportation and as requested.

(B) Community transportation services exclude medical transportation. Medical transportation is provided through the Health Systems Division of the Oregon Health Authority.

(C) The Department is not responsible for vehicle damage or personal injury sustained while using a personal motor vehicle for ISP-related transportation, except as may be covered by workers' compensation.

(D) Reimbursement for transporting an individual to accomplish ADL, IADL, or a health-related task within the community in which the individual lives or an employment goal identified in an ISP, is on a per-mile basis as outlined in the Collective Bargaining Agreement.

(b) **TRAVEL BETWEEN WORKSITES.**

(A) A personal support worker who travels directly between one worksite to another worksite is paid at the base pay rate, as defined in the Collective Bargaining Agreement, for the time spent traveling directly between the worksites.

(B) Unless otherwise specified in statute or rule, the amount of time a personal support worker may take to travel directly from one worksite to another worksite may not exceed one hour.

(C) The total time spent traveling directly between worksites for all individuals a personal support worker is authorized to deliver services to, may not total more than 10 percent of the total wages the personal support worker claims during a pay period, as described in the Collective Bargaining Agreement.

(D) The time claimed by a personal support worker for travel directly between worksites contributes to the limitation of hours a personal support worker may work in a workweek as described in OAR 411-375-0040(5)(d).

(E) The Department determines the time needed for a personal support worker to travel directly between worksites.

(i) When a personal support worker uses their own vehicle to travel directly between worksites, payment for travel time is based on a time estimate published in a common, publicly-available, web-based mapping program.

(ii) When a personal support worker uses public transportation to travel directly between worksites, payment for travel time is based on the scheduled pick-up and drop-off times for the stops nearest the worksites.

(iii) When a personal support worker uses non-motorized transportation to travel directly between worksites, payment for travel time is based on a time estimate published in a common, publicly-available, web-based mapping program.

(c) Claims for travel time exceeding the travel time estimated by the Department require a written explanation from the personal support worker. Travel time claimed in excess of the time estimated by the Department may not be paid.

(d) Under no circumstances may a personal support worker be paid for time spent in transit to or from their own residence.

(e) Personal support workers receive mileage reimbursement only as set forth in subsection (a) of this section.

(4) **GLOVES AND MASKS.** Once all public and private resources have been exhausted and in response to a documented change or newly

identified individual need, an emergency supply of protective gloves and masks must be made available to a personal support worker for the safety of the personal support worker, as outlined in the Collective Bargaining Agreement.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 410.600, 410.606-619, 427.007

Hist.: APD 30-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 48-2014, f. 12-26-14, cert. ef. 12-28-14; APD 29-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16; APD 29-2016, f. & cert. ef. 6-29-16; APD 33-2016(Temp), f. 8-30-16, cert. ef. 9-1-16 thru 2-27-17; APD 4-2017, f. 2-21-17, cert. ef. 2-28-17

411-375-0055

Standards for Common Law Employers for Personal Support Workers

(1) A common law employer is required when a personal support worker is selected by an individual, or as applicable their legal or designated representative, to deliver supports.

(2) The Department, provider agencies, or case management entities may not act as the common law employer for a personal support worker.

(3) The relationship between a personal support worker and an individual, or their designated common law employer, is an employee and employer relationship.

(4) Common law employers do not qualify for any benefits including, but not limited to, financial compensation.

(5) **COMMON LAW EMPLOYER REQUIREMENTS.**

(a) Common law employers may be one of the following:

(A) The individual.

(B) The legal or designated representative of the individual.

(C) A person who is designated by the individual, or as applicable their legal or designated representative, to act as the designated common law employer on behalf of the individual.

(i) As of December 1, 2016, a designated common law employer or proxy must sign a Department-approved form affirming the designated common law employer or proxy is able to fulfill the responsibilities, or responsibilities delegated to them, as outlined in subsection (b) of this section.

(ii) A designated common law employer must not have any of the following:

(I) A history of substantiated abuse of an adult as described in OAR 407-045-0250 to 407-045-0370.

(II) A history of founded abuse of a child as described in ORS 419B.005.

(III) A conviction of any crimes found in OAR 407-007-0275.

(IV) An indictment or conviction of fraud pursuant to federal law under 42 CFR 455.23.

(iii) A common law employer must not currently be employed as a provider in any capacity for the individual receiving services.

(iv) A common law employer must meet federal and state requirements to enter into an employment relationship.

(b) Common law employers have the following responsibilities:

(A) Locating, screening, and hiring a qualified personal support worker.

(B) Assisting in developing a Service Agreement with the case management entity as needed.

(C) Ensuring services are delivered in accordance with the Service Agreement.

(D) Supervising and training the personal support worker.

(E) Scheduling work, leave, and coverage.

(F) Tracking the hours worked and verifying the authorized hours completed by the personal support worker.

(G) Recognizing, discussing, and attempting to correct, with the personal support worker, any performance deficiencies and provide appropriate and progressive disciplinary action as needed.

(H) Notifying the case management entity of any suspected fraud or abuse by the personal support worker.

(I) Discharging an unsatisfactory personal support worker.

(c) A common law employer must meet all of the employer responsibilities described in subsection (b) of this section.

(d) The Department or case management entity may be required to intervene as described in section (6) of this rule when a common law employer, proxy, or a designated common law employer has demonstrated an inability to meet one or more of the employer responsibilities described in subsection (b) of this section. Indicators that a common law employer, proxy, or a designated common law employer may not be meeting one or more of the responsibilities include, but are not limited to the following:

(A) Complaints to the case management entity or Department from the personal support worker.

ADMINISTRATIVE RULES

(B) Scheduling personal support workers for more time than authorized in the Service Agreement.

(C) Scheduling multiple personal support workers for the same time period without authorization.

(D) Approving time worked without verifying services were delivered as described in the Service Agreement.

(E) Verifying time not actually worked by a personal support worker.

(F) Refusal to verify time worked by a personal support worker for services delivered as described in the Service Agreement.

(G) Complaints to Medicaid fraud involving the common law employer, proxy, or designated common law employer.

(H) Documented observation by the case management entity or Department services are not being delivered as identified in a Service Agreement.

(e) In the event an individual is unable or unwilling to perform the duties of a common law employer and has not already designated a common law employer, the individual, or as applicable their legal or designated representative, must either:

(A) Designate a proxy meeting the requirements of a designated common law employer described in subsection (a)(C) of this section.

(i) A proxy may not be delegated all of the responsibilities of the common law employer.

(ii) The proxy may not perform any common law employer tasks not delegated to the proxy on a Department approved form.

(B) Select a designated common law employer as outlined in subsection (a)(C) of this section.

(f) A designated common law employer must be able to fulfill all of the duties outlined in subsection (b) of this section and may not utilize a proxy.

(g) If an individual is unable to fulfill the responsibilities of a common law employer and is unable to select a proxy or designated common law employer who meets the requirements outlined in subsection (a)(C) of this section, the individual may only select services from providers who are not personal support workers.

(6) INTERVENTION.

(a) For the purposes of this rule, “intervention” means the action the Department or the case management entity requires when a common law employer fails to meet the responsibilities described in section (5)(b) of this rule.

(b) Interventions may include any of the following:

(A) A review of the employer responsibilities described in section (5)(b) of this rule.

(B) Training related to employer responsibilities or referral to a Department approved resource for training.

(C) Corrective action taken as a result of a personal support worker filing a complaint with the Department or the case management entity.

(D) Recommending alternative designation of common law employer responsibilities, such as a new designated common law employer or proxy.

(c) Any intervention initiated by the Department or the case management entity against a common law employer designated prior to October 1, 2016 must include the common law employer accepting, on a Department approved form, the responsibilities outlined in section (5)(b) of this rule.

(7) REMOVAL OF COMMON LAW AND DESIGNATED COMMON LAW EMPLOYERS AND PROXIES.

(a) The individual, or their legal or designated representative, may remove a designated common law employer or proxy at any time, for any reason. Such an action by the individual, or their legal or designated representative, is not subject to sections (7)(b) through (8) of this rule.

(b) Prior to the removal of any common law employer, designated common law employer, or proxy by the Department or case management entity, the Department or case management entity must intervene at least once, as described in section (6) of this rule, unless:

(A) There is an imminent danger to the health and safety of the individual receiving services, including any of the following:

(i) Pending charges against or conviction of the designated common law employer or proxy for any crimes found in OAR 407-007-0275.

(ii) An open protective services case for an allegation of abuse as defined in OAR 407-045-0260 against the designated common law employer or proxy.

(iii) Finding of substantiated abuse of an adult as described in OAR 407-045-0250 to 407-045-0370.

(iv) Finding of abuse of a child as described in ORS 419B.005.

(B) There is a credible allegation, indictment, or conviction of fraud pursuant to federal law under 42 CFR 455.23.

(c) The Department or case management entity shall remove any designated common law employer or proxy for any violation of section (5)(a)(C)(ii) or subsection (b) of this section.

(d) Any common law employer, designated common law employer, or proxy may be removed by the case management entity or Department for failure to meet the responsibilities of a common law employer as referenced in section (5)(b) after a documented intervention as outlined in section (6) of this rule.

(e) A common law employer, designated common law employer, or proxy, who is removed by the case management entity or Department may not act in any capacity as a common law employer or proxy for any individual receiving Department-funded services effective:

(A) 30 days from the date of removal; or

(B) Immediately if removed for reasons listed under section (5)(b) of this rule.

(f) If a designated common law employer or proxy is removed, the individual, or their legal or designated representative, may select another designated common law employer or proxy. If a designated common law employer or proxy is not selected and the individual is unable or unwilling to serve as their own common law employer, the individual may only select providers who are not personal support workers.

(8) NOTIFICATION OF DESIGNATED COMMON LAW EMPLOYER OR PROXY REMOVAL. The Department or case management entity shall notify the designated common law employer or proxy and the individual and their legal or designated representative (as applicable) of the removal of the designated common law employer or proxy.

(9) REQUEST FOR REINSTATEMENT OF COMMON LAW EMPLOYER, DESIGNATED COMMON LAW EMPLOYER, OR PROXY STATUS.

(a) An individual, designated common law employer, or proxy, is eligible to request reinstatement of their previous common law employer status if:

(A) The common law employer was the individual; or

(B) The designated common law employer or proxy no longer meets the criteria in section (7)(b) of this rule or is removed under section (7)(c) of this rule and the individual or their legal or designated representative agrees to the reinstatement.

(b) Requests for reinstatement:

(A) Must be submitted to the case management entity.

(B) Must include evidence of improvement in the areas for which they were removed. Evidence may include, but is not limited to:

(i) Improvements in health and cognitive functioning; or

(ii) Participation in a Department or case management entity approved training plan.

(C) May be approved by the case management entity when there is evidence of improvement in the ability to perform the responsibilities of being a designated common law employer and the individual agrees with the reinstatement.

(c) A request for reinstatement may not be submitted more than once in a six month period unless approved by the case management entity.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 410.600, 410.606-619, 427.007

Hist.: APD 29-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16; APD 29-2016, f. & cert. ef. 6-29-16; APD 29-2016, f. & cert. ef. 6-29-16; APD 33-2016(Temp), f. 8-30-16, cert. ef. 9-1-16 thru 2-27-17; APD 4-2017, f. 2-21-17, cert. ef. 2-28-17

411-375-0070

Inactivation and Termination of Independent Providers

(1) An independent provider may not be paid for work performed while their provider number is inactivated. A provider number for an independent provider may be inactivated by the Department for any of the following reasons until the independent provider takes action to reinstate their provider enrollment:

(a) The independent provider has not provided any paid services to an individual within the previous 12 months.

(b) The independent provider informs the case management entity the independent provider is no longer providing services in Oregon.

(c) For a personal support worker, the personal support worker fails to participate in a required orientation for personal support workers as described in the Collective Bargaining Agreement.

(d) The background check for an independent provider results in a closed case pursuant to OAR 407-007-0320.

(e) More than two years have passed since the date on the most recent background check final fitness determination for an independent provider.

(f) More than two years have passed since the signature date on the most recent Provider Enrollment Application and Agreement for an independent provider.

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(g) The independent provider fails to participate in training required by the Department.

(h) The independent provider does not request a hearing within 10 business days of a notice of proposed termination.

(2) An independent provider may not be paid for work performed while their provider number is inactivated during an investigation for any of the following reasons:

(a) The independent provider, even if not providing any paid services to an individual, is being investigated for alleged violation of the protective service and abuse rules by a case management entity for suspected abuse that poses imminent danger to current or future individuals.

(b) The independent provider, even if not providing any paid services to an individual, is being investigated by law enforcement for any of the crimes listed in OAR 407-007-0275.

(c) The independent provider has a credible allegation of fraud pursuant to federal law under 42 CFR 455.23.

(3) An independent provider may not be paid for work performed while their provider number is terminated. A provider number for an independent provider may be terminated by the Department for any of the following reasons:

(a) The independent provider violates the requirement to maintain a drug-free work place by:

(A) Being intoxicated by alcohol, inhalants, prescription drugs, or other drugs, including over-the-counter medications, while responsible for the care of an individual, while in the home of the individual, or while transporting the individual; or

(B) Manufacturing, possessing, selling, offering to sell, trading, or using illegal drugs while providing authorized services to an individual or while in the home of the individual.

(b) The independent provider has an unacceptable background check and the background check results in a closed case pursuant to OAR 407-007-0320.

(c) The independent provider demonstrates a lack of skills, knowledge, or ability to adequately or safely provide services as defined in OAR 411-375-0010.

(d) The independent provider has a violation of the protective service and abuse rules as defined in OAR 411-375-0010.

(e) Notwithstanding abuse as defined in OAR 407-045-0260, 411-020-0002, 943-045-0260, or child abuse and neglect as defined in OAR 413-015-0115, the independent provider fails to safely and adequately provide authorized services.

(f) The independent provider commits fiscal improprieties including, but not limited to, billing excessive or fraudulent charges or has a conviction for fraud pursuant to federal law under 42 CFR 455.23.

(g) The independent provider fails to provide services to an individual as described in their Service Agreement or ISP.

(h) The independent provider lacks the ability or willingness to maintain individual confidentiality.

(i) The independent provider engages in repeated unacceptable conduct at work, such as:

(A) Delay in arriving to work or absences from work not scheduled in advance with the individual, or as applicable their legal or designated representative, that are either unsatisfactory to the individual, or as applicable their legal or designated representative, or that neglect the service needs of the individual; or

(B) Inviting unwelcome guests or pets into the home or community with the individual resulting in the dissatisfaction of the individual, or as applicable their legal or designated representative, or inattention to the service needs of the individual.

(j) The independent provider has been excluded or debarred by the Office of the Inspector General.

(k) The independent provider fails to perform the applicable duties as a mandatory reporter as required by any of the following:

(A) ORS 419B.010 and 419B.015 for abuse of a child.

(B) ORS 124.060 and 124.065 for abuse of an older adult 65 years of age or older.

(C) ORS 430.737 and 430.743 for abuse of an adult with an intellectual or developmental disability or mental illness.

(D) ORS 441.640 and 441.645 for abuse of a resident of a long term care facility as defined in ORS 442.015.

(l) The independent provider fails to provide a Taxpayer Identification Number or Social Security number that matches the legal name of the independent provider as verified by the Internal Revenue Service or Social Security Administration.

(m) The independent provider fails to complete training required by the Department as a condition of retaining their provider number due to a violation of these rules.

(4) NOTIFICATION OF PROPOSED CHANGE IN PROVIDER NUMBER STATUS.

(a) The Department must issue a written notice of the proposed inactivation of a provider number to the independent provider when the inactivation is based on section (1)(g) or section (2) of this rule.

(b) The Department must issue a written notice of the proposed termination of a provider number to the independent provider. For terminations based on violation of the protective service and abuse rules, the written notice of termination may only contain the information allowed by law. In accordance with ORS 430.753, 430.763, and OAR 411-020-0030, the name of a complainant, witness, or alleged victim, and protected health information may not be disclosed.

(c) The Department-issued written notice of the proposed change in provider number status must include the following:

(A) An explanation of the reason for terminating or inactivating the provider number.

(B) The alleged violation as listed in sections (1) or (2) of this rule.

(C) The hearing rights, if any, of the independent provider as described in OAR 411-375-0080, including the right to legal representation, if applicable, and where to file a request for hearing.

(D) The effective date of the termination or inactivation.

(5) RETENTION OF PROVIDER NUMBER PENDING HEARING OUTCOME.

(a) Unless an independent provider is immediately terminated as described in subsection (b) of this section, the provider number of an independent provider may not be inactivated during the first 10 business days after a notice of proposed termination to provide the opportunity for the independent provider to file a request for hearing.

(A) The independent provider must file a request for hearing within 10 business days from the date of the notice of proposed termination if the independent provider wishes to continue to work during the hearing process as described in OAR 411-375-0080.

(B) If the independent provider files a written request for a hearing prior to the deadline, the provider number of the independent provider may not be inactivated or terminated until the hearing process is concluded.

(b) EXCLUSIONS. An independent provider may be terminated immediately by the Department for any of the following reasons and the independent provider may not continue to work during the hearing process as described in OAR 411-375-0080 when termination is based on:

(A) A background check. The independent provider has the right to a hearing in accordance with OAR 407-007-0200 to 407-007-0370.

(B) Being excluded or debarred by the Office of the Inspector General.

(C) A conviction for fraud pursuant to federal law under 42 CFR 455.23.

(D) An alleged violation listed in section (3) of this rule and the alleged violation presents imminent danger to current or future individuals.

(6) TERMINATION IF NO HEARING REQUEST FILED.

(a) An independent provider must file a request for hearing within 30 calendar days from the date of the notice of proposed termination as described in OAR 411-375-0080.

(b) The decision of the Department becomes final if an independent provider does not request a hearing within 30 calendar days from the date of the notice of proposed termination.

(c) The Department shall issue a Final Order by Default to the independent provider in accordance with OAR 137-003-0670. The provider enrollment for the independent provider is terminated once the time period for the independent provider to request a hearing has expired.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 410.600, 410.606-619, 427.007

Hist.: APD 30-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 48-2014, f. 12-26-14, cert. ef. 12-28-14; APD 29-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16; APD 29-2016, f. & cert. ef. 6-29-16; APD 33-2016(Temp), f. 8-30-16, cert. ef. 9-1-16 thru 2-27-17; APD 4-2017, f. 2-21-17, cert. ef. 2-28-17

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Rule Caption: ODDS: Definitions

Adm. Order No.: APD 5-2017

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Notice Publication Date: 12-1-2016

Rules Amended: 411-317-0000, 411-325-0020, 411-328-0560, 411-345-0020, 411-360-0020

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Subject: The Department of Human Services, Office of Developmental Disabilities Services (ODDS) is permanently updating the following:

- OAR 411-317-0000 (General Definitions).
- OAR 411-325-0020 (Definitions for 24-Hour Residential Programs and Settings).
- OAR 411-328-0560 (Definitions for Supported Living Programs).
- OAR 411-345-0020 (Definitions for Employment Services).
- OAR 411-360-0020 (Definitions for ODDS Adult Foster Homes).

OAR 411-317-0000 about general definitions for developmental disabilities services is amended to —

- Include definitions to clarify Medicaid eligibility.
- Clarify the purpose for a functional needs assessment.
- Specify the functional needs assessments appropriate to the specific program in which an individual is enrolled.
- Incorporate the definition for the In-Home Expenditure Guidelines to provide consistency.
- Define Oregon Health Authority.
- Clarify a Service Agreement is a component of an ISP that describes the authorized services to be delivered by a provider.
- Remove the definition for service level. Service level is specific to community living supports and is defined in OAR 411-450-0020.
- Define working age.

OAR 411-325-0020, 411-328-0560, 411-345-0020, and 411-360-0020 are amended to remove the definition for functional needs assessment. The definition for functional needs assessment in OAR 411-317-0000 now includes the functional needs assessments appropriate to the specific program in which an individual is enrolled.

In addition, the Department has also made additional edits to ensure consistent terminology, update statutory and rule references, correct formatting and punctuation, and improve ease of reading.

Rules Coordinator: Kimberly Colkitt-Hallman—(503) 945-6398

411-317-0000

Definitions for Developmental Disability Services

This rule, OAR 411-317-0000, defines words and terms frequently used in OAR chapter 411, divisions 300 to 450 for developmental disabilities services. OAR chapter 411, divisions 300 to 450 may include definitions specific to the subject matter in that division. If a word or term is defined differently than what is in this rule, the definition in that division applies, when used in that division.

(1) “24-Hour Residential Program” means the distinct method for the delivery of home and community-based services in a 24-hour residential setting by a provider certified and endorsed under the rules in OAR chapter 411, division 323.

(2) “24-Hour Residential Setting” means a residential home, apartment, or duplex licensed by the Department under ORS 443.410 in which home and community-based services are provided to individuals with intellectual or developmental disabilities. A 24-hour residential setting is considered a provider owned, controlled, or operated residential setting.

(3) “Abuse” means:

(a) For a child:

(A) “Abuse” as defined in ORS 419B.005.

(B) “Abuse” as defined in OAR 407-045-0260 when a child resides in a 24-hour residential setting licensed by the Department as described in OAR chapter 411, division 325.

(b) For an individual between the ages of 18 and 21 residing in a certified child foster home, “abuse” as defined in OAR 407-045-0260.

(c) For an adult, “abuse” as defined in OAR 407-045-0260.

(4) “Abuse Investigation” means the reporting and investigation activities as required by OAR 407-045-0300 and any subsequent services or supports necessary to prevent further abuse as required by OAR 407-045-0310.

(5) “Accident” means an event that results in injury, or has the potential for injury, even if the injury does not appear until after the event.

(6) “Activities of Daily Living (ADL)” are the basic personal everyday activities, such as eating, using the restroom, grooming, dressing, bathing, and transferring. ADL services include, but are not limited to the following:

(a) Basic personal hygiene — providing or assisting with needs, such as bathing (tub, bed, bath, shower), hair care, grooming, shaving, nail care, foot care, dressing, skin care, or oral hygiene.

(b) Toileting, bowel, and bladder care — assisting to and from the bathroom, on and off toilet, commode, bedpan, urinal, or other assistive device used for toileting, changing incontinence supplies, following a toileting schedule, managing menses, cleansing an individual or adjusting clothing related to toileting, emptying a catheter, drainage bag, or assistive device, ostomy care, or bowel care.

(c) Mobility, transfers, and repositioning — assisting with ambulation or transfers with or without assistive devices, turning an individual or adjusting padding for physical comfort or pressure relief, or encouraging or assisting with range-of-motion exercises.

(d) Nutrition — assisting with adequate fluid intake or adequate nutrition, assisting with food intake (feeding), monitoring to prevent choking or aspiration, assisting with adaptive utensils, cutting food, and placing food, dishes, and utensils within reach for eating.

(e) Delegated nursing tasks.

(f) First aid and handling emergencies — addressing medical incidents related to the conditions of an individual, such as seizure, aspiration, constipation, or dehydration, responding to the call of the individual for help during an emergent situation, or for unscheduled needs requiring immediate response.

(g) Assistance with necessary medical appointments — help scheduling appointments, arranging medical transportation services, accompaniment to appointments, follow up from appointments, or assistance with mobility, transfers, or cognition in getting to and from appointments.

(h) Observation of the status of an individual and reporting of significant changes to a physician, health care provider, or other appropriate person.

(7) “ADL” means “activities of daily living”.

(8) “Administration of Medication” means the act of placing a medication in or on the body of an individual by a person responsible for the care of the individual and employed by, or under contract to, the individual or as applicable their legal or designated representative or a provider organization.

(9) “Administrator Review” means the Director of the Department reviews a decision upon request, including the documentation related to the decision, and issues a determination.

(10) “Adult” means an individual who is 18 years of age or older with an intellectual or developmental disability.

(11) “Advocate” means a person other than paid staff who has been selected by an individual or their legal representative to help the individual understand and make decisions in matters relating to identification of needs and choices of services, especially when rights are at risk or have been violated.

(12) “Agency” means a public or private community agency or organization certified by the Department to deliver developmental disabilities services.

(13) “Aids to Physical Functioning” means any special equipment prescribed for an individual by a physician, therapist, or dietician that maintains or enhances the physical functioning of the individual.

(14) “Alternative Resources” mean possible resources, not including developmental disabilities services, for the provision of supports to meet the needs of an individual. Alternative resources include, but are not limited to, private or public insurance, vocational rehabilitation services, supports available through the Oregon Department of Education, or other community supports.

(15) “Annual Plan” means the written summary a case manager completes for an individual who is not enrolled in waiver or Community First Choice state plan services. An Annual Plan is not an ISP and is not a plan of care for Medicaid purposes.

(16) “Attendant Care” means an hourly service that provides assistance with ADL, IADL, and health-related tasks through cueing, monitoring, reassurance, redirection, set-up, hands-on, standby assistance, and reminding. Attendant care is available through the Community First Choice state plan.

(17) “Authority” means “Oregon Health Authority”.

(18) “Background Check” means a criminal records check and abuse check as defined in OAR 407-007-0210.

(19) “Baseline Level of Behavior” means the frequency, duration, or intensity of a behavior, objectively measured, described, and documented prior to the implementation of an initial or revised Behavior Support Plan (BSP). The baseline level of behavior serves as the reference point by which the ongoing efficacy of a BSP is to be assessed.

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(20) “Bedroom” means the personal space and sleeping area of an individual receiving home and community-based services in a provider owned, controlled, or operated residential setting, as agreed to in the Residency Agreement.

(21) “Behavior Consultant” means a contractor with specialized skills who meets the minimum qualifications defined in the Community First Choice state plan, who conducts functional assessments, and develops a Behavior Support Plan.

(22) “Behavior Data Collection System” means the methodology specified within a Behavior Support Plan that directs the process for recording observations, interventions, and other support provision information critical to the analysis of the efficacy of the Behavior Support Plan.

(23) “Behavior Data Summary” means the document composed to summarize episodes of protective physical intervention. The behavior data summary serves as a substitution for the requirement of an incident report for each episode of protective physical intervention.

(24) “Behavior Support Plan” means the written strategy, based on person-centered planning and a functional assessment that outlines specific instructions for a primary caregiver or provider to follow in order to reduce the frequency and intensity of the challenging behaviors of an individual and to modify the behavior of the primary caregiver or provider, adjust the environment of the individual, and teach new skills to the individual.

(25) “Behavior Support Services” mean the services consistent with positive behavioral theory and practice that are delivered in accordance with a Behavior Support Plan to assist with behavioral challenges due to the intellectual or developmental disability of an individual that prevents the individual from accomplishing ADL, IADL, health-related tasks, and provides cognitive supports to mitigate behavior.

(26) “Brokerage” means an entity or distinct operating unit within an existing entity that uses the principles of self-determination to perform the functions associated with planning and implementation of services for individuals with intellectual or developmental disabilities.

(27) “BSP” means “Behavior Support Plan”.

(28) “Career Development Plan”:

(a) Means the part of an ISP that identifies the following:

(A) The employment goals and objectives for an individual.

(B) The services and supports needed to achieve those goals.

(C) The people, agencies, and providers assigned to assist the individual to attain those goals.

(D) The obstacles to the individual working in an individualized job in a competitive integrated employment setting and the services and supports necessary to overcome those obstacles.

(b) A Career Development Plan is based on person-centered planning principles.

(29) “Case Management Contact” means a reciprocal interaction between a case manager and an individual or their legal or designated representative (as applicable).

(30) “Case Management Entity” means a CDDP, a Brokerage, CIIS, or the Children’s Residential Program of the Department.

(31) “Case Management Services” means the functions performed by a case manager that are funded by the Department. Case management services include, but are not limited to the following:

(a) Assessment of support needs.

(b) Developing an ISP or Annual Plan that may include authorized services.

(c) Information and referral for services.

(d) Monitoring the effectiveness of services and supports.

(32) “Case Manager” means a person who delivers case management services or person-centered service planning for and with individuals, meets the qualifications of OAR 411-415-0040, and is employed as one of the following:

(a) A personal agent by a Brokerage.

(b) A services coordinator by a CDDP.

(c) A services coordinator by the Department.

(33) “CDDP” means “Community Developmental Disabilities Program”.

(34) “Centers for Medicare and Medicaid Services”. The Centers for Medicare and Medicaid Services is the federal agency within the United States Department of Health and Human Services responsible for the administration of Medicaid, the Health Insurance Portability and Accountability Act (HIPAA), and for overseeing Medicaid programs administered by the states through survey and certification.

(35) “Chemical Restraint” means the use of a psychotropic drug or other drugs for punishment or to modify behavior in place of a meaningful behavior or treatment plan.

(36) “Child” means an individual under the age of 18.

(37) “Children’s Intensive In-Home Services” includes case management from a Department employed services coordinator and the services authorized by the Department delivered through the following:

(a) The ICF/ID Behavioral Program.

(b) The Medically Fragile Children’s Program.

(c) The Medically Involved Children’s Program.

(38) “Choice” means the expression of preference, opportunity for, and active role of an individual in decision-making related to services received and from whom services may be received including, but not limited to, case management, providers, services, and service settings. Individuals are supported in opportunities to make changes when so expressed. Choice may be communicated through a variety of methods, including orally, through sign language, or by other communication methods.

(39) “Choice Advising” means the impartial sharing of information to individuals with intellectual or developmental disabilities about the following:

(a) Case management options.

(b) Service options.

(c) Service setting options.

(d) Provider types.

(40) “Children’s Health Insurance Program” means Oregon medical coverage under Title XXI of the Social Security Act.

(41) “CHIP” means the “Children’s Health Insurance Program”.

(42) “CIIS” means “Children’s Intensive In-Home Services”.

(43) “Claimant” means the person directly impacted by an action that is the subject of a hearing request.

(44) “CME” means “Case Management Entity”.

(45) “CMS” means “Centers for Medicare and Medicaid Services”.

(46) “Collective Bargaining Agreement” means a contract based on negotiation between organized workers and their designated employer for purposes of collective bargaining to determine wages, hours, rules, and working conditions.

(47) “Community Developmental Disabilities Program” means the entity that is responsible for plan authorization, delivery, and monitoring of services for individuals who are not enrolled in a Brokerage. A Community Developmental Disabilities Program operates in a specific geographic service area of the state under a contract with the Department, local mental health authority, or other entity as contracted by the Department.

(48) “Community First Choice (K Plan)” means the state plan amendment for Oregon authorized under section 1915(k) of the Social Security Act.

(49) “Community Living Supports” means attendant care, skills training, and relief care.

(50) “Community Transportation” means the ancillary service described in OAR 411-435-0050 that enables an individual to gain access to community-based state plan and waiver services, activities, and resources, not medical in nature. Community transportation is provided in the area surrounding the home of the individual commonly used by people in the same area to obtain ordinary goods and services. Community transportation is available through the Community First Choice state plan.

(51) “Complaint” means an oral or written expression of dissatisfaction with a developmental disabilities service or provider.

(52) “Complaint Investigation” means the investigation of a non-abuse related complaint that has been made to a proper authority.

(53) “Complaint Log” means a list of complaint-related information.

(54) “Completed Application” means an application required by the Department that:

(a) Is filled out completely, signed, and dated. An applicant who is unable to sign may sign with a mark, witnessed by another person.

(b) Contains documentation required to make an eligibility determination as outlined in OAR 411-320-0080.

(55) “Condition” means a provision attached to a new or existing certificate, endorsement, or license that limits or restricts the scope of the certificate, endorsement, or license or imposes additional requirements on the provider.

(56) “Continuing Services” means the continuation of a developmental disabilities service following the request for a hearing. Services continue until a Final Order is issued.

(57) “Cost Effective” means being responsible and accountable with Department resources by offering less costly alternatives when providing

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choices that adequately meet the support needs of an individual. Less costly alternatives include other service settings available from the Department and the utilization of assistive devices, natural supports, environmental modifications, and alternative resources. Less costly alternatives may include resources not paid for by the Department.

(58) "County of Origin" means:

(a) For an adult, the county of residence for the adult.

(b) For a child, the county where the jurisdiction of guardianship exists.

(59) "Day" means a calendar day unless otherwise specified.

(60) "DD Administrative Hearing Request" means form APD 0443DD.

(61) "Denial" means any rejection of a request for a developmental disabilities service or for an increase in a developmental disabilities service. A denial of a Medicaid service requires a Notification of Planned Action.

(62) "Delegation" is the process by which a registered nurse authorizes an unlicensed person to perform nursing tasks and confirms that authorization in writing. Delegation may occur only after a registered nurse follows all steps of the delegation process as outlined in OAR chapter 851, division 047.

(63) "Department" means "Department of Human Services".

(64) "Department Hearing Representative" means a person authorized by the Department to represent the Department in a hearing as described in OAR 411-001-0500.

(65) "Department Staff" means a person employed by the Department who is knowledgeable in a particular subject matter.

(66) "Designated Representative":

(a) Means a person who is 18 years of age or older, such as a parent, family member, guardian, or advocate, who is:

(A) Chosen by an individual or their legal representative.

(B) Not a paid provider for the individual.

(C) Authorized by the individual, or as applicable their legal representative, to serve as the representative of the individual, or as applicable, their legal representative, in connection with the provision of funded supports.

(b) The power to act as a designated representative is valid until an individual modifies the authorization.

(c) An individual or their legal representative is not required to appoint a designated representative.

(67) "Developmental Disability" means a neurological condition that:

(a) Originates before an individual is 22 years of age or 18 years of age for an intellectual disability.

(b) Originates in and directly affects the brain and has continued, or is expected to continue, indefinitely.

(c) Constitutes significant impairment in adaptive behavior as diagnosed and measured by a qualified professional as described in OAR 411-320-0080.

(d) Is not primarily attributed to other conditions including, but not limited to, a mental or emotional disorder, sensory impairment, motor impairment, substance abuse, personality disorder, learning disability, or Attention Deficit Hyperactivity Disorder (ADHD).

(e) Requires training and support similar to an individual with an intellectual disability as described in OAR 411-320-0080.

(68) "Developmental Disabilities Services" mean the services provided by or authorized by a CDDP, Brokerage, or the Department that are comprised of the following:

(a) Case management services described in OAR chapter 411, division 415.

(b) Services available through the Community First Choice state plan.

(c) Services available through a 1915(c) waiver.

(69) "Director" means the Director of the Department of Human Services, Office of Developmental Disabilities Services, or the designee of the Director, which may include Department Staff.

(70) "Domestic Animals" means the animals domesticated so as to live and breed in a tame condition, such as dogs, cats, and domesticated farm stock.

(71) "Employer" means, for the purposes of obtaining services through a personal support worker, the common law employer. The common law employer is the individual, or a person selected by the individual or their legal representative, to conduct the responsibilities of an employer. An employer may also be a designated representative.

(72) "Employer-Related Supports" mean the activities that assist an individual, and when applicable their legal or designated representative or family members, with directing and supervising the provision of services

described in the ISP for the individual. Employer-related supports may include, but are not limited to, the following:

(a) Education about employer responsibilities.

(b) Orientation to basic wage and hour issues.

(c) Use of common employer-related tools, such as Service Agreements.

(d) Fiscal intermediary services.

(73) "Employment Service" means a home and community-based service that supports the primary objective of exploring, obtaining, maintaining, or advancing in an individual job in a competitive integrated employment setting in the general workforce.

(a) Employment services under the rules in OAR chapter 411, division 345 include the following:

(A) Supported Employment.

(i) Individual Employment Support.

(I) Job Coaching.

(II) Job Development.

(ii) Small Group Employment Support.

(B) Discovery.

(C) Employment Path Services.

(b) Employment services do not include vocational assessments in sheltered workshop settings or facility-based settings. Employment services do not include new participants in sheltered workshop settings.

(74) "Entity" means a person, a trust or estate, a partnership, a corporation (including associations, joint stock companies, and insurance companies), a state, or a political subdivision or instrumentality, including a municipal corporation of a state.

(75) "Entry" means initial enrollment to a Department-funded developmental disabilities service delivered by a provider agency or case management entity.

(76) "Exit" means termination or discontinuance of a Department-funded developmental disabilities service.

(77) "Family Member" means spouse, domestic partner, natural parent, child, sibling, adopted child, adoptive parent, stepparent, stepchild, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, grandchild, aunt, uncle, niece, nephew, or first cousin.

(78) "Founded Report" means the determination by the Department or Law Enforcement Authority (LEA), based on the evidence that there is reasonable cause to believe that conduct in violation of the child abuse statutes or rules has occurred and such conduct is attributable to the person alleged to have engaged in the conduct.

(79) "Functional Needs Assessment" means the comprehensive assessment or reassessment appropriate to the specific program in which an individual is enrolled that documents physical, mental, and social functioning.

(a) A functional needs assessment is:

(A) For community living supports as described in OAR chapter 411, division 450, the "functional needs assessment" as defined in OAR 411-450-0020.

(B) For 24-hour residential programs settings as described in OAR chapter 411, division 325, the Supports Intensity Scale, Adult Needs Assessment, or Children's Needs Assessment.

(C) For supported living programs as described in OAR chapter 411, division 328, the Adult Needs Assessment.

(D) For adult foster homes as described in OAR chapter 411, division 360, the Support Needs Assessment Profile, Adult Needs Assessment, or Children's Needs Assessment.

(b) The functional needs assessments are maintained by the Department at: <http://www.dhs.state.or.us/spd/tools/dd/cm/>.

(c) A printed copy of the assessment tools may be obtained by calling (503) 945-6398 or writing the Department of Human Services, Developmental Disabilities, ATTN: Rules Coordinator, 500 Summer Street NE, E-48, Salem, OR 97301.

(80) "General Business Provider" means an organization or entity selected by an individual or their legal representative and paid with Department funds that:

(a) Is primarily in business to provide the service chosen by the individual or their legal representative to the general public.

(b) Provides services for the individual through employees, contractors, or volunteers.

(c) Receives compensation to recruit, supervise, and pay the person who actually provides support for the individual.

(81) "Good Cause" means an excusable mistake, surprise, excusable neglect (which may include neglect due to a significant cognitive or health

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issue), circumstances beyond the control of a claimant, reasonable reliance on the statement of Department staff or an adverse provider relating to procedural requirements, [or due to] fraud, misrepresentation, or other misconduct of the Department or a party adverse to a claimant.

(82) "Guardian" means the parent for an individual under the age of 18, or a person or agency appointed and authorized by a court to make decisions about services for an individual.

(83) "Health Care Provider" means the person or health care facility licensed, certified, or otherwise authorized or permitted by Oregon law to administer health care in the ordinary course of business or practice of a profession. Examples of a health care provider include, but are not limited to, a registered nurse (RN), nurse practitioner (NP), licensed practical nurse (LPN), medical doctor (MD), osteopathic physician (DO), chiropractor, respiratory therapist (RT), physical therapist (PT), physician assistant (PA), dentist, or occupational therapist (OT).

(84) "Health Care Representative" means:

(a) A health care representative as defined in ORS 127.505; or

(b) A person who has authority to make health care decisions for an individual under the provisions of OAR chapter 411, division 365.

(85) "Hearing" means a contested case hearing subject to OAR 137-003-0501 to 137-003-0700, which results in a final order.

(86) "Home" means the primary residence for an individual that is not under contract with the Department to provide services certified as a foster home for children under OAR chapter 411, division 346, licensed as a foster home for adults under OAR chapter 411, division 360, or a licensed or certified residential care facility, assisted living facility, nursing facility, or other residential setting.

(a) A home for a child may include a foster home funded by Child Welfare.

(b) A foster home funded by Child Welfare is considered a provider owned, controlled, or operated residential setting.

(87) "Home and Community-Based Services" are services provided in the home or community of an individual.

(a) Home and community-based services are authorized under the following Medicaid authorities:

(A) 1915(c) - HCBS Waivers.

(B) 1915(i) - State Plan HCBS.

(C) 1915(k) - Community First Choice (K State Plan Option).

(b) Home and community-based services are delivered through the following program areas:

(A) Department of Human Services, Aging and People with Disabilities.

(B) Department of Human Services, Office of Developmental Disabilities Services.

(C) Oregon Health Authority.

(c) Home and community-based services may include alternative resources specifically authorized as home and community-based by the Department or Authority.

(88) "Home and Community-Based Setting" means a physical location meeting the qualities of OAR 411-004-0020 where an individual receives home and community-based services.

(89) "Hospital Level of Care" means a child:

(a) Has a documented medical condition and demonstrates the need for active treatment as assessed by the Clinical Criteria.

(b) The medical condition requires the care and treatment of services normally provided in an acute medical hospital.

(90) "IADL" means "instrumental activities of daily living".

(91) "ICF/ID" means "Intermediate Care Facility for Individuals with Intellectual Disabilities".

(92) "ICF/IID Level of Care" means an individual meets the following institutional level of care for an intermediate care facility for individuals with intellectual disabilities:

(a) The individual has an intellectual disability or a developmental disability as defined in this rule and meets the eligibility criteria in OAR 411-320-0080 for developmental disabilities services.

(b) The individual has a significant impairment in one or more areas of adaptive behavior as determined in OAR 411-320-0080.

(93) "IEP" means "Individualized Education Program".

(94) "Incident Report" means the written report of any injury, accident, act of physical aggression, use of protective physical intervention, or unusual incident involving an individual.

(95) "Independence" means the extent to which an individual exerts control and choice over their own life.

(96) "Independent Provider" means:

(a) A personal support worker; or

(b) An independent contractor delivering services including nursing services, discovery, job development, or behavior consultation.

(97) "Individual" means a child, young adult, or an adult, applying for, or determined eligible for, Department-funded developmental disabilities services.

(98) "Individualized Education Program" means the written plan of instructional goals and objectives developed in conference with an individual, their parent or legal representative (as applicable), teacher, and a representative of the public school district.

(99) "Individually-Based Limitations" means any limitation to the qualities outlined in OAR 411-004-0020(2)(c) to (2)(j), due to health and safety risks. An individually-based limitation is based on specific assessed need and only implemented with the informed consent of the individual or, as applicable, their legal representative, as described in OAR 411-004-0040.

(100) "Individual Support Plan" includes the written details of the supports, activities, and resources required for an individual to achieve and maintain personal outcomes and health and safety. The ISP is developed at least annually to reflect decisions and agreements made during a person-centered process of planning and information gathering. The ISP reflects services and supports that are important to meet the needs of the individual identified through a functional needs assessment as well as the preference of the individual for providers and the delivery and frequency of services and supports. The ISP is the plan of care for Medicaid purposes and reflects whether services are provided through a waiver, the Community First Choice state plan, natural supports, or alternative resources.

(101) "In-Home Expenditure Guidelines" mean the guidelines published by the Department that describe allowable uses for Department funds.

(a) The Department incorporates Version 5.0 of the In-home Expenditure Guidelines into these rules by this reference. The In-home Expenditure Guidelines are maintained by the Department at: <http://www.dhs.state.or.us/spd/tools/dd/cm/In-Home-Expenditure-Guidelines.pdf>.

(b) A printed copy may be obtained by calling (503) 945-6398 or writing the Department of Human Services, Developmental Disabilities, ATTN: Rules Coordinator, 500 Summer Street NE, E-48, Salem, Oregon 97301.

(102) "Instrumental Activities of Daily Living" are the activities other than activities of daily living required to continue independent living as described in the Community First Choice state plan.

(103) "Intake" means the activity of completing the DD Intake Form (APD 0552) and necessary releases of information prior to the submission of a completed application to the CDDP.

(104) "Integrated Employment Setting" means employment at a location where an employee interacts with other persons who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that individuals who are not individuals with disabilities and who are in comparable positions interact with other persons; and that, as appropriate, presents opportunities for advancement that are similar to those for other employees who are not individuals with disabilities and who have similar positions. Employment in an Integrated Employment Setting cannot be facility-based work in a Sheltered Workshop, and cannot be non-work activities such as day support activities.

(105) "Integration" as defined in ORS 427.005 means:

(a) Use by individuals receiving developmental disabilities services of the same community resources used by and available to other people.

(b) Participation by individuals receiving developmental disabilities services in the same community activities in which people without disabilities participate, together with regular contact with people without disabilities.

(c) Residence by individuals receiving developmental disabilities services in homes or in home-like settings that are in proximity to community resources, together with regular contact with people without disabilities in their community.

(106) "Intellectual Disability" means significantly sub-average general intellectual functioning defined as full scale intelligence quotients (IQs) 70 and under as measured by a qualified professional and existing concurrently with significant impairment in adaptive behavior directly related to an intellectual disability as described in OAR 411-320-0080 that is manifested during the developmental period prior to 18 years of age. Individuals with a valid full scale IQ of 71-75 may be considered to have an intellectual disability if there is also significant impairment in adaptive behavior as diagnosed and measured by a licensed clinical or school psychologist as described in OAR 411-320-0080.

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(107) "Involuntary Reduction" means a provider has made the decision to reduce services provided to an individual without prior approval from the individual.

(108) "Involuntary Transfer" means a provider has made the decision to transfer an individual without prior approval from the individual.

(109) "ISP" means "Individual Support Plan".

(110) "ISP Team" means a team composed of an individual receiving services and their legal or designated representative (as applicable), case manager, and others chosen by the individual, or as applicable their legal representative, such as providers and family members.

(111) "Legal Representative" means a person who has the legal authority to act for an individual. The legal representative only has authority to act within the scope and limits of their authority as designated by a court or other agreement. A legal representative acting outside of their authority or scope must meet the definition of designated representative.

(a) For an individual under the age of 18, the legal representative is the parent, unless a court appoints another person or agency to act as the guardian.

(b) For an individual 18 years of age or older, the legal representative is the guardian appointed by a court order or the legally designated health care representative, where the court order or the written designation provides authority for the appointed or designated person to make the decisions indicated where the term "legal representative" is used.

(112) "MAGI" means "Modified Adjusted Gross Income". "MAGI" is further defined in OAR 410-200-0015.

(113) "Mandatory Reporter":

(a) Means:

(A) Any public or private official as defined in ORS 419B.005 who comes in contact with a child with or without an intellectual or developmental disability and has reasonable cause to believe the child has suffered abuse, or comes in contact with any person whom the public or private official has reasonable cause to believe abused the child, regardless of whether or not the knowledge of the abuse was gained in the official capacity of the public or private official.

(B) Any public or private official as defined in ORS 430.735 who, while acting in an official capacity, comes in contact with an adult with an intellectual or developmental disability or mental illness and has reasonable cause to believe the adult has suffered abuse, or comes in contact with any person whom the public or private official has reasonable cause to believe abused the adult.

(C) Any public or private official as defined in ORS 124.050 who comes in contact with an older adult, age 65 and older, and has reasonable cause to believe the older adult has suffered abuse, or comes in contact with any person whom the public or private official has reasonable cause to believe abused the older adult.

(D) Any public or private official as defined in ORS 441.630 who comes in contact with a resident of a long-term care facility as defined in ORS 442.015 and has reasonable cause to believe the resident has suffered abuse, or comes in contact with any person whom the public or private official has reasonable cause to believe abused the resident.

(b) Nothing contained in ORS 40.225 to 40.295 affects the duty to report imposed by this definition, except that a psychiatrist, psychologist, clergy, attorney, or guardian ad litem appointed under ORS 419B.231 is not required to report if the communication is privileged under ORS 40.225 to 40.295.

(114) "Mechanical Restraint" means any mechanical device, material, object, or equipment attached or adjacent to the body of an individual that the individual cannot easily remove or easily negotiate around that restricts freedom of movement or access to the body of the individual. Mechanical restraint is not:

(a) The use of acceptable infant safety products.

(b) The use of car safety systems, consistent with applicable state law for people without disabilities.

(c) Safeguarding equipment when ordered by a physician or health care provider and approved by the ISP team.

(115) "Medicaid Agency Identification Number" means the numeric identifier assigned by the Department to a provider following the enrollment of the provider as described in OAR chapter 411, division 370.

(116) "Medicaid Performing Provider Number" means the numeric identifier assigned by the Department to an entity or person following the enrollment of the entity or person to deliver Medicaid funded services as described in OAR chapter 411, division 370. The Medicaid Performing Provider Number is used by the rendering provider for identification and billing purposes associated with service authorizations and payments.

(117) "Medicaid Title XIX Benefit Package" means only the Medicaid benefit packages provided under OAR 410-120-1210(4)(a) and (b), excluding individuals receiving CHIP Title XXI benefits.

(118) "Medication" means any drug, chemical, compound, suspension, or preparation in suitable form for use as a curative or remedial substance taken either internally or externally by any person.

(119) "Monitoring" means the periodic review of the implementation of services and supports identified in an Individual Support Plan or Annual Plan, and the quality of services delivered by other organizations.

(120) "Natural Support" means:

(a) For a child, the parental responsibilities for the child and the voluntary resources available to the child from their relatives, friends, neighbors, and the community, that are not paid for by the Department.

(b) For an adult, the voluntary resources available to an adult from their relatives, friends, significant others, neighbors, roommates, and the community, that are not paid for by the Department.

(121) "Notice of Involuntary Reduction, Transfer, or Exit" means form APD 0719DD. This form is part of the AFH/DD Mandatory Written Notice of Exit or Transfer.

(122) "Notification of Planned Action" means form APD 0947. The Notification of Planned Action is the written decision notice issued to an individual in the event that a developmental disabilities service is denied, reduced, suspended, or terminated.

(123) "Nurse" means a person who holds a current license from the Oregon Board of Nursing as a registered nurse or licensed practical nurse pursuant to ORS chapter 678.

(124) "Nursing Facility Level of Care" means a child:

(a) Has a documented medical condition that demonstrates the need for active treatment as assessed by the Clinical Criteria as defined in OAR 411-300-0110.

(b) The medical condition requires the care and treatment of services normally provided in a nursing facility.

(125) "Nursing Service Plan" means the plan that is developed by a registered nurse based on an initial nursing assessment, reassessment, or an update made to a nursing assessment as the result of a monitoring visit.

(a) The Nursing Service Plan is specific to an individual and identifies their diagnoses and health needs and any service coordination, teaching, or delegation activities.

(b) The Nursing Service Plan is separate from the ISP as well as any service plans developed by other health professionals.

(126) "Nursing Tasks" mean the care or services that require the education and training of a licensed professional nurse to perform. Nursing tasks may be delegated.

(127) "OAAPI" means the Department of Human Services, Office of Adult Abuse Prevention and Investigation.

(128) "OAH" means "Office of Administrative Hearings".

(129) "OCCS" means "Office of Client and Community Services".

(130) "OCCS Medical Programs" means the medical programs under OCCS including, but not limited to, the MAGI Medicaid and CHIP programs described in OAR 410-200-0305 to 410-200-0510. "OCCS Medical Programs" is further defined in OAR 410-200-0015.

(131) "ODDS" means the Department of Human Services, Office of Developmental Disabilities Services.

(132) "Office of Client and Community Services" means the part of the Health Systems Division under the Oregon Health Authority.

(133) "OIS" means "Oregon Intervention System".

(134) "OHA" means "Oregon Health Authority".

(135) "OHP" means "Oregon Health Plan".

(136) "Older Adult" means an adult at least 65 years of age.

(137) "Oregon Health Authority" means the agency established in ORS chapter 413 that administers the funds for Titles XIX and XXI of the Social Security Act. The Oregon Health Authority is the single state agency for the administration of the medical assistance program under ORS chapter 414.

(138) "Oregon Intervention System" is the system of providing training of elements of positive behavior support and non-aversive behavior intervention. The Oregon Intervention System uses principles of pro-active support and describes the approved protective physical intervention techniques used in an emergency to maintain health and safety.

(139) "Oregon Supplemental Income Program-Medical" is Oregon Medicaid insurance coverage for individuals who meet the eligibility criteria described in OAR chapter 461.

(140) "OSIPM" means "Oregon Supplemental Income Program-Medical".

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(141) "Parent" means the biological parent, adoptive parent, or step-parent of a child. Unless otherwise specified, references to parent also include a person chosen by the parent or guardian to serve as their designated representative in connection with the provision of ODDS-funded supports.

(142) "Person-Centered Planning":

(a) Means a timely and formal or informal process driven by an individual, includes people chosen by the individual, ensures the individual directs the process to the maximum extent possible, and enables the individual to make informed choices and decisions consistent with 42 CFR 441.540.

(b) Person-centered planning includes gathering and organizing information to reflect what is important to and for the individual and to help:

(A) Determine and describe choices about personal goals, activities, services, providers, service settings, risks, and lifestyle preferences.

(B) Design strategies and networks of support to achieve goals and a preferred lifestyle using individual strengths, relationships, and resources.

(C) Identify, use, and strengthen naturally occurring opportunities for support at home and in the community.

(c) The methods for gathering information vary, but all are consistent with the cultural considerations, needs, and preferences of the individual.

(143) "Personal Agent" means a person who:

(a) Is a case manager for the provision of case management services.

(b) Is the person-centered plan coordinator for an individual as defined in the Community First Choice state plan.

(c) Works directly with individuals, and if applicable their legal or designated representatives and families, to provide or arrange for support services.

(d) Meets the qualifications set forth in OAR 411-415-0040.

(144) "Personal Support Worker":

(a) Means a person:

(A) Who has a Medicaid provider number.

(B) Who is hired or selected by an individual or their representative.

(C) Who receives money from the Department for the purpose of delivering services to the individual in the home or community of the individual.

(D) Whose compensation for providing services is provided in whole or in part through the Department.

(b) This definition of personal support worker is intended to be interpreted consistently with ORS 410.600.

(145) "Plan Year" means 12 consecutive months from the start date specified on an authorized ISP or Annual Plan.

(146) "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.

(d) Evaluates the effectiveness of behavior interventions based on objective data.

(147) "Prescription Medication" means any medication that requires a prescription from a physician before the medication may be obtained from a pharmacist.

(148) "Primary Caregiver" means:

(a) For a child, their parent, guardian, relative, or other non-paid parental figure that normally provides their direct care. In this context, the term parent or guardian may include a designated representative.

(b) For an adult, the person identified in an Individual Support Plan as providing the majority of services and support for an individual in the home of the individual.

(149) "Primary Care Provider" means the health care provider who delivers day-to-day comprehensive health care. Typically, the primary care provider acts as the first contact and principal point of continuing care for an individual within the health care system and coordinates other specialist care the individual may need.

(150) "Private Duty Nursing" means the State Plan nursing services described in OAR chapter 410, division 132 and OAR 411-300-0150 that are determined medically necessary to support a child or young adult in their home.

(151) "PRN (pro re nata)" means the administration of a medication to an individual on an 'as needed' basis.

(152) "Productivity" as defined in ORS 427.005 means regular engagement in income-producing work, preferable competitive employment with supports and accommodations to the extent necessary, by an individual that is measured through improvements in income level,

employment status, or job advancement or engagement by an individual in work contributing to a household or community.

(153) "Progress Note" means a written record of an action taken by a provider in the delivery of a service to support an individual. A progress note may also be a recording of information related to services, support needs, or circumstances of the individual that is necessary for the effective delivery of services.

(154) "Protection" means the necessary actions offered to an individual, as soon as possible, to prevent subsequent abuse or exploitation of the individual, to prevent self-destructive acts, or to safeguard the person, property, and funds of the individual.

(155) "Protective Physical Interventions" are safety procedures utilized with an individual that assists in keeping the individual protected from harming themselves or others through supportive measures, as taught in the Oregon Intervention System.

(156) "Protective Services" mean the necessary actions offered to an individual, as soon as possible, to prevent subsequent abuse or exploitation of the individual, to prevent self-destructive acts, or to safeguard the person, property, and funds of the individual.

(157) "Provider" means a person, agency, organization, or business, approved by the Department or other appropriate agency and selected by an individual, or their designated or legal representative, to provide Department-funded services. The provider for a child may not also be the primary caregiver of the child.

(158) "Provider Agency" means a public or private community organization that delivers developmental disabilities services and is certified and endorsed by the Department under the rules in OAR chapter 411, division 323 or division 450, that:

(a) Is primarily in business to provide supports for individuals eligible to receive developmental disabilities.

(b) Provides supports for individuals through employees, contractors, or volunteers.

(c) Receives compensation to recruit, supervise, and pay the people who actually provides support for the individuals.

(159) "Provider Owned, Controlled, or Operated Setting" means:

(a) The provider is responsible for delivering home and community-based services to individuals in the setting and the provider:

(A) Owns the setting;

(B) Leases or co-leases the residential setting; or

(C) If the provider has a direct or indirect financial relationship with the property owner, the setting is presumed to be provider owned, controlled, or operated.

(b) A setting is not provider owned, controlled, or operated if the individual leases directly from a third party that has no direct or indirect financial relationship with the provider.

(c) When an individual receives services in the home of a family member, the home is not considered provider owned, controlled, or operated.

(160) "Psychotropic Medication" means a medication the prescribed intent of which is to affect or alter thought processes, mood, or behavior including, but not limited to, anti-psychotic, antidepressant, anxiolytic (anti-anxiety), and behavior medications. The classification of a medication depends upon its stated, intended effect when prescribed.

(161) "Quality Assurance" means a systematic procedure for assessing the effectiveness, efficiency, and appropriateness of services.

(162) "Relief Care" means the services provided on a periodic basis for the relief of, or due to the temporary absence of, a person normally available to provide supports to an individual. A unit of service of relief care is 24 hours. Relief care is available through the Community First Choice state plan.

(163) "Request for Service" means:

(a) Submission of a completed application for developmental disabilities services as described in OAR 411-320-0080;

(b) A written request for a new developmental disabilities service or provider; or

(c) A written request for a change in a developmental disabilities service currently provided.

(164) "Residency Agreement" means the written and legally enforceable agreement between a residential provider and an individual or their legal or designated representative, when the individual is receiving home and community-based services in a provider owned, controlled, or operated residential setting. The Residency Agreement identifies the rights and responsibilities of the individual and the residential provider and provides the individual protection from eviction substantially equivalent to landlord-tenant laws.

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(165) "Residential Programs" means services delivered by the following:

(a) 24-hour residential programs described in OAR chapter 411, division 325.

(b) Adult foster homes described in OAR chapter 411, division 360.

(c) Supported living programs described in OAR chapter 411, division 328.

(d) Foster homes for children described in OAR chapter 411, division 346.

(166) "Residential Settings" means the location where individuals, who receive services from a residential program, live.

(167) "Restraint" means any physical hold, device, or chemical substance that restricts, or is meant to restrict, the movement or normal functioning of an individual.

(168) "Review" means a request for reconsideration of a decision.

(169) "Safeguarding Equipment" means a device used to provide support to an individual for the purpose of achieving and maintaining functional body position, proper balance, and protecting the individual from injury or symptoms of existing medical conditions.

(170) "School Aged" means the age at which an individual is old enough to attend kindergarten through high school.

(171) "Self-Administration of Medication" means an individual manages and takes their own medication, identifies their own medication and the times and methods of administration, places the medication internally in or externally on their own body without staff assistance upon written order of a physician, and safely maintains the medication without supervision.

(172) "Self-Determination" means a philosophy and process by which individuals with intellectual or developmental disabilities are empowered to gain control over the selection of services and supports that meet their needs. The basic principles of self-determination are:

(a) Freedom. The ability for an individual, together with freely-chosen family and friends, to plan a life with necessary services and supports rather than purchasing a predefined program.

(b) Authority. The ability for an individual, with the help of a social support network if needed, to control resources in order to purchase services and supports.

(c) Autonomy. The arranging of resources and personnel, both formal and informal, that assists an individual to live a life in a community rich in community affiliations.

(d) Responsibility. The acceptance of a valued role of an individual in the community through competitive employment, organizational affiliations, personal development, and general caring for others in the community, as well as accountability for spending public dollars in ways that are life-enhancing for the individual.

(173) "Self-Direction" means an individual, or as applicable their legal or designated representative, has decision-making authority over services and takes direct responsibility for managing services with the assistance of a system of available supports that promotes personal choice and control over the delivery of waiver and state plan services.

(174) "Sensory Impairment" means loss or impairment of sight or hearing from any cause, including involvement of the brain.

(175) "Service Agreement":

(a) Means the component of an ISP that is the written agreement for a particular provider that describes at a minimum, the following:

(A) The services authorized in an ISP to be delivered by the provider.

(B) Hours, rates, location of services, and expected outcomes of the services.

(C) Any specific individual health, safety, and emergency procedures that may be required, including action to be taken if an individual is unable to provide for their own safety and the individual is missing while in the community.

(b) For employed personal support workers, the Service Agreement serves as the written job description for Oregon Home Care Commission purposes.

(c) For non-personal support worker providers, the ISP serves as the Service Agreement, when signed by the provider.

(176) "Service Element" means a funding stream to fund developmental disabilities programs and services.

(177) "Service Record" means the combined information related to an individual.

(178) "Services Coordinator" means an employee of the Department, CDDP, or other agency that contracts with the county or Department, who provides case management services. A services coordinator acts as the proponent for individuals with intellectual or developmental disabilities and is

the person-centered plan coordinator for the individual as defined in the Community First Choice state plan.

(179) "Setting" means the community-based location where services are delivered.

(180) "Sheltered Workshop" means a facility in which individuals with intellectual or developmental disabilities are congregated for the purpose of receiving employment services and performing work tasks for pay at the facility. A sheltered workshop primarily employs individuals with intellectual and developmental disabilities, or other disabilities, with the exception of service support staff. A sheltered workshop is a fixed site that is owned, operated, or controlled by a provider, where an individual has few or no opportunities to interact with individuals who do not have disabilities, not including paid support staff. A sheltered workshop is not small group employment in an integrated employment setting, and is not otherwise an integrated employment setting.

(181) "Skills Training" means the hourly service intended to increase the independence of an individual through training, coaching, and prompting the individual to accomplish ADL, IADL, and health-related tasks. Skills training is available through the Community First Choice state plan.

(182) "Social Benefit" means that developmental disabilities services are intended to assist an individual to function in society on a level comparable to that of a person who does not experience a developmental disability.

(a) Social benefits may not:

(A) Duplicate benefits and services otherwise available to a person regardless of disability.

(B) Replace normal parental responsibilities for the services, education, recreation, and general supervision of a child.

(C) Provide financial assistance with food, clothing, shelter, and laundry needs common to any person, except as described in OAR chapter 411, division 435 for transition services.

(D) Replace other governmental or community services available to an individual.

(b) Assistance provided as a social benefit is reimbursement for an expense previously authorized in an ISP.

(c) Assistance provided as a social benefit may not exceed the actual cost of the support required by an individual to be supported in the home of the individual.

(183) "Staff" means a paid employee who is responsible for providing services and supports to an individual and whose wages are paid in part or in full with funds sub-contracted with a Community Developmental Disabilities Program, Brokerage, or contracted directly through the Department.

(184) "Substantiated" means an abuse investigation has been completed by the Department, or the designee of the Department, and the preponderance of the evidence establishes the abuse occurred.

(185) "Support" means:

(a) For a child, the assistance the child and their family requires, solely because of the effects of a condition that makes the child eligible for developmental disabilities, to maintain or increase the age-appropriate independence of the child, achieve age-appropriate community presence and participation of the child, and to maintain the child in the family home. Support is subject to change with time and circumstances.

(b) For an adult, the assistance the adult individual requires, solely because of the effects of an intellectual or developmental disability, to maintain or increase independence, achieve community presence and participation, and improve productivity. Support is subject to change with time and circumstances.

(186) "Transfer" means movement of an individual from one service setting to a different service setting, administered or operated by the same provider.

(187) "Transition-Age" means:

(a) Not older than 24 years of age.

(b) Not younger than 14 years of age. With respect to Vocational Rehabilitation Services, persons who are under 16 years of age may receive employment services with Department approval. With respect to ODDS, persons who are under 18 years of age may receive employment services with Department approval.

(188) "Unacceptable Background Check" means an administrative process that produces information related to the background of a person that precludes the person from being an independent provider for one or more of the following reasons:

(a) Under OAR 407-007-0275, the person applying to be an independent provider has been found ineligible due to ORS 443.004.

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(b) Under OAR 407-007-0275, the person was enrolled as an independent provider for the first time, or after any break in enrollment, after July 28, 2009 and has been found ineligible due to ORS 443.004.

(c) A background check and fitness determination has been conducted resulting in a “denied” status as defined in OAR 407-007-0010.

(189) “Unusual Incident” means any incident involving an individual that includes serious illness or an accident, death, injury or illness requiring inpatient or emergency hospitalization, a suicide attempt, when an individual contacts the police or is contacted by the police, a fire requiring the services of a fire department, an act of physical aggression, or any incident requiring an abuse investigation.

(190) “Variance” means the temporary exemption from a regulation or provision of the rules granted by the Department upon written application.

(191) “Volunteer” means any person assisting a provider without pay to support the services and supports provided to an individual.

(192) “Workday” means 12:00 AM through 11:59 PM.

(193) “Working Age” means an individual aged 21 to 60. Working age also includes an individual 18 to 21 if the individual has left school.

(194) “Workweek” means 12:00 AM Sunday through 11:59 PM Saturday.

(195) “Written Outcome” means the written response from the Department or the local program to a complaint following a review of the complaint.

(196) “Young Adult” means a young individual aged 18 through 20.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 409.050

Hist.: APD 22-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 39-2014, f. 12-26-14, cert. ef. 12-28-14; APD 40-2014, f. 12-26-14, cert. ef. 12-28-14; APD 38-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16; APD 26-2016, f. & cert. ef. 6-29-16; APD 32-2016(Temp), f. 8-30-16, cert. ef. 9-1-16 thru 2-27-17; APD 5-2017, f. 2-21-17, cert. ef. 2-28-17

411-325-0020

Definitions and Acronyms

OAR 411-317-0000 includes general definitions for words and terms frequently used in OAR chapter 411, division 325. In addition to the definitions in OAR 411-317-0000, the following definitions apply specifically to the rules in OAR chapter 411, division 325. If the same word or term is defined differently in OAR 411-317-0000, the definition in this rule applies.

(1) “24-Hour Residential Program” means the distinct method for the delivery of home and community-based services in a 24-hour residential setting by a provider certified and endorsed under the rules in OAR chapter 411, division 323.

(2) “24-Hour Residential Setting” means a residential home, apartment, or duplex licensed by the Department under ORS 443.410 in which home and community-based services are provided to individuals with intellectual or developmental disabilities. A 24-hour residential setting is considered a provider owned, controlled, or operated residential setting.

(3) “Apartment” means “24-hour residential setting” as defined in this rule.

(4) “Appeal” means the process under ORS chapter 183 that a provider may use to petition a civil penalty.

(5) “Applicant” means a person, agency, corporation, or governmental unit who applies for a license to deliver home and community-based services in a 24-hour residential setting.

(6) “Board of Directors” means the group of people formed by a provider agency to set policy and give directions to a provider delivering supports to individuals in a community-based service setting. A board of directors may include local advisory boards used by multi-state organizations.

(7) “CDDP” means “Community Developmental Disabilities Program”.

(8) “Certificate” means the document issued by the Department to a provider that certifies the provider is eligible under the rules in OAR chapter 411, division 323 to receive state funds for the delivery of services through an endorsed 24-hour residential setting.

(9) “Competency Based Training Plan” means the written description of the process of the provider for providing training to newly hired staff. At a minimum, the Competency Based Training Plan:

(a) Addresses health, safety, rights, values and personal regard, and the mission of the provider.

(b) Describes competencies, training methods, timelines, how competencies of staff are determined and documented, including steps for remediation, and when a competency may be waived by a provider to accommodate the specific circumstances of a staff member.

(10) “Condition” means a provision attached to a new or existing certificate, endorsement, or license that limits or restricts the scope of the certificate, endorsement, or license or imposes additional requirements on the provider.

(11) “Denial” means the refusal of the Department to issue a certificate, endorsement, or license to operate a 24-hour residential program or 24-hour residential setting because the Department has determined the provider or the home is not in compliance with these rules or the rules in OAR chapter 411, division 323.

(12) “Duplex” means “24-hour residential setting” as defined in this rule.

(13) “Educational Surrogate” means the person who acts in place of the parent of a child in safeguarding the rights of the 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 the child has a disability and it is a ward of the state.

(c) At the request of the parent of the child or young adult student.

(14) “Endorsement” means the authorization to provide services in a 24-hour residential setting issued by the Department to a certified provider that has met the qualification criteria outlined in these rules and the rules in OAR chapter 411, division 323.

(15) “Executive Director” means the person designated by a board of directors or corporate owner responsible for the operation of a 24-hour residential program and the administration of services in a 24-hour residential setting.

(16) “Home” means “24-hour residential setting” as defined in this rule.

(17) “ICF/ID” means “Intermediate Care Facility for Individuals with Intellectual Disabilities”.

(18) “ISP” means “Individual Support Plan”.

(19) “License” means a document granted by the Department to an applicant who is in compliance with the requirements of these rules and the rules in OAR chapter 411, division 323.

(20) “Licensee” means the person or organization to whom a certificate, endorsement, and license is granted.

(21) “Modified Diet” means the texture or consistency of food or drink is altered or limited, such as no nuts or raw vegetables, thickened fluids, mechanical soft, finely chopped, pureed, or bread only soaked in milk.

(22) “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. Nursing services differ from administrative nursing services.

(23) “OCCS” means the “Office of Client and Community Services”.

(24) “OIS” means “Oregon Intervention System”.

(25) “Oregon Core Competencies” means:

(a) The list of skills and knowledge required for newly hired staff in the areas of health, safety, rights, values and personal regard, and the mission of the provider.

(b) The associated timelines in which newly hired staff must demonstrate the competencies.

(26) “OSIPM” means “Oregon Supplemental Income Program-Medical”.

(27) “Revocation” means the action taken by the Department to rescind a certificate, endorsement, or license to operate a 24-hour residential program or 24-hour residential setting after the Department determines a provider or home is not in compliance with one or more of these rules or the rules in OAR chapter 411, division 323.

(28) “Special Diets” means the specially prepared food or particular types of food specific to the medical condition or diagnosis of an individual and in support of an evidence-based treatment regimen. Examples of special diets include, but are not limited to, low calorie, high fiber, diabetic, low salt, lactose free, or low fat diets. Special diets do not include a diet where extra or additional food is offered without the order of a physician, but may not be eaten, such as offering prunes each morning at breakfast or including fresh fruit with each meal.

(29) “Suspension” means an immediate temporary withdrawal of the approval to operate a 24-hour residential program or 24-hour residential setting after the Department determines a provider or home is not in compliance with one or more of these rules or the rules in OAR chapter 411, division 323.

(30) “These Rules” mean the rules in OAR chapter 411, division 325.

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(31) “Variance” means the temporary exception from a regulation or provision of these rules that may be granted by the Department upon written application by a provider.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455
Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 25-2004, f. 7-30-04, cert. ef. 8-1-04; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12; SPD 23-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 58-2013, f. 12-27-13, cert. ef. 12-28-13; APD 24-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 42-2014, f. 12-26-14, cert. ef. 12-28-14; APD 34-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16; APD 24-2016, f. & cert. ef. 6-29-16; APD 32-2016(Temp), f. 8-30-16, cert. ef. 9-1-16 thru 2-27-17; APD 5-2017, f. 2-21-17, cert. ef. 2-28-17

411-328-0560

Definitions

ORAR 411-317-0000 includes general definitions for words and terms frequently used in OAR chapter 411, division 328. In addition to the definitions in OAR 411-317-0000, the following definitions apply specifically to the rules in OAR chapter 411, division 328. If the same word or term is defined differently in OAR 411-317-0000, the definition in this rule applies.

(1) “Board of Directors” means the group of people formed by a provider agency to set policy and give directions to a provider delivering supports to individuals in a community-based service setting. A board of directors may include local advisory boards used by multi-state organizations.

(2) “CDDP” means “Community Developmental Disabilities Program”.

(3) “Certificate” means the document issued by the Department to a provider that certifies the provider is eligible under the rules in OAR chapter 411, division 323 to receive state funds for the delivery of services through an endorsed supported living setting.

(4) “Endorsement” means the authorization to provide services in a supported living setting issued by the Department to a certified provider that has met the qualification criteria outlined in these rules and the rules in OAR chapter 411, division 323.

(5) “Executive Director” means the person designated by a board of directors or corporate owner responsible for the operation of a supported living program and the administration of services in a supported living setting.

(6) “Individual” means an adult applying for, or determined eligible for, Department-funded developmental disabilities services.

(7) “Individual Profile” means the written profile that describes an individual entering into a supported living setting. The profile may consist of materials or assessments generated by a provider or other related agencies, consultants, family members, or the legal or designated representative of the individual (as applicable).

(8) “ISP” means “Individual Support Plan”.

(9) “OIS” means “Oregon Intervention System”.

(10) “OSIPM” means “Oregon Supplemental Income Program-Medical”.

(11) “Provider” means a public or private community agency or organization that delivers developmental disabilities services and is certified and endorsed by the Department to deliver the services under these rules and the rules in OAR chapter 411, division 323.

(12) “Supported Living” means the endorsed program that provides the opportunity for individuals to live in the residence of their own choice within the community. Supported living is not grounded in the concept of “readiness” or in a “continuum of services model”, but rather provides the opportunity for individuals to live where they want, with whom they want, for as long as they desire, with a recognition that needs and desires may change over time.

(13) “These Rules” mean the rules in OAR chapter 411, division 328.

(14) “Unit” means the personal space and bedroom of an individual receiving home and community-based services in a provider owned, controlled, or operated residential setting, as agreed to in the Residency Agreement.

Stat. Auth.: ORS 409.050, 430.662
Stats. Implemented: ORS 430.610, 430.662, 430.670
Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0560 by SPD 17-2009, f. & cert. ef. 12-9-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12; SPD 24-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 59-2013, f. 12-27-13, cert. ef. 12-28-13; APD 24-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 42-2014, f. 12-26-14, cert. ef. 12-28-14; APD 33-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16; APD 23-2016, f. & cert. ef. 6-29-16; APD 32-2016(Temp), f. 8-30-16, cert. ef. 9-1-16 thru 2-27-17; APD 5-2017, f. 2-21-17, cert. ef. 2-28-17

411-345-0020

Definitions and Acronyms

ORAR 411-317-0000 includes general definitions for words and terms frequently used in OAR chapter 411, division 345. In addition to the definitions in OAR 411-317-0000, the following definitions apply specifically to the rules in OAR chapter 411, division 345. If the same word or term is defined differently in OAR 411-317-0000, the definition in this rule applies.

(1) “CDDP” means “Community Developmental Disabilities Program”.

(2) “Competitive Integrated Employment” means work that is performed on a full-time or part-time basis (including self-employment):

(a) For which an individual:

(A) Is compensated at a rate that:

(i) Is not less than the higher of the rate specified in federal, state, or local minimum wage law, and also is not less than the customary rate paid by the employer for the same or similar work performed by other employees who are not individuals with disabilities, and who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills; or

(ii) In the case of an individual who is self-employed, yields an income that is comparable to the income received by other individuals who are not individuals with disabilities, and who are self-employed in similar occupations or on similar tasks and who have similar training, experience, and skills; and

(B) Is eligible for the level of benefits provided to other employees.

(b) That is at a location where the employee interacts with other persons who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that individuals who are not individuals with disabilities and who are in comparable positions interact with other persons; and

(c) That, as appropriate, presents opportunities for advancement that are similar to those for other employees who are not individuals with disabilities and who have similar positions.

(3) “Customized Employment” means competitive integrated employment for an individual with a disability that is based on an individualized determination of the strengths, needs, and interests of the individual, is designed to meet the specific abilities of the individual, and the business needs of the employer.

(4) “Discovery” is a time-limited comprehensive, person-centered, and community-based employment planning support service to better inform an individual seeking an individualized job in a competitive integrated employment setting and to create a Discovery Profile. Discovery includes a series of work or volunteer related activities to inform the individual and the job developer about the strengths, interests, abilities, skills, experiences, and support needs of the individual, as well as identify the conditions and employment settings in which the individual will be successful. Discovery is also an opportunity for the individual to begin active pursuit of competitive integrated employment.

(5) “Discovery Profile” is a comprehensive and person-centered report produced as an outcome of discovery, representing an individual, and providing information to better inform employment service planning and job development activities. The Discovery Profile includes information about the strengths, interests, abilities, skills, experiences, and support needs of the individual, as well as information about conditions and employment settings for the success of the individual.

(6) “Employment Path Services” means services to provide learning and work experiences, including volunteer opportunities, for an individual to develop general, non-job-task-specific, strengths and skills that contribute to employability in an individual job in a competitive integrated employment setting in the general workforce.

(7) “Employment Professional” means an employee of a provider agency or an independent provider who has the qualifications and training to provide employment services under these rules, including individual employment support, small group employment support, discovery, or employment path services.

(8) “Endorsement” means the authorization to provide program services issued by the Department to a certified provider agency that has met the qualification criteria outlined in these rules, the corresponding program rules, and the rules in OAR chapter 411, division 323.

(9) “Evidence-Based Practices” means well-defined best practices, which have been demonstrated to be effective by multiple peer-reviewed research studies specific to the relevant population or subset of that population.

ADMINISTRATIVE RULES

(10) "Executive Director" means the person designated by a board of directors or corporate owner of a provider agency responsible for the administration of agency provided employment services.

(11) "Individual Employment Support" means job coaching or job development services to obtain, maintain, or advance in an individual job in a competitive integrated employment setting in the general workforce, including customized employment or self-employment.

(12) "ISP" means "Individual Support Plan".

(13) "Job Coaching" means support for an individual to maintain or advance in an individual job in a competitive integrated employment setting in the general workforce, including customized employment or self-employment.

(14) "Job Development" means support for an individual to obtain an individual job in a competitive integrated employment setting in the general workforce, including customized employment or self-employment.

(15) "OSIPM" means "Oregon Supplemental Income Program-Medical".

(16) "PRN" means the administration of medication to an individual on an 'as needed' basis (pro re nata).

(17) "Small Group Employment Support" means services and training activities provided in regular business, industry, and community settings for groups of two to eight individuals with disabilities. Small group employment support is provided in a manner that promotes integration into the workplace and interaction between participants and people without disabilities in those workplaces.

(18) "These Rules" mean the rules in OAR chapter 411, division 345.

(19) "Vocational Assessment" means an assessment administered to provide employment related information essential to the development of, or revision of, the employment related planning documents for an individual.

Stat. Auth.: ORS 409.050 & 430.662

Stats. Implemented: ORS 430.610, 430.662, 430.670

Hist.: MHD 26-1982(Temp), f. & cert. ef. 12-3-82; MHD 9-1983, f. & cert. ef. 6-7-83; MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0005, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 12-2010, f. 6-30-10, cert. ef. 7-1-10; SPD 14-2011, f. & cert. ef. 7-1-11; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12; SPD 26-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 61-2013, f. 12-27-13, cert. ef. 12-28-13; APD 27-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 45-2014, f. 12-26-14, cert. ef. 12-28-14; APD 31-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16; APD 22-2016, f. & cert. ef. 6-29-16; APD 32-2016(Temp), f. 8-30-16, cert. ef. 9-1-16 thru 2-27-17; APD 5-2017, f. 2-21-17, cert. ef. 2-28-17

411-360-0020

Definitions and Acronyms

OAR 411-317-0000 includes general definitions for words and terms frequently used in OAR chapter 411, division 360. In addition to the definitions in OAR 411-317-0000, the following definitions apply specifically to the rules in OAR chapter 411, division 360. If the same word or term is defined differently in OAR 411-317-0000, the definition in this rule applies.

(1) "Adult Foster Home (AFH)" means any home in which residential care and services are provided in a home-like environment for compensation to five or fewer adults who are not related to the provider by blood, marriage, or adoption. An adult foster home does not include any house, institution, hotel, or other similar living situation that supplies room or board only, if no individual thereof requires any element of care.

(2) "Adult Foster Home for Individuals with Intellectual or Developmental Disabilities (AFH-DD)" means an adult foster home in which residential care and services are provided to support individuals with intellectual or developmental disabilities.

(3) "Advance Directive" or "Advance Directive for Health Care" means the legal document signed by an individual or their legal representative that provides health care instructions in the event the individual is no longer able to give directions regarding their wishes. The Advance Directive gives the individual the means to control their own health care in any circumstance. An Advance Directive for Health Care does not include Physician Orders for Life-Sustaining Treatment (POLST).

(4) "AFH-DD" means an "adult foster home for individuals with intellectual or developmental disabilities" as defined in this rule.

(5) "Applicant" means a person who completes an application for an adult foster home license who is also the owner of the business or a person who completes an application to become a resident manager. The term applicant includes a co-applicant (if applicable).

(6) "Bill of Rights" means the civil, legal, or human rights afforded to individuals in an adult foster home in accordance with those rights afforded to all other U.S. citizens including, but not limited to, those rights delin-

ated in the Adult Foster Home Bill of Rights for individuals with intellectual or developmental disabilities described in OAR 411-360-0170.

(7) "Care" means supportive services that encourage maximum individual independence and enhance the quality of life for an individual including, but not limited to, the following:

(a) Provision of 24-hour supervision, being aware of the whereabouts of the individual, and ensuring the health, safety, and welfare of the individual.

(b) Assistance with activities of daily living and instrumental activities of daily living as defined in OAR 411-317-0000.

(c) Assistance with quality of life activities, such as socialization and recreation.

(d) Monitoring the activities of the individual to ensure the health, safety, and welfare of the individual.

(8) "Caregiver" means any person responsible for delivering care and services to support individuals. A caregiver includes a provider, resident manager, and any temporary, substitute, or supplemental caregiver or other person designated to provide care and service to support individuals in an AFH-DD.

(9) "CDDP" means "Community Developmental Disabilities Program".

(10) "CMS" means "Centers for Medicare and Medicaid Services".

(11) "Community Nursing Services" mean the nursing services that focus on the chronic and ongoing health and safety needs of an individual. 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.

(12) "Compensation" means monetary or in-kind payments by or on behalf of an individual to a provider in exchange for room and board, care, and services as indicated in the ISP or Service Agreement. Compensation does not include the voluntary sharing of expenses between or among roommates.

(13) "Condition" means a provision attached to a new or existing license that limits or restricts the scope of the license or imposes additional requirements on the licensee.

(14) "Controlled Substance" means any drug classified as schedules one through five under the Federal Controlled Substance Act.

(15) "Day Care" means the care, assistance, and supervision of an individual who does not stay overnight. Individuals receiving day care services are included in the licensed capacity of a home as described in OAR 411-360-0060.

(16) "Denial" means the refusal of the Department to issue a license to operate an AFH-DD because the Department has determined that an applicant or the home is not in compliance with one or more of these rules.

(17) "Disaster" means an occurrence beyond the control of a licensee, whether natural, technological, or man-made, that renders a home uninhabitable on a temporary, extended, or permanent basis.

(18) "Enjoin" means to prohibit by judicial order.

(19) "Exempt Area" means a county where the county agency provides similar programs for licensing and inspection of adult foster homes equal to, or superior to, the requirements of ORS 443.705 to 443.825 and the Director has exempted the county from the license, inspection, and fee provisions described in ORS 443.705 to 443.825. Exempt area county licensing rules require review and approval by the Director prior to implementation.

(20) "Facility" means the physical structure of an AFH-DD.

(21) "Guardian" means the parent for an individual under the age of 18, or a person or agency appointed and authorized by a court to make decisions about services for an individual. A paid provider for an individual may not be the guardian of the individual.

(22) "Hearing" means a contested case hearing subject to OAR 137-003-0501 to 137-003-0700, which results in a Final Order.

(23) "Home" means the physical structure of an AFH-DD.

(24) "Homelike" means an environment that promotes the dignity, security, and comfort of individuals through the provision of personalized care and services to support and encourage independence, choice, and decision making by the individuals.

(25) "House Rules" mean the social courtesies identified through a voluntary collaborative process by members of the household. The identified rules are non-binding and may not be solely provider driven expectations for individuals residing in the home.

(26) "Indirect Ownership Interest" means an ownership interest in an entity that has an ownership interest in the disclosing entity.

ADMINISTRATIVE RULES

(27) "Individual" means a young adult or adult residing in an AFH-DD, regardless of source of compensation.

(28) "Individualized Education Program" means the written plan of instructional goals and objectives developed in conference with an individual less than 21 years of age, their parent or legal representative (as applicable), teacher, and a representative of the public school district.

(29) "ISP" means "Individual Support Plan".

(30) "License" means a document granted by the Department to an applicant who is in compliance with the requirements of these rules.

(31) "Licensee" means the person who is issued a license, whose name is on the license, and who is responsible for the operation of an adult foster home. The licensee of an adult foster home does not include the owner or lessor of the building in which the adult foster home is situated unless the owner or lessor of the building is the provider.

(32) "Limited License" means a license is issued to a licensee who intends to deliver care and services for compensation to a specific individual who is unrelated to the licensee, but with whom the licensee has an established relationship of no less than one year.

(33) "Liquid Resource" means cash or assets that may readily be converted to cash, such as a life insurance policy that has a cash value, stock certificates, or a guaranteed line of credit from a financial institution.

(34) "Marijuana" means all parts of the plant Cannabis family Moraceae, whether growing or not, the resin extracted from any part of the plant, and every compound, manufacture, salt derivative, mixture, or preparation of the plant or its resin. Marijuana does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted there from), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. "Legal medical marijuana" refers to the use of marijuana authorized under the Oregon Medical Marijuana Act (OMMA), ORS 475B.400 to ORS 475B.525.

(35) "Mental Health Assessment" means the assessment used to determine the need for mental health services by interviewing an individual and obtaining all pertinent biopsychosocial information as identified by the individual, their family, and collateral sources. A mental health assessment:

- (a) Addresses the condition presented by the individual.
- (b) Determines a diagnosis.
- (c) Provides treatment direction and individualized services and supports.

(36) "Modified Diet" means the texture or consistency of food or drink is altered or limited, such as no nuts or raw vegetables, thickened fluids, mechanical soft, finely chopped, pureed, or bread only soaked in milk.

(37) "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. Nursing services differ from administrative nursing services.

(38) "OCCS" means the "Office of Client and Community Services".

(39) "Occupant" means any person residing in, or using the facilities of, an adult foster home including the individuals, licensee, resident manager, friends, family members, a person receiving day care services, and room and board tenants.

(40) "OIS" means "Oregon Intervention System".

(41) "OSIPM" means "Oregon Supplemental Income Program-Medical".

(42) "Over the Counter Topical" means a medication purchased without a prescription applied to the skin and not in an orifice.

(43) "Ownership Interest" means the possession of equity in the capital, stock, or profits of an adult foster home. A person with an ownership or control interest means a person or corporation that:

- (a) Has an ownership interest totaling five percent or more in a disclosing entity;
- (b) Has an indirect ownership interest equal to five percent or more in a disclosing entity;
- (c) Has a combination of direct and indirect ownership interests equal to five percent or more in a disclosing entity;
- (d) Owns an interest of five percent or more in any mortgage, deed of trust, note, or other obligation secured by the disclosing entity if that interest equals at least five percent of the value of the property or assets of the disclosing entity;
- (e) Is an officer or director of a disclosing entity organized as a corporation; or
- (f) Is a partner in a disclosing entity organized as a partnership.

(44) "Provider" means any person operating an adult foster home, such as a licensee or resident manager. "Provider" does not include care-

givers or the owner or lessor of the building in which an adult foster home is situated unless the owner or lessor of the building is also the operator of the adult foster home.

(45) "Provider Enrollment" means an agreement between the Department and a Medicaid provider to provide room and board and deliver care and services to a Medicaid eligible individual in an adult foster home for compensation.

(46) "Provisional License" means a 60-day license issued in an emergency situation when a licensed provider is no longer overseeing the operation of an adult foster home. A provisional license is issued to a qualified person who meets the standards of OAR 411-360-0070 and OAR 411-360-0110.

(47) "Qualified Entity Initiator (QEI)" as defined in OAR 407-007-0210.

(48) "Qualified Mental Health Professional" means a licensed medical practitioner or any other person meeting the qualifications specified in OAR 309-019-0125.

(49) "Relief Care" means the services provided on a periodic basis for the relief of, or due to the temporary absence of, a person normally available to provide supports to an individual. Relief care may include 24-hour relief care or hourly relief care. Individuals receiving relief care are included in the licensed capacity of a home as described in OAR 411-360-0060.

(50) "Reside" means for a person to live in an adult foster home for a permanent or extended period of time. For the purpose of a background check, a person is considered to reside in a home if the visit of the person is for four consecutive weeks or greater.

(51) "Resident Manager" means an employee of a licensee, approved by the Department, who resides in an adult foster home, and is directly responsible for the care and services to support individuals on a day-to-day basis.

(52) "Respite" means "relief care" as defined in this rule.

(53) "Revocation" means the action taken by the Department to rescind an adult foster home license after the Department determines the provider or home is not in compliance with one or more of these rules.

(54) "Room and Board" means receiving compensation for the provision of meals, a place to sleep, laundry, basic utilities, and housekeeping to a person that does not need assistance with activities of daily living. Room and board facilities for two or more people are required to register with the Department as described in OAR chapter 411, division 068, unless registered with the local authority having jurisdiction. Room and board does not include provision of care.

(55) "Self-Preservation", in relation to fire and life safety, means the ability of an individual to respond to an alarm without additional cues and reach a point of safety without assistance.

(56) "Special Diets" means the specially prepared food or particular types of food specific to the medical condition or diagnosis of an individual and in support of an evidence-based treatment regimen. Examples of special diets include, but are not limited to, low calorie, high fiber, diabetic, low salt, lactose free, or low fat diets. Special diets do not include a diet where extra or additional food is offered without the order of a physician or licensed health care provider, but may not be eaten, such as offering prunes each morning at breakfast or including fresh fruit with each meal.

(57) "Subject Individual" means:

- (a) Any person 16 years of age or older, including the following:
 - (A) A licensed adult foster home provider and provider applicant.
 - (B) A person intending to work in, or currently working in, an adult foster home including, but not limited to, a substitute caregiver and a potential substitute caregiver in training.
 - (C) A volunteer if allowed unsupervised access to an individual.
 - (D) An occupant, excluding an individual, residing in or on the premises of a proposed or currently licensed adult foster home, including the following:
 - (i) A member of the household.
 - (ii) A room and board tenant.
 - (iii) A person visiting for four consecutive weeks or greater.
- (b) Subject individual does not apply to the following:
 - (A) An individual of the adult foster home or their visitor.
 - (B) A person who resides or works in an adult foster home who does not have:
 - (i) Regular access to the home for meals;
 - (ii) Regular use of the appliances or facilities of the adult foster home;
 - (iii) Unsupervised access to an individual or their personal property.
- (C) A person providing services to an individual employed by a private business not regulated by the Department.

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(58) "Substitute Caregiver" means any person who provides care and services in an adult foster home under the jurisdiction of the Department that is left in charge of the individuals for any period of time and has access to their records.

(59) "Suspension" means an immediate, temporary withdrawal of the approval to operate an adult foster home after the Department determines a provider or home is not in compliance with one or more of these rules or there is a threat to the health, safety, or welfare of individuals.

(60) "Tenant" means an individual who resides in an adult foster home and receives services, such as meal preparation, laundry, and house-keeping.

(61) "These Rules" mean the rules in OAR chapter 411, division 360.

(62) "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 an individual.

(63) "Variance" means the temporary exemption from a regulation or provision of these rules granted by the Department upon written application by the provider.

(64) "Young Adult" means a young individual age 18 through 20 who resides in an adult foster home under the custody of the Department, voluntarily, or under guardianship. A young adult may include an individual who is less than 18 years of age.

Stat. Auth.: ORS 409.050, 410.070, 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

Hist.: SPD 3-2005, f. 1-10-05, cert. ef. 2-1-05; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 13-2010, f. 6-30-10, cert. ef. 7-1-10; SPD 34-2013, f. & cert. ef. 9-27-13; APD 28-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 47-2014, f. 12-26-14, cert. ef. 12-28-14; APD 30-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16; APD 21-2016, f. & cert. ef. 6-29-16; APD 32-2016(Temp), f. 8-30-16, cert. ef. 9-1-16 thru 2-27-17; APD 5-2017, f. 2-21-17, cert. ef. 2-28-17

Rule Caption: ODDS: Children's Intensive In-Home Services (CIIS) and Ancillary Services

Adm. Order No.: APD 6-2017

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Rules Amended: 411-300-0110, 411-300-0120, 411-435-0020, 411-435-0050, 411-435-0060, 411-435-0070

Subject: The Department of Human Services, Office of Developmental Disabilities Services (Department) is permanently updating the following rules:

- OAR chapter 411, division 300 for children's intensive in-home services (CIIS).

- OAR chapter 411, division 435 for ancillary services.

OAR 411-300-0110 about CIIS definitions and acronyms is amended to —

- Specify that if the same word or term in OAR 411-300-0110 is defined differently than the general definitions in OAR 411-317-000, the definition in OAR 411-300-0110 applies.

- Include acronyms related to Medicaid eligibility.

- Remove the definition for "Expenditure Guidelines" because the definition has been added to the general definitions in OAR 411-317-0000.

OAR 411-300-0120 about CIIS eligibility is amended to align service eligibility with the financial eligibility requirements in the waiver.

OAR 411-435-0020 about definitions and acronyms for ancillary services is amended to —

- Specify that if the same word or term in OAR 411-435-0020 is defined differently than the general definitions in OAR 411-317-000, the definition in OAR 411-435-0020 applies.

- Include a definition for "Community Transportation" because community transportation is a specific ancillary service.

- Remove the definition for "In-Home Expenditure Guidelines" because the definition has been added to the general definitions in OAR 411-317-0000.

OAR 411-435-0050 about Community First Choice ancillary services is amended to include behavior support services and the qualifications for a behavior consultant.

OAR 411-435-0060 and OAR 411-435-0070 about waiver ancillary services are amended to align service eligibility with the financial eligibility requirements in the waiver.

In addition, the Department has made additional edits to ensure consistent terminology, update statutory and rule references, correct formatting and punctuation, and improve ease of reading.

Rules Coordinator: Kimberly Colkitt-Hallman — (503) 945-6398

411-300-0110

Definitions and Acronyms

OAR 411-317-0000 includes general definitions for words and terms frequently used in OAR chapter 411, division 300. In addition to the definitions in OAR 411-317-0000, the following definitions apply specifically to the rules in OAR chapter 411, division 300. If the same word or term is defined differently in OAR 411-317-0000, the definition in this rule applies.

(1) "ADL" means "activities of daily living".

(2) "Alternative Resources" means possible resources available for the provision of supports to meet the needs of a child. Alternative resources include, but are not limited to, private or public insurance, vocational rehabilitation services, supports available through the Oregon Department of Education, or other community supports.

(3) "Behavior Criteria" means the criteria used by the Department to evaluate the intensity of the behaviors, challenges, and service needs of a child and to determine eligibility for the ICF/ID Behavioral Model Waiver.

(4) "CDDP" means "Community Developmental Disabilities Program".

(5) "Child" means an individual who is less than 18 years of age, and applying for, or accepted for, CIIS.

(6) "CHIP" means the "Children's Health Insurance Program".

(7) "CIIS" means "Children's Intensive In-home Services". CIIS includes case management from a Department-employed services coordinator and the services authorized by the Department delivered through the following:

(a) The ICF/ID Behavioral Program.

(b) The Medically Fragile Children's Program.

(c) The Medically Involved Children's Program.

(8) "Clinical Criteria" means the criteria used by the Department to assess the initial and ongoing eligibility of a child for the Medically Fragile Children's Program and their support needs.

(9) "Cost Effective" means being responsible and accountable with Department resources by offering less costly alternatives when providing choices that adequately meet the support needs of a child. Less costly alternatives include other programs available from the Department and the utilization of assistive devices, natural supports, environmental modifications, and alternative resources. Less costly alternatives may include resources not paid for by the Department.

(10) "Daily Activity Log" means the record of services provided by a paid provider to a child. The content and form of a daily activity log is agreed upon by both the parent or guardian and the services coordinator and documented in the ISP for the child.

(11) "Delegation" is the process where a registered nurse authorizes an unlicensed person to perform nursing tasks and confirms that authorization in writing. Delegation may occur only after a registered nurse follows all steps of the delegation process as outlined in OAR chapter 851, division 047.

(12) "Entry" means admission to a Department-funded service.

(13) "Exit" means termination or discontinuance of enrollment in CIIS.

(14) "Family":

(a) Means a unit of two or more people that includes at least one child who is eligible for CIIS where the primary caregiver is:

(A) Related to the child by blood, marriage, or legal adoption; or

(B) In a domestic relationship where partners share the following:

(i) A permanent residence.

(ii) Joint responsibility for the household in general, such as child-rearing, maintenance of the residence, and basic living expenses.

(iii) Joint responsibility for supporting a child when the child is related to one of the partners by blood, marriage, or legal adoption.

(b) The term "family" is defined as described above for the following purposes:

(A) Determining the eligibility of a child for enrollment into CIIS as a resident in the family home.

(B) Identifying people who may apply, plan, and arrange for individual services.

ADMINISTRATIVE RULES

(C) Determining who may receive family training.

(15) "Family Home" means the primary residence for a child that is not under contract with the Department to provide services as a certified foster home or a licensed or certified residential care facility, assisted living facility, nursing facility, or other residential setting.

(16) "ICF/ID Behavioral Model Waiver" means the 1915(c) Home and Community-Based Services waiver granted by the federal Centers for Medicare and Medicaid Services that allows Medicaid funds to be spent on a child living in the family home who otherwise would have to be served in an intermediate care facility for individuals with intellectual disabilities if the waiver was not available.

(17) "ISP" means "Individual Support Plan".

(18) "Medically Fragile Model Waiver" means the 1915(c) Home and Community-Based Services waiver granted by the federal Centers for Medicare and Medicaid Services that allows Medicaid funds to be spent on a child living in the family home who otherwise would have to be served in a hospital if the waiver was not available.

(19) "Medically Involved Children's Waiver" means the 1915(c) Home and Community-Based Services waiver granted by the federal Centers for Medicare and Medicaid Services that allows Medicaid funds to be spent on a child living in the family home who otherwise would have to be served in a nursing facility if the waiver program was not available.

(20) "Medically Involved Criteria" means the criteria used by the Department to evaluate the intensity of the physical and medical challenges of a child and to determine eligibility for the Medically Involved Children's Program.

(21) "MFC" means "Medically Fragile Children". Medically fragile children have a health impairment requiring intensive, specialized services on a daily basis, who have been found eligible for MFC services by the Department.

(22) "OCCS" means "Office of Client and Community Services".

(23) "OHP" means "Oregon Health Plan".

(24) "OSIPM" means "Oregon Supplemental Income Program-Medical".

(25) "Parent" means the biological parent, adoptive parent, or step-parent of a child. Unless otherwise specified, references to parent also include a person chosen by the parent or guardian to serve as the designated representative of the parent or guardian in connection with the provision of Department-funded supports.

(26) "Primary Caregiver" means the parent, guardian, relative, or other non-paid parental figure of a child that normally provides direct care to the child. In this context, the term parent or guardian may include a designated representative.

(27) "Private Duty Nursing" means the nursing services described in OAR 411-300-0150 that are determined medically necessary to support a child or young adult receiving MFC services in the family home.

(28) "Support" means the assistance that a child and their family requires, solely because of the effects of the qualifying disability of the child, to maintain or increase the age-appropriate independence of the child, achieve age-appropriate community presence and participation of the child, and to maintain the child in the family home. Support is subject to change with time and circumstances.

(29) "These Rules" mean the rules in OAR chapter 411, division 300.

(30) "Young Adult" means an individual aged 18 through 20.

Stat. Auth.: ORS 409.050, 417.345

Stats. Implemented: ORS 417.345, 427.005, 427.007, 430.215

Hist.: SDSL 12-2002, f. 12-26-02, cert. ef. 12-28-02; SPD 19-2003(Temp), f. & cert. ef. 12-11-03 thru 6-7-04; SPD 13-2004, f. & cert. ef. 6-1-04; SPD 11-2009, f. 7-31-09, cert. ef. 8-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 20-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 53-2013, f. 12-27-13, cert. ef. 12-28-13; APD 31-2014(Temp), f. & cert. ef. 8-20-14 thru 2-16-15; APD 4-2015, f. 2-13-15, cert. ef. 2-16-15; APD 40-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16; APD 19-2016, f. 6-28-16, cert. ef. 6-29-16; APD 6-2017, f. 2-21-17, cert. ef. 2-28-17

411-300-0120

Eligibility for CIIS

(1) ASSESSMENT. An assessment of a child for a determination of eligibility for entry into CIIS may be requested by a services coordinator or the legal guardian.

(2) GENERAL ELIGIBILITY. In order to be eligible for CIIS, a child must:

(a) Be under the age of 18 or under the age of 21 for young adults who meet the requirements of section (5) of this rule and are accessing private duty nursing services only.

(b) Be an Oregon resident who meets the citizenship and alien status requirements of OAR 461-120-0110.

(c) Be receiving a Medicaid Title XIX benefit package through OSIPM or the OCCS Medical Program. A child receiving CHIP Title XXI benefits is not eligible to receive supports and services through CIIS.

(d) Contribute to the cost of services pursuant to OAR 461-160-0610 and 461-160-0620, for a child with excess income.

(e) Reside in the family home (except for children or young adults living in foster care who are eligible for private duty nursing services only).

(f) Be safely served in the family home. This includes, but is not limited to, a qualified primary caregiver demonstrating the willingness, skills, and ability to provide direct care as outlined in an ISP in a cost effective manner, as determined by a services coordinator, and participate in planning, monitoring, and evaluation of the services provided.

(3) ELIGIBILITY FOR ICF/ID BEHAVIORAL PROGRAM. In addition to the requirements listed in section (2) of this rule, a child must:

(a) Be determined eligible for developmental disabilities services by the CDDP of the county of origin as described in OAR 411-320-0080.

(b) Meet the ICF/IID Level of Care defined in OAR 411-317-0000.

(c) Be accepted by the Department by scoring 200 or greater on the Behavior Criteria within the two months prior to starting services and maintain a score of 200 or greater as determined annually by a reassessment.

(4) ELIGIBILITY FOR MEDICALLY FRAGILE CHILDREN'S PROGRAM. In addition to the requirements listed in section (2) of this rule, a child must:

(a) Meet the Hospital Level of Care defined in OAR 411-317-0000.

(b) Be accepted by the Department by scoring 45 or greater on the MFC Clinical Criteria prior to starting services, have a status of medical need likely to last for more than two months, and maintain a score of 45 or greater on the MFC Clinical Criteria as assessed every six months.

(5) ELIGIBILITY FOR PRIVATE DUTY NURSING SERVICES THROUGH THE MEDICALLY FRAGILE CHILDREN'S PROGRAM. A child or young adult not enrolled in the Medically Fragile Children's Program, who resides in a foster home or their family home, may be eligible for private duty nursing.

(a) To be eligible for private duty nursing, the child or young adult must:

(A) Meet the requirements listed in section (2) of this rule.

(B) Be accepted by the Department by scoring 45 or greater on the MFC Clinical Criteria prior to starting services, have a status of medical need likely to last for more than two months, and maintain a score of 45 or greater on the MFC Clinical Criteria as assessed every six months.

(b) A child or young adult residing in a foster home is eligible for only the private duty nursing services described in OAR 411-300-0150(c) A young adult residing in a family home is eligible for only the private duty nursing services described in OAR 411-300-0150.

(6) ELIGIBILITY FOR MEDICALLY INVOLVED CHILDREN'S WAIVER. In addition to the requirements listed in section (2) of this rule, a child must:

(a) Meet the Nursing Facility Level of Care defined in OAR 411-317-0000.

(b) Be accepted by the Department by scoring 100 or greater on the Medically Involved Criteria and maintain an eligibility score of 100 or greater as determined annually by a reassessment.

(c) Require services offered under the Medically Involved Children's Waiver.

(7) EXIT. A child may be exited from CIIS in any of the following circumstances:

(a) The child is exited from case management services as described in OAR 411-415-0030.

(b) The child no longer meets the general eligibility criteria in section (2) of this rule.

(c) The child no longer meets the eligibility requirements for any of the following:

(A) The ICF/ID Behavioral Program described in section (3) of this rule,

(B) The Medically Fragile Children's Program described in section (4) of this rule.

(C) The Medically Involved Children's Program described in section (6) of this rule.

(d) A young adult no longer meets criteria for the private duty nursing services described in OAR 411-300-0150.

(e) The Department has sufficient evidence the parent or guardian has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the ISP, refused to cooperate with documenting usage of Department funds, or otherwise knowingly misused public funds associated with CIIS.

ADMINISTRATIVE RULES

(f) The child is incarcerated or admitted to a medical hospital, psychiatric hospital, sub-acute facility, nursing facility, intermediate care facility for individuals with intellectual disabilities, foster home, or other 24-hour residential setting and it is determined the child is not returning to the family home after 90 consecutive days.

(g) At the oral or written request of a parent or guardian to end the service relationship. The services coordinator must document the request to end the service relationship in the file of the child.

(h) The child is not safely served in the family home as described in section (2)(f) of this rule.

(i) The services coordinator is not able to locate the child and their parent or guardian.

(j) The parent or guardian has not responded after 30 days of repeated attempts by a services coordinator to complete ISP development or monitoring activities, including participation in a functional needs assessment.

(k) The child does not reside in Oregon.

(8) TRANSITION DUE TO INELIGIBILITY FOR CIIS.

(a) A child who no longer meets eligibility criteria must be transitioned from CIIS no later than 30 days from the date of the assessment that determined ineligibility for the program.

(b) The CIIS program shall assist families to identify alternative resources.

(c) In the event enrollment in CIIS is ended, a written Notification of Planned Action must be provided as described in OAR chapter 411, division 318.

(9) WAIT LIST. If the maximum number of children allowed on an approved Model Waiver are enrolled and being served in the program, the Department may place a child eligible for CIIS on a wait list. A child on the wait list may access other Medicaid or General Fund services for which the child is determined eligible.

(a) The date the Department has received the initial completed application for CIIS determines the order on the wait list.

(b) A child who was previously enrolled in CIIS and currently meets the criteria for eligibility as described in section (2) of this rule, is put on the wait list as of the date the original application for CIIS was complete.

(c) The date the application for CIIS is complete is the date the Department receives the complete referral.

(d) A child on the wait list is served on a first come, first served basis as space in CIIS allows. A reassessment is completed prior to entry to determine current eligibility. A child must be:

(A) Reassessed for the ICF/ID Behavioral Model Waiver if the current assessment is more than 60 days old.

(B) Reassessed for the Medically Involved Children's Waiver if the current assessment is more than 120 days old.

(C) Newly assessed for the Medically Fragile Model Waiver.

(e) A child on the wait list is prioritized for entry into the Medically Involved Children's Waiver if the child is currently residing in a nursing facility for long-term care and the family of the child wishes the child to return home, or the child resides in the community and is at imminent risk of placement in a nursing facility. An evaluation is completed prior to entry to determine current eligibility.

Stat. Auth.: ORS 409.050, 417.345

Stats. Implemented: ORS 417.345, 427.005, 427.007, 430.215

Hist.: SDSL 12-2002, f. 12-26-02, cert. ef. 12-28-02; SPD 11-2009, f. 7-31-09, cert. ef. 8-1-09; SPD 20-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 53-2013, f. 12-27-13, cert. ef. 12-28-13; APD 31-2014(Temp), f. & cert. ef. 8-20-14 thru 2-16-15; APD 4-2015, f. 2-13-15, cert. ef. 2-16-15; APD 8-2015, f. & cert. ef. 3-12-15; APD 10-2015(Temp), f. 4-2-15, cert. ef. 4-10-15 thru 10-6-15; APD 20-2015, f. 10-5-15, cert. ef. 10-6-15; APD 19-2016, f. 6-28-16, cert. ef. 6-29-16; APD 6-2017, f. 2-21-17, cert. ef. 2-28-17

411-435-0020

Definitions and Acronyms

OAR 411-317-0000 includes general definitions for words and terms frequently used in OAR chapter 411, division 435. In addition to the definitions in OAR 411-317-0000, the following definitions apply specifically to the rules in OAR chapter 411, division 435. If the same word or term is defined differently in OAR 411-317-0000, the definition in this rule applies.

(1) "ADL" means "activities of daily living".

(2) "Ancillary Services" means the array of services described in these rules that may be authorized as stand-alone services, separate from attendant care, relief care, and skills training, and an all-inclusive rate paid to a residential program or a foster care provider.

(3) "Assistive Devices" means the ancillary service that makes available devices, aids, controls, supplies, or appliances necessary to enable an individual to increase the ability of the individual to perform ADLs and

IADLs or to communicate in the home and community. Assistive devices are available through the Community First Choice state plan.

(4) "Assistive Technology" means the ancillary service that makes available devices, aids, controls, supplies, or appliances purchased to provide support for an individual and replace the need for direct interventions or to increase independence. Assistive technology is available through the Community First Choice state plan.

(5) "CDDP" means "Community Developmental Disabilities Program".

(6) "Chore Services" means the ancillary service that is needed to restore a hazardous or unsanitary situation in the home of an individual to a sanitary, safe environment. Chore services are available through the Community First Choice state plan.

(7) "CIIS" means "Children's Intensive In-home Services".

(8) "Community Nursing Services" means the ancillary service that provides for the nursing services that focus on the chronic and ongoing health and safety needs of an individual. 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. Community nursing services are available through the Community First Choice state plan.

(9) "Community Transportation" means the ancillary service that enables an individual to gain access to community-based state plan and waiver services, activities, and resources, not medical in nature. Community transportation is provided in the area surrounding the home of the individual commonly used by people in the same area to obtain ordinary goods and services. Community transportation is available through the Community First Choice state plan.

(10) "Environmental Modifications" means the ancillary service that provides for physical adaptations necessary to ensure the health, welfare, and safety of an individual in his or her own home, or necessary to enable an individual to function with greater independence around the home or lead to a substitution for, or decrease in, direct human assistance to the extent expenditures may otherwise be made for human assistance. Environmental modifications are available through the Community First Choice state plan.

(11) "Environmental Safety Modifications" means the ancillary service that provides for physical adaptations to the exterior of the home of an individual or the home of the family of an individual, as identified in the ISP for the individual, to ensure the health, welfare, and safety of the individual, or necessary to enable the individual to function with greater independence around the home or lead to a substitution for, or decrease in, direct human assistance to the extent expenditures may otherwise be made for human assistance. Environmental safety modifications are available through a 1915(c) waiver.

(12) "Family Training" means the ancillary service that provides for the training services available to the family of an individual to increase the capacity of the family to care for, support, and maintain the individual in the home of the individual. Family training is available through a 1915(c) waiver.

(13) "IADL" means "instrumental activities of daily living".

(14) "Individual-Directed Goods and Services" means the ancillary service that provides for services, equipment, or supplies, not otherwise provided through other waiver or state plan services, that address an identified need in an ISP. Individual-directed goods and services may include services, equipment, or supplies that maintain a child in the community. Individual-directed goods and services are available through a 1915(c) waiver.

(15) "ISP" means "Individual Support Plan".

(16) "OCCS" means the "Office of Client and Community Services".

(17) "OHP" means "Oregon Health Plan".

(18) "OIS" means "Oregon Intervention System".

(19) "OSIPM" means "Oregon Supplemental Income Program-Medical".

(20) "Scope of Work" means the written statement of all proposed work requirements for an environmental modification including, but not limited to, dimensions, measurements, materials, labor, any pertinent building permits, and outcomes necessary for a contractor to submit a proposal to complete such work. The scope of work is specific to the identified tasks and requirements necessary to address the needs outlined in the supplemental assessment referenced in the ISP and relating to the ADL, IADL, and health-related tasks of the individual as discussed by the individual, designated representative, legal representative, homeowner, case manager, and ISP team.

ADMINISTRATIVE RULES

(21) "Special Diets" means the ancillary service that provides for the specially prepared food or particular types of food specific to the medical condition or diagnosis of an individual and in support of an evidence-based treatment regimen. Special diets are available through a 1915(c) waiver.

(22) "Specialized Medical Supplies" means the ancillary service, available through a 1915(c) waiver, that provides for medical and ancillary supplies such as:

(a) Necessary medical supplies specified in an ISP that are not available through state plan or alternative resources.

(b) Ancillary supplies necessary to the proper functioning of items necessary for life support or to address physical conditions.

(c) Supplies necessary for the continued operation of augmentative communication devices or systems.

(23) "These Rules" mean the rules in OAR chapter 411, division 435.

(24) "Transition Costs" means the ancillary service that provides for expenses such as rent and utility deposits, first month's rent and utilities, bedding, basic kitchen supplies, and other necessities required for an individual to make the transition from residing in a nursing facility or intermediate care facility for individuals with intellectual disabilities to residing in a community-based home. Transition costs are available through the Community First Choice state plan.

(25) "Vehicle Modifications" means the ancillary service that provides for the adaptations or alterations made to a vehicle that is the primary means of transportation for an individual in order to accommodate the service needs of the individual. Vehicle modifications are available through a 1915(c) waiver.

Stat. Auth.: ORS 409.050, 427.104, 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-430.670

Hist.: APD 20-2016, f. & cert. ef. 6-29-16; APD 36-2016(Temp), f. 8-31-16, cert. ef. 9-1-16 thru 2-27-17; APD 6-2017, f. 2-21-17, cert. ef. 2-28-17

411-435-0050

Developmental Disabilities — Community First Choice Ancillary Services

(1) The following ancillary services are available through the Community First Choice state plan:

(a) Community nursing services as described in section (2) of this rule.

(b) Environmental modifications as described in section (3) of this rule.

(c) Assistive devices as described in section (4) of this rule.

(d) Assistive technology as described in section (5) of this rule.

(e) Chore services as described in section (6) of this rule.

(f) Community transportation as described in section (7) of this rule.

(g) Transition costs as described in section (8) of this rule.

(h) Behavior support services as described in section (9) of this rule.

(2) COMMUNITY NURSING SERVICES.

(a) In addition to the general eligibility criteria listed in OAR 411-435-0030, to access community nursing services, an individual may not be enrolled in a 24-hour residential program under OAR chapter 411, division 325. An individual enrolled in a supported living program under OAR chapter 411, division 328 is eligible to access community nursing services when the cost of the service is not included in the rate paid to the provider.

(b) Community nursing services include the following:

(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 provider and primary caregiver.

(F) Teaching and education of the provider and primary caregiver and identifying supports that minimize health risks while promoting the autonomy of an individual and self-management of healthcare.

(G) Collateral contact with a case manager regarding the community health status of an individual to assist in monitoring safety and well-being and to address needed changes to the ISP for the individual.

(c) Community nursing services exclude the direct nursing services described in OAR chapter 411, division 380 and the private duty nursing services described in OAR chapter 411, division 300.

(d) A Nursing Service Plan must exist if Department funds are used for community nursing services. A case manager must authorize the provision of community nursing services as identified in an ISP.

(e) After an initial nursing assessment, a nursing reassessment must be completed every six months or sooner if a change in a medical condition requires an update to the Nursing Service Plan.

(3) ENVIRONMENTAL MODIFICATIONS.

(a) In addition to the general eligibility criteria stated in OAR 411-435-0030, an individual may access this service if:

(A) Environmental modification may be reasonably expected to reduce the need for human assistance or increase the independence of the individual with meeting an identified support need related to the completion of an ADL, IADL, or health-related task.

(B) The individual is not enrolled in a residential program, unless the enrollment is in a supported living program described in OAR chapter 411, division 328 and the dwelling is not a provider owned, controlled, or operated setting.

(b) Environmental modifications include, but are not limited to, the following:

(A) Installation of shatter-proof windows.

(B) Hardening of walls or doors.

(C) Specialized, hardened, waterproof, or padded flooring.

(D) An alarm system for doors or windows.

(E) Protective covering for smoke alarms, light fixtures, and appliances.

(F) Installation of ramps, grab-bars, and electric door openers.

(G) Adaptation of kitchen cabinets and sinks.

(H) Widening of doorways.

(I) Handrails.

(J) Modification of bathroom facilities.

(K) Individual room air conditioners for an individual whose temperature sensitivity issues create behaviors or medical conditions that put the individual or others at risk.

(L) Installation of non-skid surfaces.

(M) Overhead track systems to assist with lifting or transferring.

(N) Specialized electric and plumbing systems necessary to accommodate the medical equipment and supplies necessary for the welfare of the individual.

(O) Adaptations to control the home environment, including lights and heat.

(c) Environmental modifications exclude the following:

(A) Adaptations or improvements to the home that are of general utility, such as carpeting, roof repair, and central air conditioning, unless directly related to the assessed health and safety needs of the individual and identified in the ISP for the individual as the most cost effective solution.

(B) Adaptations that add to the total square footage of the home, except for ramps that attach to the home for the purpose of entry or exit.

(C) Adaptations outside of the home, except for ramps that attach to the home for the purpose of entry or exit.

(D) General repair or maintenance and upkeep required for the home.

(d) Environmental modifications must be tied to supporting assessed ADL, IADL, and health-related tasks, as identified in the needs assessment and ISP for an individual.

(e) Environmental modifications are limited to \$5,000 per modification. A case manager must request approval for additional expenditures through the Department prior to authorization of the service in an ISP. Approval is based on the service and support needs and goals of the individual and the determination by the Department of appropriateness and cost-effectiveness. Separate environmental modification projects that cumulatively total up to over \$5,000 in a plan year must be submitted to the Department for review.

(f) Any modification requiring a permit must be inspected by a local inspector, and certified as in compliance with local codes. Certification of compliance must be filed in the file for the contractor prior to payment.

(g) Environmental modifications must be made within the existing square footage of the home, except for external ramps, and may not add to the square footage of the home.

(h) Payment to the contractor is to be withheld until the work meets specifications.

(i) A scope of work must be completed for each identified environmental modification project. All contractors submitting bids must be given the same scope of work.

(j) For all environmental modifications, a case management entity must assure the acquisition of at least three written bids from providers meeting the qualifications in OAR 411-435-0080. When it is not possible to reasonably obtain three written bids, exceptions to this requirement may be granted by the Department.

(k) A case manager must assure the processes outlined in the In-home Expenditure Guidelines are followed for contractor bids and the awarding of work.

(l) All dwellings must be in good repair and have the appearance of sound structure.

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(m) The identified home may not be in foreclosure or be the subject of legal proceedings regarding ownership.

(n) Environmental modifications must only be completed to the primary residence of the individual.

(o) Upgrades in materials not directly related to the health and safety needs of the individual are not paid for or permitted.

(p) Environmental modifications are subject to Department requirements regarding material and construction practices based on industry standards for safety, liability, and durability, as referenced in building codes, materials, manuals, and industry and risk management publications.

(q) RENTAL PROPERTY.

(A) Environmental modifications to rental property may not substitute or duplicate services otherwise the responsibility of the landlord under the landlord tenant laws, the Americans with Disabilities Act, or the Fair Housing Act.

(B) Environmental modifications made to a rental structure must have written authorization from the owner of the rental property prior to the start of the work.

(C) The Department does not fund work to restore the rental structure to the former condition of the rental structure.

(4) ASSISTIVE DEVICES. Assistive devices are primarily and customarily used to meet an ADL, IADL, or health-related support need. The purchase, rental, or repair of an assistive device with Department funds must be limited to the types of equipment and accessories not excluded under OAR 410-122-0080. An individual who meets the general eligibility criteria in OAR 411-435-0030 may access this service when assistive devices may be reasonably expected to reduce the need for human assistance, or increase the independence of an individual with meeting an identified support need related to the completion of an ADL, IADL, or health-related task.

(a) Assistive devices may include the purchase of devices, aids, controls, supplies, or appliances primarily and customarily used to enable an individual to increase the ability of the individual to perform and support ADLs and IADLs or to communicate in the home and community.

(b) Assistive devices may be purchased with Department funds when the intellectual or developmental disability of an individual otherwise prevents or limits the independence of the individual in areas identified in a functional needs assessment.

(c) Assistive devices that may be purchased for the purpose described in subsection (b) of this section must be of direct benefit to the individual.

(d) Expenditures for assistive devices are limited to \$5,000 per plan year without Department approval. Any single purchase costing more than \$500 or any combination of items that meet a single assessed need totaling more than \$500, must be approved by the Department prior to expenditure. A case manager must request approval for additional expenditures through the Department prior to expenditure. Approval is based on the service and support needs and goals of the individual and a determination by the Department of appropriateness and cost-effectiveness.

(e) Devices must be limited to the least costly option necessary to meet the assessed need of an individual.

(f) Assistive devices must meet applicable standards of manufacture, design, and installation.

(g) Assistive devices exclude the following:

(A) Items that do not address the underlying need for the device.

(B) Items intended to supplant similar items furnished under OHP, private insurance, or alternative resources.

(C) Items that are unsafe for an individual.

(D) Toys or outdoor play equipment.

(E) Equipment and furnishings of general household use.

(5) ASSISTIVE TECHNOLOGY Assistive technology is primarily and customarily used to provide additional safety and support and replace the need for direct interventions, to enable self-direction of care, or increase independence. An individual who meets the general eligibility criteria in OAR 411-435-0030 may access this service when assistive technology may be reasonably expected to reduce the need for human assistance, or increase the independence of an individual with meeting an identified support need related to the completion of an ADL, IADL, or health-related task.

(a) Expenditures for assistive technology are limited to \$5,000 per plan year without Department approval. Any single purchase costing more than \$500, or any combination of items that meet a single assessed need totaling more than \$500, must be approved by the Department prior to expenditure. A case manager must request approval for additional expenditures through the Department prior to expenditure. Approval is based on the service and support needs and goals of the individual and a determination by the Department of appropriateness and cost-effectiveness.

(b) Payment for ongoing electronic back-up systems or assistive technology costs must be paid to providers each month after services are received.

(A) Ongoing costs do not include electricity or batteries.

(B) Ongoing costs may include minimally necessary data plans and the services of a company to monitor emergency response systems.

(c) Assistive technology includes, but is not limited to the following:

(A) Motion or sound sensors.

(B) Two-way communication systems.

(C) Automatic faucets and soap dispensers.

(D) Incontinence and fall sensors.

(E) Devices to secure assistance in an emergency in the community.

(F) Medication minders.

(G) Alert systems for ADL or IADL supports.

(H) Mobile electronic devices or other electronic backup systems, including the expense necessary for the continued operation of the assistive technology.

(6) CHORE SERVICES.

(a) To be eligible to access chore services an individual must:

(A) Meet the general eligibility criteria in OAR 411-435-0030; and

(B) Not be enrolled in a residential program, unless the enrollment is in a supported living program described in OAR chapter 411, division 328 and the dwelling is not a provider owned, controlled, or operated setting.

(b) Chore services include heavy household chores, such as the following:

(A) Washing floors, windows, and walls.

(B) Tacking down loose rugs and tiles.

(C) Moving heavy items of furniture for safe access and egress.

(c) Chore services may include yard hazard abatement to ensure the outside of a home is safe for an individual to traverse and enter and exit the home.

(d) Chore services may be provided only in situations where no one else is responsible to perform or pay for the services.

(7) COMMUNITY TRANSPORTATION.

(a) Community transportation may only be authorized on an ISP when:

(A) An individual meets the general eligibility criteria in OAR 411-435-0030.

(B) Voluntary natural supports or volunteer services are not available.

(C) The individual is not enrolled in a residential program.

(D) It is not the responsibility of the parent of a child.

(E) One of the following is identified in the ISP of the individual:

(i) The individual has an assessed need for an ADL, IADL, or health-related task during transportation.

(ii) The individual has either an assessed need for an ADL, IADL, or health-related task at the destination or a need for waiver-funded services at the destination.

(b) Community transportation includes, but is not limited to the following:

(A) Community transportation provided by a common carrier, taxicab, or bus in accordance with standards established for these entities.

(B) Reimbursement on a per-mile basis for transporting an individual to accomplish an ADL, IADL, health-related task, or employment goal identified in an ISP.

(C) The purchase of a bus pass.

(c) Community transportation must be provided in the most cost effective manner to meet the needs identified in the ISP for an individual.

(d) Community transportation expenses exceeding \$500 per month must be approved by the Department.

(e) Community transportation must be prior authorized by a case manager and documented in an ISP. The Department does not pay any provider under any circumstances for more than the total number of hours, miles, or rides prior authorized by the case manager and documented in the ISP. Personal support workers who use their own personal vehicle for community transportation are reimbursed as described in OAR chapter 411, division 375.

(f) Mileage reimbursement for community transportation is only authorized when a provider is also being paid for delivering community living supports or job coaching. Mileage may not be authorized as a stand-alone payment.

(g) Community transportation services exclude the following:

(A) Medical transportation.

(B) Purchase or lease of a vehicle.

(C) Routine vehicle maintenance and repair, insurance, and fuel.

(D) Ambulance services.

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- (E) Costs for transporting a person other than the individual.
- (F) Transportation for a provider to travel to and from the workplace of the provider.
- (G) Transportation not for the sole benefit of the individual.
- (H) Transportation as part of a vacation or trips for relaxation purposes.
- (I) Transportation provided by family members who are not personal support workers.
- (J) Reimbursement for out-of-state travel expenses.
- (K) Mileage reimbursement to the individual or a personal support worker when the individual owns the vehicle doing the transportation.
- (L) Transportation normally provided by schools.
- (M) Transportation normally provided by a primary caregiver for a child of similar age without disabilities.
- (N) Transportation for a child typically the responsibility of a parent. Transportation for a child not typically a parental responsibility is limited to transportation:

(i) Concurrent with the delivery of relief care as described in OAR 411-450-0060; or

(ii) Included in a Behavior Support Plan.

(8) TRANSITION COSTS.

(a) To be eligible to access transition costs, an individual must meet the general eligibility criteria in OAR 411-435-0030 and not be enrolled in a residential program.

(b) Transition costs are limited to an individual transitioning from residing in a nursing facility or intermediate care facility for individuals with intellectual disabilities to residing in a community-based home when the cost for the transition is not included in the rate paid to the provider.

(c) Transition costs are based on the assessed need of an individual determined during the person-centered planning process and must support the desires and goals of the individual receiving services and supports.

(d) Final approval for transition costs must be through the Department prior to expenditure. The approval of the Department is based on the need of an individual and the determination by the Department of appropriateness and cost-effectiveness.

(e) Financial assistance for transition costs is limited to the following:

(A) Moving and move-in costs, including movers, cleaning and security deposits, payment for background or credit checks (related to housing), or initial deposits for heating, lighting, and phone.

(B) Payment of previous utility bills that may prevent the individual from receiving utility services.

(C) Basic household furnishings, such as a bed.

(D) Other items necessary to re-establish a home.

(f) Transition costs are provided no more than twice annually.

(g) Transitions costs for basic household furnishings and other items are limited to one time per year.

(h) Transition costs may not supplant the legal responsibility of the parent or guardian of a child. In this context, the term parent or guardian does not include a designated representative.

(9) BEHAVIOR SUPPORT SERVICES. Behavior support services are provided to assist individuals with behavioral challenges due to their disability that prevent them from accomplishing ADL, IADL, and health-related tasks. Behavior support services include, behavior modification and intervention supports to allow individuals to develop, maintain, or enhance skills to accomplish ADL, IADL, and health-related tasks. The need for behavior support services is determined through a functional needs assessment and the goals of an individual as identified in the person-centered planning process. Positive behavioral support services may also include consultation to a caregiver on how to mitigate behavior that may place the health and safety of an individual at risk and prevent institutionalization. Behavior support services may be implemented in the home or community, based on the assessed needs of an individual. All behavior support services must be for the direct benefit of an individual.

(a) Individuals enrolled in 24-hour residential programs receive behavior support services through the residential program. An individual enrolled in a supported living program under OAR chapter 411, division 328 is eligible to access behavior support services when the cost of the service is not included in the rate paid to the provider.

(b) A qualified behavior consultant must:

(A) Work with the individual and, if applicable, caregivers to complete the following:

(i) Address the needs of the individual to acquire, maintain, and enhance skills necessary for the individual to accomplish ADL, IADL, and health-related tasks.

(ii) Identify the issues that are of most concern.

(iii) Evaluate the formal or informal responses caregivers have used to address those issues.

(iv) Identify the unique characteristics of the individual and the individual circumstances that may influence the responses that may work with the individual.

(B) Assess the individual. The assessment must include the following:

(i) Specific identification of the behaviors or areas of concern.

(ii) Identification of the settings or events likely to be associated with, or to trigger, the behavior.

(iii) Identification of early warning signs of the behavior.

(iv) Identification of the probable reasons causing the behavior and the needs of the individual met by the behavior, including the possibility that the behavior is:

(I) An effort to communicate;

(II) The result of a medical condition;

(III) The result of an environmental cause; or

(IV) The symptom of an emotional or psychiatric disorder.

(v) Evaluation and identification of the impact of the disability impacting the development of strategies and affecting the individual and the area of concern.

(vi) An assessment of current communication strategies.

(C) Develop a variety of positive strategies to assist the individual to use acceptable, alternative actions and develop or enhance skills to accomplish ADL, IADL, and health-related tasks. These strategies may include changes in the physical and social environment, developing effective communication, and appropriate responses and assistance by the caregiver.

(i) When interventions in behavior are necessary, the interventions must be performed in accordance with positive behavioral theory and practice as defined in OAR 411-317-0000.

(ii) The least intrusive intervention possible to keep the individual and others safe must be used.

(iii) Abusive or demeaning interventions must never be used.

(iv) The strategies must be adapted to the specific disability of the individual and, when applicable, to the style or culture of the family.

(D) Develop a written Behavior Support Plan using clear, concrete language understandable to the individual and their caregiver describing the assessment, strategies, and procedures to be used.

(E) Develop emergency and crisis procedures to be used to keep the individual and their caregiver safe. When interventions in the behavior of the individual are necessary, positive, preventative, non-aversive interventions that conform to OIS must be utilized. The use of protective physical intervention must be part of a Behavior Support Plan. When protective physical intervention is required, the protective physical intervention must only be used as a last resort and the provider must be appropriately trained in OIS.

(F) Teach caregivers the strategies and procedures to be used.

(G) Monitor and revise the Behavior Support Plan as needed.

(c) Behavior support services may include the following:

(A) Training a primary caregiver on the behavior modifications and interventions identified in the BSP.

(B) Developing a visual communication system as a strategy for behavior support.

(C) Communicating with other professionals about the strategies and outcomes written in the Behavior Support Plan but only within authorized consultation hours.

(d) Behavior support services exclude the following:

(A) Rehabilitation or treatment of mental health conditions including, but not limited to, therapy or counseling.

(B) Health or mental health plan coverage.

(C) Educational services including, but not limited to, consultation and training for classroom staff.

(D) Adaptations to meet the needs of an individual at school.

(E) An assessment in a school setting.

(F) Attendant care.

(G) Relief care.

(H) Communication or activities not directly related to the development, implementation, or revision of the Behavior Support Plan.

(e) BEHAVIOR CONSULTANTS. Behavior consultants must meet the qualifications described in this section of this rule. Behavior consultants are not personal support workers. Behavior consultants may include, but are not limited to, autism specialists, licensed psychologists, or other behavioral specialists.

(A) Behavior consultants providing specialized supports must:

(i) Have education, skills, and abilities necessary to provide behavior support services as described in this rule.

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(ii) Have current certification demonstrating completion of OIS training.

(iii) Submit a resume or the equivalent to the Department indicating at least one of the following:

(I) A bachelor's degree in special education, psychology, speech and communication, occupational therapy, recreation, art or music therapy, or a behavioral science or related field, and at least one year of experience with individuals who present difficult or dangerous behaviors.

(II) Three years of experience with individuals who present difficult or dangerous behaviors and at least one year of that experience includes providing the services of a behavior consultant described in this rule.

(B) Additional education or experience may be required to safely and adequately provide the services described in this section.

(C) A behavior consultant may not have a conflict of interest associated with the delivery of behavior support services unless the conflict is waived by the Department prior to delivering the service. A conflict of interest exists when the provider may benefit from the delivery of the service or is:

(i) Related by blood or marriage to the individual, or to any paid caregiver of the individual;

(ii) Financially responsible for the individual; or

(iii) Empowered to make financial or health-related decisions on behalf of the individual.

(D) A behavior consultant who meets the definition of an independent provider must meet the qualifications in OAR 411-375-0020 and listed in subsections (A) to (C) of this section.

(E) An agency certified by the Department according to OAR chapter 411, division 323 may provide behavior support services to an individual not enrolled to a residential program of the agency when the agency employee meets the qualifications listed in subsections (A) to (C) of this section.

Stat. Auth.: ORS 409.050, 427.104, 430.662

Stats. Implemented: ORS ORS 427.005, 427.007, 430.610, 430.620, 430.662-430.670

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411-435-0060

Developmental Disabilities — Waiver Ancillary Services

(1) The following ancillary services are available through the ICF/IDD Comprehensive Waiver, ICF/IDD Support Services Waiver, Medically Involved Children's Waiver, Medically Fragile (Hospital) Model Waiver, and ICF/ID Behavioral Model Waiver:

(a) Family training as described in section (2) of this rule.

(b) Environmental safety modifications as described in section (3) of this rule.

(c) Vehicle modifications as described in section (4) of this rule.

(d) Specialized medical supplies as described in section (5) of this rule.

(2) FAMILY TRAINING.

(a) To be eligible to access family training, an individual must meet the general eligibility criteria in OAR 411-435-0030 and not be enrolled in a residential program.

(b) Family training services include the following:

(A) Instruction about treatment regimens and use of equipment specified in an ISP.

(B) Information, education, and training about the disability, medical, and behavioral conditions of an individual.

(C) Registration fees for organized conferences and workshops specifically related to the intellectual or developmental disability of the individual or the identified, specialized, medical, or behavioral support needs of the individual.

(i) Conferences and workshops must be prior authorized by a case manager, directly relate to the intellectual or developmental disability of the individual, and increase the knowledge and skills of the family to care for and maintain the individual in the home of the individual.

(ii) Conference and workshop costs exclude the following:

(I) Travel, food, and lodging expenses.

(II) Services otherwise provided under OHP or available through other resources.

(III) Costs for individual family members who are employed to care for the individual.

(c) Family training services exclude the following:

(A) Mental health counseling, treatment, or therapy.

(B) Training for a paid provider, including a paid family member.

(C) Legal fees.

(D) Training for a family to carry out educational activities in lieu of school.

(E) Vocational training for family members.

(F) Paying for training to carry out activities or interventions the Department deems to constitute abuse of an individual.

(d) Prior authorization by the case manager is required for attendance by family members at organized conferences and workshops funded with Department funds.

(3) ENVIRONMENTAL SAFETY MODIFICATIONS.

(a) To be eligible to access environmental safety modifications, an individual must meet the general eligibility criteria in OAR 411-435-0030 and not enrolled in a residential program, unless the enrollment is in a supported living program described in OAR chapter 411, division 328 and the dwelling is not a provider owned, controlled, or operated setting.

(b) Environmental safety modifications must be made using materials of the most cost effective type and may not include decorative additions.

(c) Fencing may not exceed 200 linear feet without approval from the Department.

(d) Environmental safety modifications exclude the following:

(A) Large gates, such as automobile gates.

(B) Costs for paint and stain.

(C) Adaptations or improvements to the home that are of general utility and not for the direct safety or long-term benefit to the individual or do not address the underlying environmental need for the modification.

(D) Adaptations adding to the total square footage of the home.

(E) Adaptations prohibited by local codes and ordinances or neighborhood Covenants, Conditions, and Restrictions (CCR).

(e) Environmental safety modifications must be tied to supporting ADL, IADL, and health-related tasks as identified in the ISP.

(f) Environmental safety modifications are limited to \$5,000 per modification. A case manager must request approval for additional expenditures through the Department prior to expenditure. Approval is based on the service and support needs and goals of the individual and the determination by the Department of appropriateness and cost-effectiveness. Separate environmental safety modification projects that cumulatively total up to over \$5,000 in a plan year must be submitted to the Department for review.

(g) Environmental safety modifications must be completed by a state licensed contractor with a minimum of \$1,000,000 liability insurance. Any modification requiring a permit must be inspected by a local inspector and certified as in compliance with local codes. Certification of compliance must be filed in the file for the contractor prior to payment.

(h) Environmental safety modifications must be made within the existing square footage of the home and may not add to the square footage of the home.

(i) Payment to the contractor is to be withheld until the work meets specifications.

(j) A scope of work as defined in OAR 411-435-0020 must be completed for each identified environmental safety modification project. All contractors submitting bids must be given the same scope of work.

(k) For all environmental safety modifications, a minimum of three written bids are required from providers meeting the qualifications in OAR 411-435-0080.

(l) A case manager must follow the processes outlined in the In-home Expenditure Guidelines for contractor bids and the awarding of work.

(m) The identified home may not be in foreclosure or the subject of legal proceedings regarding ownership.

(n) Environmental safety modifications must only be completed to the primary residence of the individual.

(o) Upgrades in materials not directly related to the health and safety needs of the individual are not paid for or permitted.

(p) Environmental safety modifications are subject to Department requirements regarding material and construction practices based on industry standards for safety, liability, and durability, as referenced in building codes, materials manuals, and industry and risk management publications.

(q) RENTAL PROPERTY.

(A) Environmental safety modifications to rental property may not substitute or duplicate services otherwise the responsibility of the landlord under the landlord tenant laws, the Americans with Disabilities Act, or the Fair Housing Act.

(B) Environmental safety modifications made to a rental structure must have written authorization from the owner of the rental property prior to the start of the work.

(C) The Department does not fund work to restore the rental structure to the former condition of the rental structure.

(4) VEHICLE MODIFICATIONS.

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(a) To be eligible to access vehicle modifications, an individual must meet the general eligibility criteria in OAR 411-435-0030 and not be enrolled in a residential program.

(b) Vehicle modifications may only be made to the vehicle primarily used by an individual to meet the unique needs of the individual. Vehicle modifications may include a lift, interior alterations to seats, head and leg rests, belts, special safety harnesses, other unique modifications to keep the individual safe in the vehicle, and the upkeep and maintenance of a modification made to the vehicle.

(c) Vehicle modifications exclude the following:

(A) Adaptations or improvements to a vehicle that are of general utility and not of direct medical benefit to the individual or do not address the underlying need for the modification.

(B) The purchase or lease of a vehicle.

(C) Routine vehicle maintenance and repair.

(d) Vehicle modifications are limited to \$5,000 per modification. A case manager must request approval for additional expenditures through the Department prior to expenditure. Approval is based on the service and support needs and goals of the individual and the determination by the Department of appropriateness and cost-effectiveness. Separate vehicle modification projects that cumulatively total up to over \$5,000 in a plan year must be submitted to the Department for review.

(e) Vehicle modifications must meet applicable standards of manufacture, design, and installation.

(5) SPECIALIZED MEDICAL SUPPLIES. Specialized medical supplies do not cover services which are otherwise available to an individual under Vocational Rehabilitation and Other Rehabilitation Services, 29 U.S.C. 701-7961, as amended, or the Individuals with Disabilities Education Act, 20 U.S.C. 1400 as amended. Specialized medical supplies may not overlap with, supplant, or duplicate other services provided through a waiver, OHP, or Medicaid state plan services. To be eligible to access specialized medical supplies an individual must meet the general eligibility criteria in OAR 411-435-0030.

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411-435-0070

Developmental Disabilities — Other Waiver Ancillary Services

(1) SPECIAL DIETS. Special diets are specially prepared food or particular types of food, ordered by a physician and periodically monitored by a dietician, specific to the medical condition or diagnosis of an individual, and needed to sustain the individual in their home. Special diets are an ancillary service available through the ICF/IDD Support Services Waiver, Medically Involved Children's Waiver, Medically Fragile (Hospital) Model Waiver, and ICF/ID Behavioral Model Waiver.

(a) Special diets are available to only individuals who meet the general eligibility criteria in OAR 411-435-0030 and are enrolled in a Brokerage or CIIS.

(b) A special diet is a supplement and is not intended to meet complete, daily nutritional requirements.

(c) A special diet must be ordered at least annually by a physician licensed by the Oregon Board of Medical Examiners and periodically monitored by a dietician or physician.

(d) The maximum monthly purchase for special diet supplies for a child in a CIIS program may not exceed \$100 per month.

(e) Special diet supplies must be in support of an evidence-based treatment regimen.

(f) A special diet excludes restaurant and prepared foods, vitamins, and supplements.

(2) INDIVIDUAL-DIRECTED GOODS AND SERVICES. This ancillary service is available through the Medically Involved Children's Waiver, Medically Fragile (Hospital) Model Waiver, and ICF/ID Behavioral Model Waiver.

(a) Only a child who meets the general eligibility criteria in OAR 411-435-0030 and enrolled in CIIS may access individual-directed goods and services.

(b) Individual-directed goods and services provide equipment and supplies not otherwise available through another source, such as waiver services or state plan services.

(c) Authorization of individual directed goods and services must be based on an assessed need.

(d) Individual-directed goods and services must directly address the disability related need of a child identified in their ISP.

(e) Individual-directed goods and services must:

(A) Decrease the need for other Medicaid services;

(B) Promote inclusion of a child in the community; or

(C) Increase the safety of a child in the family home.

(f) Individual-directed goods and services may not be:

(A) Otherwise available through another source, such as waiver services or state plan services;

(B) Experimental or prohibited treatment; or

(C) Goods or services that are normally purchased by a family for a typically developing child of the same age.

(g) Individual-directed goods and services purchased must be the most cost effective option available to meet the needs of the child.

Stat. Auth.: ORS 409.050, 427.104, 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-430.670

Hist.: APD 20-2016, f. & cert. ef. 6-29-16; APD 36-2016(Temp), f. 8-31-16, cert. ef. 9-1-16 thru 2-27-17; APD 6-2017, f. 2-21-17, cert. ef. 2-28-17

Rule Caption: Oregon Deaf and Hard of Hearing Services Advisory Committee

Adm. Order No.: APD 7-2017

Filed with Sec. of State: 2-21-2017

Certified to be Effective: 3-1-17

Notice Publication Date: 1-1-2017

Rules Adopted: 411-019-0000, 411-019-0010, 411-019-0020, 411-019-0030

Subject: The Department of Human Services (Department) is permanently adopting rules for the Oregon Deaf and Hard of Hearing Services Advisory Committee in OAR chapter 411, division 019 to establish in rule, the structure of the Oregon Deaf and Hard of Hearing Services, (ODHHS) advisory committee. The new rules include a new membership configuration that will embody all affiliations within the Deaf and Hard of Hearing population and the purpose and responsibilities of the advisory committee. This change will empower, improve, and strengthen the voices of Deaf and Hard of Hearing people within the State of Oregon.

Rules Coordinator: Kimberly Colkitt-Hallman—(503) 945-6398

411-019-0000

Purpose and Responsibilities

(1) The purpose of these rules is to establish responsibilities and membership for the Oregon Deaf and Hard of Hearing Services (ODHHS) advisory committee. The goal of ODHHS is to serve members of the public and state agencies by ensuring agency programs are available and accessible to individuals who are Deaf or Hard of Hearing.

(2) The advisory committee's responsibilities shall include the following:

(a) Identifying the needs and concerns of individuals who are Deaf or Hard of Hearing.

(b) Making recommendations to the Department of Human Services (DHS) related to the full achievement of economic, social, legal, and political equity for the Deaf and Hard of Hearing community.

(c) Advising the Department of Human Services, Governor, Legislative Assembly, and other state agencies on how state services for individuals who are Deaf or Hard of Hearing might be improved or better coordinated to meet the needs of these individuals.

(d) Providing information to individuals who are Deaf or Hard of Hearing about where they may obtain assistance in rehabilitation and employment and about laws prohibiting discrimination in employment as a result of disability.

(e) Cooperating with interest groups in rehabilitation and employment for individuals who are Deaf or Hard of Hearing, and encourage public and private employers to undertake affirmative action to ensure equitable employment of individuals who are Deaf or Hard of Hearing.

(f) Promoting information and education to employers and the general public to increase awareness of and sensitivity to the needs of individuals who are Deaf or Hard of Hearing and to increase opportunities for equitable education and training that shall ensure these individuals have the opportunity to reach their full vocational potential.

Stat. Auth.: ORS 410.070, 410.740

Stats. Implemented: ORS 410.740

Hist.: APD 7-2017, f. 2-21-17, cert. ef. 3-1-17

411-019-0010

Definitions

Unless the context indicates otherwise, the following definitions apply to the rules in OAR chapter 411, division 019:

ADMINISTRATIVE RULES

(1) “Deaf” is a term that describes individuals who usually have no useful residual hearing and who generally use sign language as their primary mode of communication. This group of individuals is culturally Deaf and uses the uppercase “D” when using this term.

(2) “deaf” is a term that describes individuals who are audiotically deaf. Individuals who are deaf generally use their residual hearing with speech reading, amplification, hearing aids, cochlear implants, and other hearing assistive technology, and usually speak as a primary mode of communication. This group of individuals uses the lowercase “d” when using this term.

(3) “Deaf-blind” denotes people with a variety of causes and degrees of combined vision and hearing losses that imposes barriers to communication, education, work, and social interaction. This term does not necessarily mean total lack of hearing and vision. Deaf-blind individuals can use a variety of adaptive technology and may also use visual or tactile sign language.

(4) “Department” means the Department of Human Services.

(5) “Hard of Hearing” describes individuals with partial hearing loss. Individuals may also use the term Hard of Hearing to describe themselves if they have a severe or profound audiological level of hearing loss.

(6) “Late Deafened” describes people who acquired a severe to profound hearing loss as adults, generally well after the development of speech and language. Individuals who are late deafened generally will benefit from the use of visual display technology and cochlear implants and may also benefit from hearing aids and other hearing technology.

(7) “These Rules” mean the rules in OAR chapter 411, division 019.

Stat. Auth.: ORS 410.070, 410.740

Stats. Implemented: ORS 410.740

Hist.: APD 7-2017, f. 2-21-17, cert. ef. 3-1-17

411-019-0020

Composition of ODHHS Advisory Committee

(1) The Director of the Department of Human Services shall appoint an advisory committee to advise the Director regarding the Oregon Deaf and Hard of Hearing Services Program. The Director shall try to achieve geographic diversity in advisory committee membership, if possible. The Director may elect to consult with the advisory committee regarding proposed committee membership.

(2) The Director shall appoint 12 individuals to the advisory committee:

(a) Four individuals who either are Deaf, deaf, or Deaf-blind.

(b) Four individuals who are Hard of Hearing.

(c) Two individuals who specialize in providing adaptive or communication services for the Deaf, deaf, Deaf-blind, or Hard of Hearing population.

(d) Two individuals who are well qualified by appropriate licensure, certification, or education and experience to practice in psychology, mental health, social services, or rehabilitation counseling services.

(3) The Director may conduct background checks prior to appointment.

Stat. Auth.: ORS 410.070, 410.740

Stats. Implemented: ORS 410.740

Hist.: APD 7-2017, f. 2-21-17, cert. ef. 3-1-17

411-019-0030

ODHHS Executive and Ad Hoc Committees

(1) The ODHHS advisory committee shall elect an ODHHS executive committee from its membership.

(2) The executive committee shall consist of two co-chairs and one secretary.

(a) The executive committee reserves the right to expand the executive committee membership to include three at-large members to be determined by a vote of the advisory committee.

(b) The primary role of the executive committee is to assist the staff in planning and organizing advisory committee meetings and to make decisions that require critical resolution between regular meetings of the advisory committee, while keeping within the mission and values of the advisory committee.

(c) The executive committee will review applicants to the advisory committee and make appointment recommendations. Appointment recommendations shall be forwarded to the DHS Director.

(3) The co-chairs may establish ad hoc committees for particular purposes with stated objectives and limited duration.

(a) Chairs of any ad hoc committees must be members of the ODHHS advisory committee and be appointed by the co-chairs.

(b) Ad hoc committees may include members of the general public when appropriate.

Stat. Auth.: ORS 410.070, 410.740

Stats. Implemented: ORS 410.740

Hist.: APD 7-2017, f. 2-21-17, cert. ef. 3-1-17

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

Rule Caption: Amending rule relating to case plan activities and support services payments

Adm. Order No.: SSP 3-2017(Temp)

Filed with Sec. of State: 2-28-2017

Certified to be Effective: 3-1-17 thru 6-30-17

Notice Publication Date:

Rules Amended: 461-190-0211

Subject: OAR 461-190-0211 about case plan activities and support service payments in the JOBS, Post-TANF, Pre-TANF, REF, SFPSS, TA-DVS, and TANF programs is being amended to allow (until June 30, 2017) support services payments necessary to obtain or maintain safe stable housing for participants experiencing or at risk of domestic violence. Total payments may not to exceed \$800 during a 90-day period. This rule is also being amended to allow JOBS-exempt individuals who are in a Domestic Violence Intervention activity to receive support services; allow JOBS support services for Domestic Violence Intervention activities; and amend housing and utilities payments allowances. These amendments support families with the added stress and complication of current domestic violence or the risk of domestic violence in the aftermath of severe and unusual winter storm conditions.

The rule text showing proposed changes is available at http://www.dhs.state.or.us/policy/selfsufficiency/ar_temporary.htm.

Rules Coordinator: Robert Trachtenberg—(503) 947-5290

461-190-0211

Case Plan Activities and Standards for Support Service Payments; JOBS, Post-TANF, Pre-TANF, REF, SFPSS, TA-DVS, TANF

In the JOBS, Post-TANF, Pre-TANF, REF, SFPSS, TA-DVS, and TANF programs, notwithstanding any other administrative rule in chapter 461 and subject to the limitations of state funding, the following special provisions apply:

(1) Participation in an activity (see OAR 461-001-0025) is available to the following individuals:

(a) An individual who is an adult parent, needy caretaker relative (see OAR 461-001-0000), or teen parent (see OAR 461-001-0000) receiving TANF who is not otherwise exempt (see OAR 461-130-0305) and in accordance with participation requirements in OAR 461-130-0310.

(b) An individual who is an applicant or recipient in the Pre-TANF, Post-TANF, or SFPSS program.

(c) Subject to local services and budget, an individual who is exempt from JOBS requirements as a one-parent household with a dependent child (see OAR 461-001-0000) under six months of age and has approved activities as specified in the individual’s case plan (see OAR 461-001-0025).

(d) Subject to local services and budget, an individual who is exempt from JOBS requirements and actively engaged in Domestic Violence Intervention activities.

(e) An individual who has gone over-income for the TANF program due to earnings and needs to increase activity hours to meet Post-TANF federally required participation rates (see OAR 461-001-0025).

(f) An individual who has become over-income for the TANF program due to earnings in an on-the-job training (see OAR 461-001-0000) activity is eligible to receive support services (see OAR 461-001-0025) for no more than three months, unless circumstances unique to the situation are identified and warrant the Department to approve a limited number of additional months. Eligibility for support services under this subsection is only permitted while the individual continues to participate in the on-the-job training activity.

(2) For eligible individuals, subject to the requirements and limitations in sections (1), (5), (6), and (7) of this rule, the following activities are available, and include support services payments if needed:

(a) Job search (see OAR 461-001-0025).

(b) JOBS Plus (see OAR 461-001-0025 and 461-101-0010) is limited to six months per individual, unless circumstances unique to the employment situation are identified and warrant the Department to approve a limited number of additional months.

ADMINISTRATIVE RULES

- (c) Work experience (see OAR 461-001-0025).
- (d) Supported work (see OAR 461-001-0025).
- (e) High School or GED Completion Attendance (see OAR 461-001-0025).
- (f) Parents as Scholars (see OAR 461-001-0025).
- (g) Limited family stability (see OAR 461-001-0000) activity.
- (A) Drug and alcohol services (see OAR 461-001-0025).
- (B) Mental health services (see OAR 461-001-0025).
- (C) Attending medical appointments or services.
- (D) Rehabilitation activities (see OAR 461-001-0025).
- (E) Crisis Intervention (see OAR 461-001-0025).
- (F) SSI application process.
- (G) Domestic Violence Intervention
- (h) Vocational training (see OAR 461-001-0025).
- (i) Life skills (see OAR 461-001-0025).
- (j) On-the-job training.
- (k) Unsubsidized employment (work).
- (L) Adult Basic Education (see OAR 461-001-0025).
- (m) Job skills training (see OAR 461-001-0025).
- (n) Self-initiated training (see OAR 461-001-0025).
- (3) The following activities do not include support services payments:
 - (a) Family Support & Connections.
 - (b) Microenterprise (see OAR 461-001-0000).
 - (c) Post-TANF.
 - (d) Program entry (see OAR 461-001-0025).
- (4) Participation in an activity is based on whether an individual is Job Ready, Near Job Ready, Not Job Ready, or a teen parent.
 - (a) Job Ready means the individual has no barrier (see OAR 461-001-0025) or current barriers do not impact participation or employment. In addition, the individual has all of the following:
 - (A) Prior stable work history, either paid or unpaid.
 - (B) Had not voluntarily quit or been dismissed from his or her most recent employment (see OAR 461-135-0070) without good cause (see OAR 461-135-0070).
 - (C) Reliable or available transportation.
 - (D) No outstanding legal issues that would impact or prevent employment.
 - (E) Access to reliable child care within support services limits, or does not need help to pay for child care, or does not need child care.
 - (b) Near Job Ready means the individual has minimal barriers to participation or employment and the individual is addressing the barriers. In addition, the individual has all of the following:
 - (A) Limited or no work history, either paid or unpaid.
 - (B) Reliable or available transportation.
 - (C) No outstanding legal issues that would impact or prevent employment, or such legal issues are identified and are being addressed.
 - (D) Access to reliable child care within support services limits, or does not need help to pay for child care, or does not need child care.
 - (c) Not Job Ready means the individual has one or more barriers to participation or employment or is in crisis, and the individual is not addressing the barriers. For example, the individual has one or more of the following:
 - (A) Lack of stable housing that is preventing participation in an activity or employment.
 - (B) Domestic violence (see OAR 461-001-0000), mental health, or alcohol and drug issues, and the individual is not addressing the issue.
 - (C) Medical issues that prevent participation in an activity or employment.
 - (D) Outstanding legal issues that would impact or prevent employment.
 - (E) Literacy issues that impact the ability for the individual to participate in an activity or obtain employment.
 - (F) Other family stability issues that need to be addressed.
- (5) In approving JOBS program support services payments, the Department must consider lower cost alternatives. This rule is not intended to supplant Department funding with other funding that is available in the community. The expectation of the Department is that case managers and clients work collaboratively to seek resources that are reasonably available to the client in order to participate in activities.
 - (6) Payments for support services are only provided when:
 - (a) Necessary to participate in activities in a signed case plan;
 - (b) Authorized in advance; and
 - (c) All other provisions of this rule are met.
 - (7) Payments for support services are subject to the following limitations:

(a) Child Care. Payments for child care may be authorized, as limited by OAR 461-160-0040, if necessary to enable Job Ready or Near Job Ready individuals or teen parents to participate in an approved JOBS program activity specified in the individual's case plan, including a Not Job Ready individual approved by the district to complete a family stability activity. If authorized, payment for child care is:

(A) The lesser of the actual rate charged by the care provider and the rate established in OAR 461-155-0150. The Department rate for children in care less than 158 hours in a month is limited by OAR 461-155-0150.

(B) The minimum hours necessary, including meal and commute time, for the individual to participate in an approved JOBS program activity.

(b) Transportation. The Department may provide payments for a Job Ready or Near Job Ready individual or teen parent for transportation costs incurred in travel to and from an approved JOBS program activity or a Not Job Ready individual approved by the district to complete a family stability activity. Payment is made only for the cost of public transportation or the cost of fuel. Payments are subject to the following considerations:

(A) Payment for public transportation is a priority over payment for a privately owned vehicle.

(B) Payment for fuel costs for a privately-owned vehicle is provided if the client or individual providing the transportation reports having a valid driver's license and vehicle insurance and either of the following is true:

(i) No public transportation is available or the client is unable to use public transportation because of a verifiable medical condition or disability for which no accommodation is available.

(ii) Public transportation is available but is more costly than the cost of fuel.

(c) Housing and Utilities. Payments for housing and utilities are not allowed with the exception of payments necessary to obtain or maintain safe stable housing for any participant experiencing or at risk of domestic violence. Total payments for a benefit group (see OAR 461-110-0750) may not exceed \$800.00 during a 90-day period.

(d) Other Payments. When the need is identified by the district and no other sources are available, the Department may provide other payments needed:

(A) To look for work.

(B) To accept a job offer.

(C) To attain a high school diploma or GED.

(D) For books and supplies to complete a district-approved vocational training.

(E) Other payments with manager approval that are not otherwise restricted by rule.

(e) None of the following payments are allowed:

(A) Non-essential items.

(B) Television, cable, and Internet.

(C) Fines, reinstatement fees, restitution, legal fees, civil fees, court costs, or other costs associated with a penalty.

(D) Purchase of a car, recreational vehicle, or motor home.

(E) Support services for exempt individuals.

(F) Pet-related costs.

(G) ERDC co-payments.

(8) The Department may require an individual to provide verification of a need for, or costs associated with, support services prior to approval and issuance of payment if verification is reasonably available.

(9) The Department may reduce, close, or deny in whole or in part a request for a support services payment in the following circumstances:

(a) The individual is disqualified for failing to comply with a case plan, unless the payment in question is necessary for the individual to demonstrate cooperation with his or her case plan.

(b) The purpose for the payment is not related to the individual's case plan.

(c) The individual disagrees with a support services payment offered or made by the Department as outlined in the individual's case plan.

(d) The individual is not determined to be a Job Ready or Near Job Ready individual under section (1) of this rule, a Not Job Ready individual in a family stability activity, or a teen parent.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.121, 412.006, 412.009, 412.014, 412.049, 412.124

Stats. Implemented: ORS 409.010, 411.060, 411.070, 411.121, 412.001, 412.006, 412.009, 412.014, 412.049, 412.124

Hist.: AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91;

AFS 9-1991, f. 3-29-91, cert. ef. 4-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-

1993, f. & cert. ef. 7-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 26-1996, f. 6-27-96, cert.

ef. 7-1-96; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 18-1998, f. & cert. ef. 10-2-98;

AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; SSP 33-

2003, f. 12-31-03, cert. ef. 1-4-04; SSP 21-2004, f. & cert. ef. 10-1-04; SSP 11-2005(Temp),

f. & cert. ef. 9-1-05 thru 12-31-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 11-

ADMINISTRATIVE RULES

2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 42-2010(Temp), f. 12-30-10, cert. ef. 1-1-11 thru 6-30-11; SSP 10-2011, f. 3-31-11, cert. ef. 4-1-11; SSP 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SSP 25-2011, f. 9-30-11, cert. ef. 10-1-11; SSP 30-2011(Temp), f. & cert. ef. 11-1-11 thru 4-29-12; SSP 11-2012, f. & cert. ef. 4-6-12; SSP 12-2012(Temp), f. & cert. ef. 4-6-12 thru 9-30-12; SSP 18-2012(Temp), f. & cert. ef. 5-23-12 thru 9-30-12; SSP 30-2012, f. 9-28-12, cert. ef. 10-1-12; SSP 34-2012(Temp), f. & cert. ef. 11-6-12 thru 5-5-13; SSP 38-2012(Temp), f. 12-28-12, cert. ef. 1-1-13 thru 5-5-13; SSP 2-2013(Temp), f. & cert. ef. 1-23-13 thru 5-5-13; SSP 8-2013, f. & cert. ef. 4-1-13; SSP 15-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SSP 24-2013, f. & cert. ef. 10-1-13; SSP 6-2014(Temp), f. & cert. ef. 3-5-14 thru 9-1-14; SSP 15-2014, f. & cert. ef. 7-1-14; SSP 3-2015(Temp), f. & cert. ef. 1-1-15 thru 6-29-15; SSP 17-2015, f. & cert. ef. 6-30-15; SSP 18-2015(Temp), f. 6-30-15, cert. ef. 7-1-15 thru 12-27-15; SSP 34-2015, f. 12-22-15, cert. ef. 12-28-15; SSP 23-2016, f. 6-28-16, cert. ef. 7-1-16; SSP 3-2017(Temp), f. 2-28-17, cert. ef. 3-1-17 thru 6-30-17

Rule Caption: Amending rule relating to monthly income standards used to determine eligibility

Adm. Order No.: SSP 4-2017(Temp)

Filed with Sec. of State: 2-28-2017

Certified to be Effective: 3-1-17 thru 8-27-17

Notice Publication Date:

Rules Amended: 461-155-0180

Subject: OAR 461-155-0180 about income standards used to determine eligibility in self-sufficiency programs is being amended to update the standards that apply 2017 federal poverty guidelines starting March 1, 2017.

The rule text showing proposed changes is available at http://www.dhs.state.or.us/policy/selfsufficiency/ar_temporary.htm.

Rules Coordinator: Robert Trachtenberg—(503) 947-5290

461-155-0180

Income Standards; Not OSIP, OSIPM, QMB

(1) A Department program may cite this rule if the program uses a monthly income standard based on the federal poverty level or state median income. The standards in this rule are effective as of March 1, 2017.

(2) A monthly income standard set at 100 percent of the 2016 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.]

(3) A monthly income standard set at 130 percent of the 2016 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.]

(4) A monthly income standard set at 185 percent of the 2017 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.]

(5) A monthly income standard set at 200 percent of the 2016 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.]

(6) A monthly income standard set at 250 percent of the 2017 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.]

(7) A monthly income standard set at 350 percent of the 2016 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.]

(8) A monthly income standard set at 85 percent of the 2017 state median income is set at the following amounts: [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.816, 412.014, 412.049

Stats. Implemented: ORS 409.010, 411.060, 411.070, 411.816, 412.014, 412.049

Hist.: SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 1-2007, f. & cert. ef. 1-24-07; SSP 1-2008(Temp), f. & cert. ef. 1-24-08 thru 6-30-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 1-2009, f. & cert. ef. 1-27-09; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; SSP 4-2010, f. & cert. ef. 3-31-10; SSP 25-2010(Temp), f. & cert. ef. 8-16-10 thru 2-12-11; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 1-2011(Temp), f. & cert. ef. 1-20-11 thru 7-19-11; SSP 17-2011, f. & cert. ef. 7-1-11; SSP 2-2012, f. & cert. ef. 1-25-12; SSP 3-2013, f. & cert. ef. 1-30-13; SSP 5-2013(Temp), f. & cert. ef. 2-1-13 thru 7-31-13; SSP 13-2013, f. & cert. ef. 7-1-13; SSP 22-2013(Temp), f. & cert. ef. 8-23-13 thru 2-19-14; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14; SSP 2-2014, f. 1-31-14, cert. ef. 2-1-14; SSP 7-2015, f. 1-30-15, cert. ef. 2-1-15; SSP 23-2015, f. 9-28-15, cert. ef. 10-1-15; SSP 15-2016, f. & cert. ef. 4-1-16; SSP 4-2017(Temp), f. 2-28-17, cert. ef. 3-1-17 thru 8-27-17

Rule Caption: 3-1-17 Amending rules relating to public and medical assistance programs

Adm. Order No.: SSP 5-2017

Filed with Sec. of State: 3-1-2017

Certified to be Effective: 3-1-17

Notice Publication Date: 11-1-2016

Rules Amended: 461-155-0290, 461-155-0291, 461-155-0295

Subject: OAR 461-155-0290, 461-155-0291, and OAR 461-155-0295 are being amended to reflect the annual updates to the Federal Poverty Level that happens every March. These amendments keep Oregon in line with current federal standards for Department Medicaid programs and changes in the Federal Poverty Level.

Rules Coordinator: Robert Trachtenberg—(503) 947-5290

461-155-0290

Income Standard; QMB-BAS

The adjusted income standard for the QMB-BAS program is 100 percent of the 2017 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 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 4-2013, 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; SSP 5-2017, f. & cert. ef. 3-1-17

461-155-0291

Income Standard; QMB-DW

The adjusted income standard for the QMB-DW program is 200 percent of the 2017 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; SSP 5-2017, f. & cert. ef. 3-1-17

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 2017 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 2017 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; SSP 5-2017, f. & cert. ef. 3-1-17

ADMINISTRATIVE RULES

Rule Caption: Amending two rules that apply to SNAP time limit counties

Adm. Order No.: SSP 6-2017(Temp)

Filed with Sec. of State: 3-10-2017

Certified to be Effective: 3-10-17 thru 9-5-17

Notice Publication Date:

Rules Amended: 461-170-0011, 461-170-0101

Subject: OAR 461-170-0011 regarding the changes a client in the SNAP program must report is being amended to include any time limit county as an area in Oregon whose residents must report if their work hours drop below 20 hours a week. OAR 461-170-0101 regarding when a SNAP household may use the simplified reporting system is being amended to any time limit county as an area in Oregon whose residents may have a less than 6-month certification period and use simplified reporting. Oregon is required by federal law to implement SNAP time limits in certain counties as the economy improves. These rules changes immediately affect clients in Clackamas County.

The rule text showing changes is available at http://www.dhs.state.or.us/policy/selfsufficiency/ar_temporary.htm.

Rules Coordinator: Robert Trachtenberg—(503) 947-5290

461-170-0011

Changes That Must Be Reported

(1) A change in employment status is considered to occur as follows:

- For a new job, the change occurs the first day of the new job.
- For a job separation, the change occurs on the last day of employment.

(2) A change in source of income is considered to occur as follows:

- For earned income, the change occurs upon the receipt by the individual of the first paycheck from a new job or the first paycheck reflecting a new rate of pay.
- For unearned income, the change occurs the day the individual receives the new or changed payment.

(3) An individual must report, orally or in writing, the following changes:

(a) In the ERDC program, an individual must report the following changes within 10 days of occurrence:

- A change in child care provider.
- A change in employment status.
- A change in mailing address or residence.
- A change in membership of the filing group (see OAR 461-110-0350).

(E) A member of the filing group is discharged from the U.S. military and returning from active duty in a military war zone.

(F) A change in income above the ERDC income limit as defined in OAR 461-155-0150(5)(b) that is expected to continue.

(b) In the SNAP program:

(A) An ABAWD residing in one of the time limit counties (see OAR 461-135-0520), who is employed and assigned to CRS or SRS, must report a change in work hours when work hours are below 20 hours per week. This change must be reported within 10 days of occurrence.

(B) An individual assigned to CRS must report any of the following changes within 10 days of occurrence:

- A change in earned income of more than \$100.
- A change in unearned income of more than \$50.
- A change in source of income.
- A change in membership of the filing group (see OAR 461-110-0370) and any resulting change in income.
- A change in residence and the shelter costs in the new residence.
- A change in the legal obligation to pay child support.
- When the sum of cash on hand, stocks, bond, and money in a bank or savings institution account reaches or exceeds program resource limits.

(viii) Acquisition or change in ownership of a non-excluded vehicle.

(C) An individual assigned to SRS must report when the monthly income of the filing group exceeds the SNAP countable (see OAR 461-001-0000) income limit by the tenth day of the month following the month of occurrence.

(D) An individual assigned to TBA is not required to report any changes.

(c) For Employment Payments (see OAR 461-135-1270) and JPI (see OAR 461-135-1260), an individual must follow the same reporting require-

ments as a SNAP client assigned to CRS, SRS, or TBA reporting systems (see OAR 461-170-0010).

(d) In the GA, OSIP, OSIPM, and QMB programs, an individual must report all changes that may affect eligibility (see OAR 461-001-0000) within 10 days of occurrence, including any of the following changes:

- A change in employment status.
- A change in health care coverage.
- A change in membership of the household group (see OAR 461-110-0210).
- A change in marital status.
- A change in residence.
- Except for QMB-BAS, QMB-SMB, and QMB-SMF, a change in resources.
- A change in source or amount of income.

(e) In the REF, SFPSS, and TANF programs, an individual assigned to CRS must report any of the following changes within 10 days of occurrence:

- Acquisition or change in ownership of a non-excluded vehicle.
- A change in earned income more than \$100.
- Employment separation.
- A change in membership of the household group (see OAR 461-110-0210).
- A change in marital status or other changes in membership of the filing group.
- A change in mailing address or residence.
- A change in pregnancy status of any member of the filing group.
- A change in source of income.
- A change in unearned income more than \$50.
- A change in who pays the shelter costs if the costs will be paid by a non-custodial parent.
- Sale or receipt of a resource that causes total resources to exceed program resource limits.

(f) In the REFM program, an individual must report the following changes within 10 days of occurrence:

- A change in membership of the household group (see OAR 461-110-0210).
- A change in residence.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.706, 411.816, 412.014, 412.049, 413.085, 414.685
Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.081, 411.404, 411.704, 411.706, 411.816, 411.825, 412.014, 412.049, 413.085, 414.685, 414.826
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1992, f. & cert. ef. 5-1-92; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 15-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 25-1998, f. 12-18-98, cert. ef. 1-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 24-2002(Temp), f. 12-31-02, cert. ef. 1-1-03 through 6-30-03; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 13-2003, f. 6-12-03, cert. ef. 6-16-03; SSP 20-2003, f. & cert. ef. 8-15-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 16-2005, f. & cert. ef. 12-1-05; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 through 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; Renumbered from 461-170-0015, 461-170-0020, 461-170-0025, 461-170-0030, 461-170-0035 by SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 5-2009, f. & cert. ef. 4-1-09; SSP 39-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 through 6-30-10; SSP 5-2010, f. & cert. ef. 4-1-10; SSP 7-2010(Temp), f. & cert. ef. 4-1-10 through 6-30-10; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 26-2011(Temp), f. 9-30-11, cert. ef. 10-1-11 through 3-29-12; SSP 10-2012, f. 3-29-12, cert. ef. 3-30-12; SSP 17-2012(Temp), f. & cert. ef. 5-1-12 through 10-28-12; SSP 30-2012, f. 9-28-12, cert. ef. 10-1-12; SSP 24-2013, f. & cert. ef. 10-1-13; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 through 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14; SSP 14-2014(Temp), f. & cert. ef. 6-26-14 through 12-23-14; SSP 24-2014, f. & cert. ef. 10-1-14; SSP 23-2015, f. 9-28-15, cert. ef. 10-1-15; SSP 37-2015, f. 12-23-15, cert. ef. 1-1-16; SSP 15-2016, f. & cert. ef. 4-1-16; SSP 25-2016(Temp), f. 6-30-16, cert. ef. 7-1-16 through 12-27-16; SSP 31-2016, f. & cert. ef. 9-1-16; SSP 35-2016, f. 9-30-16, cert. ef. 10-1-16; SSP 6-2017(Temp), f. & cert. ef. 3-10-17 through 9-5-17

(B) A change in residence.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.706, 411.816, 412.014, 412.049, 413.085, 414.685

Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.081, 411.404, 411.704, 411.706, 411.816, 411.825, 412.014, 412.049, 413.085, 414.685, 414.826
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1992, f. & cert. ef. 5-1-92; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 15-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 25-1998, f. 12-18-98, cert. ef. 1-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 24-2002(Temp), f. 12-31-02, cert. ef. 1-1-03 through 6-30-03; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 13-2003, f. 6-12-03, cert. ef. 6-16-03; SSP 20-2003, f. & cert. ef. 8-15-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 16-2005, f. & cert. ef. 12-1-05; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 through 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; Renumbered from 461-170-0015, 461-170-0020, 461-170-0025, 461-170-0030, 461-170-0035 by SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 5-2009, f. & cert. ef. 4-1-09; SSP 39-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 through 6-30-10; SSP 5-2010, f. & cert. ef. 4-1-10; SSP 7-2010(Temp), f. & cert. ef. 4-1-10 through 6-30-10; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 26-2011(Temp), f. 9-30-11, cert. ef. 10-1-11 through 3-29-12; SSP 10-2012, f. 3-29-12, cert. ef. 3-30-12; SSP 17-2012(Temp), f. & cert. ef. 5-1-12 through 10-28-12; SSP 30-2012, f. 9-28-12, cert. ef. 10-1-12; SSP 24-2013, f. & cert. ef. 10-1-13; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 through 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14; SSP 14-2014(Temp), f. & cert. ef. 6-26-14 through 12-23-14; SSP 24-2014, f. & cert. ef. 10-1-14; SSP 23-2015, f. 9-28-15, cert. ef. 10-1-15; SSP 37-2015, f. 12-23-15, cert. ef. 1-1-16; SSP 15-2016, f. & cert. ef. 4-1-16; SSP 25-2016(Temp), f. 6-30-16, cert. ef. 7-1-16 through 12-27-16; SSP 31-2016, f. & cert. ef. 9-1-16; SSP 35-2016, f. 9-30-16, cert. ef. 10-1-16; SSP 6-2017(Temp), f. & cert. ef. 3-10-17 through 9-5-17

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.706, 411.816, 412.014, 412.049, 413.085, 414.685
Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.081, 411.404, 411.704, 411.706, 411.816, 411.825, 412.014, 412.049, 413.085, 414.685, 414.826
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1992, f. & cert. ef. 5-1-92; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 15-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 25-1998, f. 12-18-98, cert. ef. 1-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 24-2002(Temp), f. 12-31-02, cert. ef. 1-1-03 through 6-30-03; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 13-2003, f. 6-12-03, cert. ef. 6-16-03; SSP 20-2003, f. & cert. ef. 8-15-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 16-2005, f. & cert. ef. 12-1-05; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 through 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; Renumbered from 461-170-0015, 461-170-0020, 461-170-0025, 461-170-0030, 461-170-0035 by SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 5-2009, f. & cert. ef. 4-1-09; SSP 39-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 through 6-30-10; SSP 5-2010, f. & cert. ef. 4-1-10; SSP 7-2010(Temp), f. & cert. ef. 4-1-10 through 6-30-10; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 26-2011(Temp), f. 9-30-11, cert. ef. 10-1-11 through 3-29-12; SSP 10-2012, f. 3-29-12, cert. ef. 3-30-12; SSP 17-2012(Temp), f. & cert. ef. 5-1-12 through 10-28-12; SSP 30-2012, f. 9-28-12, cert. ef. 10-1-12; SSP 24-2013, f. & cert. ef. 10-1-13; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 through 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14; SSP 14-2014(Temp), f. & cert. ef. 6-26-14 through 12-23-14; SSP 24-2014, f. & cert. ef. 10-1-14; SSP 23-2015, f. 9-28-15, cert. ef. 10-1-15; SSP 37-2015, f. 12-23-15, cert. ef. 1-1-16; SSP 15-2016, f. & cert. ef. 4-1-16; SSP 25-2016(Temp), f. 6-30-16, cert. ef. 7-1-16 through 12-27-16; SSP 31-2016, f. & cert. ef. 9-1-16; SSP 35-2016, f. 9-30-16, cert. ef. 10-1-16; SSP 6-2017(Temp), f. & cert. ef. 3-10-17 through 9-5-17

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Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1992, f. & cert. ef. 5-1-92; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 15-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 25-1998, f. 12-18-98, cert. ef. 1-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 24-2002(Temp), f. 12-31-02, cert. ef. 1-1-03 through 6-30-03; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 13-2003, f. 6-12-03, cert. ef. 6-16-03; SSP 20-2003, f. & cert. ef. 8-15-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 16-2005, f. & cert. ef. 12-1-05; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 through 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; Renumbered from 461-170-0015, 461-170-0020, 461-170-0025, 461-170-0030, 461-170-0035 by SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 5-2009, f. & cert. ef. 4-1-09; SSP 39-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 through 6-30-10; SSP 5-2010, f. & cert. ef. 4-1-10; SSP 7-2010(Temp), f. & cert. ef. 4-1-10 through 6-30-10; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 26-2011(Temp), f. 9-30-11, cert. ef. 10-1-11 through 3-29-12; SSP 10-2012, f. 3-29-12, cert. ef. 3-30-12; SSP 17-2012(Temp), f. & cert. ef. 5-1-12 through 10-28-12; SSP 30-2012, f. 9-28-12, cert. ef. 10-1-12; SSP 24-2013, f. & cert. ef. 10-1-13; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 through 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14; SSP 14-2014(Temp), f. & cert. ef. 6-26-14 through 12-23-14; SSP 24-2014, f. & cert. ef. 10-1-14; SSP 23-2015, f. 9-28-15, cert. ef. 10-1-15; SSP 37-2015, f. 12-23-15, cert. ef. 1-1-16; SSP 15-2016, f. & cert. ef. 4-1-16; SSP 25-2016(Temp), f. 6-30-16, cert. ef. 7-1-16 through 12-27-16; SSP 31-2016, f. & cert. ef. 9-1-16; SSP 35-2016, f. 9-30-16, cert. ef. 10-1-16; SSP 6-2017(Temp), f. & cert. ef. 3-10-17 through 9-5-17

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ADMINISTRATIVE RULES

Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.816, 412.049
Hist.: SSP 20-2003, f. & cert. ef. 8-15-03; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 16-2005, f. & cert. ef. 12-1-05; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 5-2009, f. & cert. ef. 4-1-09; SSP 5-2010, f. & cert. ef. 4-1-10; SSP 1-2015(Temp), f. & cert. ef. 1-1-15 thru 6-29-15; SSP 17-2015, f. & cert. ef. 6-30-15; SSP 23-2015, f. 9-28-15, cert. ef. 10-1-15; SSP 37-2015, f. 12-23-15, cert. ef. 1-1-16; SSP 6-2017(Temp), f. & cert. ef. 3-10-17 thru 9-5-17

Rule Caption: Amending rule relating to the treatment of revocable trusts to determine eligibility

Adm. Order No.: SSP 7-2017(Temp)

Filed with Sec. of State: 3-13-2017

Certified to be Effective: 3-13-17 thru 9-8-17

Notice Publication Date:

Rules Amended: 461-145-0540

Subject: OAR 461-145-0540 relating to the treatment of trusts is being amended to reinstate the treatment of revocable trusts in the ERDC, REF, REFM, and TANF programs in effect prior to 2016 to align the ERDC and TANF programs with the SNAP program, and align the REF and REFM programs with the TANF program. The amendment counts trust payments as unearned income in these four programs.

Rules Coordinator: Robert Trachtenberg—(503) 947-5290

461-145-0540

Trusts

(1) This section applies to all trust funds (see OAR 461-001-0000) in the REF, REFM, SNAP, and TANF programs. It also applies in the OSIP, OSIPM, and QMB-DW programs for trust funds established before October 1, 1993:

(a) Trust funds are counted as a resource if the fund is legally available for use by a member of the financial group (see OAR 461-110-0530) for items covered by program benefits. In the OSIP, OSIPM, and QMB-DW programs, the amount of the trust that is considered legally available is the maximum amount that could be distributed to the beneficiary under the terms of the trust, regardless of whether the trustee exercises his or her authority to actually make a distribution.

(b) Trust funds are excluded if the fund is not available for use by a member of the financial group. The financial group must try to remove legal restrictions on the trust, unless that would cause an expense to the group.

(c) The part of the fund available for use for medical expenses covered by the medical program for which the financial group is eligible is counted.

(2) In the ERDC program, all trust funds are excluded.

(3) In the OSIP, OSIPM, and QMB-DW programs, trust funds established on or after October 1, 1993, are treated in accordance with sections (5) to (11) of this rule.

(4) In the QMB-BAS, QMB-SMB, and QMB-SMF programs:

(a) All trust funds are excluded as a resource.

(b) A payment made from the trust to or for the benefit of the client is counted as unearned income.

(5) A trust is considered established if the financial group used their resources to form all or part of the trust and if any of the following established a trust, other than by a will:

(a) The client.

(b) The client's spouse.

(c) Any other person, including a court or administrative body, with legal authority to act in place of or on behalf of the client or the client's spouse.

(d) Any other person, including a court or administrative body, acting at the direction or upon the request of the client or the client's spouse.

(6) If the trust contains resources or income of another person, only the share attributable to the client is considered available.

(7) Except as provided in section (10) of this rule, the following factors are ignored when determining how to treat a trust:

(a) The purpose for which the trust was established.

(b) Whether or not the trustees have or exercise any discretion under the trust.

(c) Any restrictions on when or if distributions may be made from the trust.

(d) Any restrictions on the use of distributions from the trust.

(8) If the trust is revocable, it is treated as follows:

(a) In the OSIP, OSIPM, and QMB-DW programs:

(A) The total value of the trust is considered a resource available to the client.

(B) A payment made from the trust to or for the benefit of the client is excluded as income.

(b) In the ERDC, REF, REFM, SNAP, and TANF programs:

(A) The total value of the trust is considered a resource available to the client.

(B) A payment made from the trust to or for the benefit of the client is considered unearned income.

(c) A payment from the trust other than to or for the benefit of the client is considered a transfer of assets covered by OAR 461-140-0210 and following.

(9) If the trust is irrevocable, it is treated as follows:

(a) If, under any circumstances, the funds transferred into the trust are unavailable to the client and the trustee has no discretion to distribute the funds to or for the benefit of the client, the client is subject to a transfer-of-resources penalty as provided in OAR 461-140-0210 and following.

(b) If, under any circumstances, payments could be made to or on behalf of the client, the share of the trust from which the payment could be made is considered a resource. A payment from the trust other than one to or for the benefit of the client is considered a transfer of assets that may be covered by OAR 461-140-0210.

(c) If, under any circumstances, income is generated by the trust and could be paid to the client, the income is unearned income. Payments made for any reason other than to or for the benefit of the client are considered a transfer of assets subject to disqualification per OAR 461-140-0210.

(d) If any change in circumstance makes assets (income or resources) from the trust unavailable to the client, the change is a disqualifying transfer as of the date of the change.

(10) Notwithstanding the provisions in sections (1), (3), and (5) to (9) of this rule, the following trusts are not considered in determining eligibility (see OAR 461-001-0000) for OSIPM and QMB-DW:

(a) A trust containing the assets of a client determined to have a disability that meets the SSI criteria that was created before the client reached age 65, if the trust was established by one of the following and the state will receive all funds remaining in the trust upon the death of the client, up to the amount of medical benefits provided on behalf of the client:

(A) The client's parent (see OAR 461-001-0000).

(B) The client's grandparent.

(C) The client's legal guardian or conservator.

(D) A court.

(b) A trust established between October 1, 1993 and March 31, 1995 for the benefit of the client and containing only the current and accumulated income of the client. The accumulated amount remaining in the trust must be paid directly to the state upon the death of the client up to the amount of medical benefits provided on behalf of the client. The trust is the total income in excess of the income standard for OSIPM. The remaining income not deposited into the trust is available for the following deductions in the order they appear prior to applying the patient liability:

(A) Personal-needs allowance.

(B) Community spouse monthly maintenance needs allowance.

(C) Medicare and other private medical insurance premiums.

(D) Other incurred medical.

(c) A trust established on or after April 1, 1995 for the benefit of the client whose income is above 300 percent of the full SSI standard and containing the current and accumulated income of the client. The accumulated amount remaining in the trust must be paid directly to the state upon the death of the client up to the amount of medical assistance provided on behalf of the client. The trust contains all of the client's income. The income deposited into the trust is distributed monthly in the following order with excess amounts treated as income to the individual subject to the rules on transfer of assets in division 140 of this chapter of rules:

(A) Personal needs allowance and applicable room and board standard.

(B) Reasonable administrative costs of the trust, not to exceed a total of \$50 per month, including the following:

(i) Trustee fees.

(ii) A reserve for administrative fees and costs of the trust, including bank service charges, copy charges, postage, accounting and tax preparation fees, future legal expenses, and income taxes attributable to trust income.

(iii) Conservatorship and guardianship fees and costs.

(C) Community spouse and family monthly maintenance needs allowance.

(D) Medicare and other private medical insurance premiums.

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(E) Other incurred medical costs as allowed under OAR 461-160-0030 and 461-160-0055.

(F) Contributions to reserves or payments for child support, alimony, and income taxes.

(G) Monthly contributions to reserves or payments for the purchase of an irrevocable burial plan with a maximum value of \$5,000.

(H) Contributions to a reserve or payments for home maintenance if the client meets the criteria of OAR 461-155-0660 or 461-160-0630.

(I) Patient liability not to exceed the cost of home and community-based care (see OAR 461-001-0030) or nursing facility services.

(11) This section of the rule applies to a trust signed on or after July 1, 2006.

(a) Notwithstanding the provisions of sections (1), (3), and (5) to (9) of this rule, a trust that meets the requirements of subsection (b) of this section is not considered in determining eligibility for OSIPM and QMB-DW, except that if the client is age 65 or older when the trust is funded or a transfer is made to the trust, the transfer may constitute a disqualifying transfer of assets under OAR 461-140-0210 and following.

(b) This section of the rule applies to a trust that meets all of the following conditions:

(A) The trust is established and managed by a non-profit association.

(B) A separate account is maintained for each beneficiary of the trust, but, for purposes of investment and management of funds, the trust pools these accounts.

(C) The trust is established by the client, client's parent, grandparent, or legal guardian or a court for clients who have disabilities.

(D) Upon the death of the beneficiary or termination of the trust, the trust pays to the state an amount equal to the total medical assistance paid on behalf of the beneficiary under the State plan for Medicaid. The amount paid to the state may be reduced by administrative costs directly related to administering the sub-trust account of the beneficiary.

(E) The trust contains the resources or income of a client who has a disability that meets the SSI criteria.

(12) In the OSIP, OSIPM, and QMB-DW programs, the provisions of this rule may be waived for an irrevocable trust if the Department determines that denial of benefits would create an undue hardship on the client if, among other things:

(a) The absence of the services requested may result in a life-threatening situation.

(b) The client was a victim of fraud or misrepresentation.

Stat. Auth.: ORS 411.060, 411.070, 411.083, 411.404, 411.816, 412.049, 413.085, 414.685
Stats. Implemented: ORS 411.060, 411.070, 411.083, 411.404, 411.816, 412.049, 413.085, 414.685, 414.839

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 18-1993(Temp), f. & cert. ef. 10-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; 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 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 18-2002(Temp), f. & cert. ef. 11-19-02 thru 5-18-03; SSP 11-2003, f. & cert. ef. 5-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 16-2006(Temp), f. 12-29-06, cert. ef. 1-1-07 thru 3-31-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 17-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SSP 26-2013, f. & cert. ef. 10-1-13; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14; SSP 35-2015, f. 12-23-15, cert. ef. 1-1-16; SSP 25-2016(Temp), f. 6-30-16, cert. ef. 7-1-16 thru 12-27-16; SSP 31-2016, f. & cert. ef. 9-1-16; SSP 42-2016(Temp), f. & cert. ef. 11-4-16 thru 5-2-17; SSP 45-2016, f. 12-20-16, cert. ef. 1-1-17; SSP 7-2017(Temp), f. & cert. ef. 3-13-17 thru 9-8-17

Department of State Police Chapter 257

Rule Caption: Amend rules to clarify when a tow business or employee can be denied from participation

Adm. Order No.: OSP 1-2017

Filed with Sec. of State: 3-8-2017

Certified to be Effective: 3-8-17

Notice Publication Date: 1-1-2017

Rules Amended: 257-050-0050, 257-050-0145

Subject: A Temporary rule change was made on November 18, 2016. This action seeks to make permanent those changes.

OAR 257-050-0145 dictates the conditions under which a tow business owner or employee is disqualified from participation in the OSP non-preference tow program based on felony convictions. Prior to the temporary rule change, the rules stated that if a tow business, a qualified tow business or an owner or employee is convicted of certain felony offenses, the Department "shall deny, suspend, or revoke

a tow business' application or a qualified tow business' letter of appointment..." Under those rules, if any employee is ineligible based on any described felony convictions, the entire tow business or qualified tow business becomes ineligible to participate in the non-preference tow program. The temporary rule and these proposed permanent rule amendments narrow "employee" to "driver," clarify to whom and to what entities the felony conviction prohibitions apply, and will allow a tow business or qualified tow business to remain eligible to participate in the program if it prevents a disqualified driver from engaging in any work that is referred to the business by the Department. The proposed amendments are intended to provide flexibility to allow otherwise-eligible tow businesses and qualified tow businesses to continue participating in the non-preference tow program by segregating ineligible drivers and preventing them from participation in the Department's non-preference tow program. However, with the additional clarifications, the proposed rule amendments maintain the current requirement that a tow business will be ineligible to receive a letter of appointment for participation in the Department's non-preference tow program, or a qualified tow business' existing letter of appointment will be revoked, if the tow business, qualified tow business, a manager of daily operations or a principal of the business is disqualified based on any of the felony convictions specified in OAR 257-050-0145.

The proposed rule amendments will also require that OSP be notified if a qualified tow business, tow business, manager of daily operations, or principal becomes aware that a driver is ineligible because of any disqualifying felony conviction and will clarify that OSP may conduct LEDS checks or check court records to determine the existence of felony convictions.

OAR 257-050-0050 has also been amended to add definitions for new terms that are used in the amendments to OAR 257-050-0145 and for terms that previously were not defined.

Rules Coordinator: Shannon Peterson — (503) 934-0183

257-050-0050

Definitions

(1) "Abandoned Auto" or "Abandoned Vehicle" — A vehicle, as defined in ORS 819.110, that has been parked or left standing upon any public way for a period in excess of 24 hours without authorization by statute or local ordinance.

(2) "Another United States court" — The definition contained in ORS 163A.005(1).

(3) "Area Commander" or "Station Commander" — The local commanding officer of an area established by the Oregon State Police.

(4) "Business Records" — Those records maintained by a qualified tow business that relate to the non-preference tows and which include, but are not limited to, tow bills, letters of appointment, and inspection sheets.

(5) "Certified" or "Certification" — The successful completion by an employee of a tow business of a written test administered by a nationally recognized towing affiliated body/organization relating to the level of towing the employee operates.

(6) "Convicted" — An adjudication of guilt upon a verdict or finding entered in a criminal proceeding in a court of competent jurisdiction.

(7) "Denial" — Action taken by the Department in refusing to issue a letter of appointment to a tow business.

(8) "Department" — The Department of State Police, also referred to as "Oregon State Police," and its employees.

(9) "Driver" — Any individual or employee associated with a qualified tow business or tow business and who operates a tow vehicle, regardless of whether the individual is listed in an application for a letter of appointment.

(10) "Employee" — Any person in the service of a tow business under contract of hire, express or implied, oral or written, where the business has the power or right to control and direct the employee in the material details of how the work for the business is to be performed.

(11) "Fencing" — Permanent fencing meeting zoning requirements, with a minimum height of six (6) feet.

(12) "Hazardous Vehicle" — A vehicle, as defined in ORS 819.120, that is disabled, abandoned, parked, or left standing unattended on a road or highway right of way and that is in such a location as to constitute a hazard or obstruction to motor vehicle traffic using the road or highway given that term in OAR 734-020-0147.

ADMINISTRATIVE RULES

(13) "Hearings Officer" — A person appointed by an agency or entity contracted by the Department of State Police to conduct contested case hearings.

(14) "Highway" — Every public way, road, street, thoroughfare and place including bridges, viaducts and other structures within the boundaries of the state open, used or intended for use of the general public for vehicles or vehicular traffic as a matter of right (ORS 801.305).

(15) "Inspector" — A commissioned officer or other appointed representative of the Oregon State Police who has been designated by the Department to examine tow trucks and qualified tow businesses.

(16) "Letter of Appointment" — A letter issued by the Department that authorizes a tow business to tow abandoned or disabled vehicles on a non-preference rotational basis for the Oregon State Police.

(17) "Manager of daily operations" — Any individual who has control or direction of the day-to-day, regulatory, or financial aspect of a tow business or qualified tow business.

(18) "Non-Preference tow rotational List" or "Non-Preference List" — The list of qualified tow businesses maintained at Oregon State Police Headquarters that is used to dispatch the tow trucks on an equitable basis when no choice or preference to a tow business is stated by the vehicle owner, driver, or other person responsible for the vehicle.

(19) "On Road Time" — The time it takes a qualified tow business to have a tow truck started and on the road from the time the dispatcher was called by the Department.

(20) "Patrol Services Division" — The administrative body of the Oregon State Police that is located at General Headquarters in Salem, Oregon.

(21) "Place of Business" — A separate building or physical structure that a qualified tow business occupies, either continuously or at regular times, where the qualified tow business' business books and records are kept and the business of towing vehicles is transacted in each assigned tow zone. Multiple or different qualified tow businesses may operate on a single piece of real property, provided that each qualified tow business maintains individual and separate records, storage facilities, and letters of appointment in order to be placed on the Department's non-preference tow rotational list.

(22) "Principal" — an owner, partner, corporate officer or other person or entity that controls, manages or has a financial interest in, a tow business or qualified tow business.

(23) "Qualified Tow Business" is a tow business with a current letter of appointment issued by the Department.

(24) "Region Commander" or "District Commander" — The commanding officer of the region as established by the Oregon State Police.

(25) "Recovery Vehicle" — A motor vehicle that is:

(a) A commercially available truck chassis equipped with a commercially manufactured tow body or bed, that is rated and issued a serial number by the manufacturer;

(b) Designed and equipped for, and used in, the towing and/or recovery of vehicles;

(c) Capable of towing a vehicle by means of a tow bar, sling or wheel lift; and

(d) Capable of recovering a vehicle by means of a hoist, winch and towline.

(26) "Response Time" — The reasonable driving time it takes a tow truck to respond to the dispatched location once the tow truck is on the road.

(27) "Revocation" and "revoked" — The termination of a letter of appointment or right to apply for a letter of appointment, and the removal from the Oregon State Police's non-preference towing program for a period of not less than 10 years, which becomes effective from the date of the Notice of Revocation from the Oregon State Police.

(28) "Right to apply" — The right of a tow business or its principal(s) to apply for, and the right of a qualified tow business or its principal(s) to re-apply for, a letter of appointment.

(29) "Sex crime" — The crimes listed in ORS 163A.005(5). "Sex crime" includes an equivalent conviction from another United States court, regardless of the degree of the criminal offense.

(30) "Suspension" and "suspend" — The temporary withdrawal of a letter of appointment or right to apply for a letter of appointment, and the removal from the Oregon State Police non-preference towing program for a period of not more than 10 years.

(31) "Tow business" — Any person, enterprise, corporation or partnership that engages in the impounding, transporting, recovery or storage of towed or abandoned vehicles or in the disposal of abandoned vehicles.

(32) "Tow Vehicle" — A motor vehicle that is:

(a) Altered or designed and equipped for, and used in, the business of towing vehicles; and

(b) Used to tow vehicles by means of a crane hoist, tow bar, towline or dolly, or otherwise used to render assistance to other vehicles (ORS 801.530).

(33) "Tow Zone" — The geographical area designated by the area commander for the removal of vehicles.

(34) "Vehicle Storage Area" — The approved yard or enclosed building where a qualified tow business keeps or stores towed vehicles.

Stat. Auth.: ORS 181A.350

Stats. Implemented: ORS 181A.350

Hist.: OSP 1-1989, f. & cert. ef. 1-3-89; OSP 3-1989, f. 10-16-89, cert. ef. 10-15-89; OSP 5-1992, f. & cert. ef. 12-16-92; OSP 2-1995, f. & cert. ef. 10-20-95; OSP 1-1999(Temp), f. & cert. ef. 9-10-99 thru 3-7-00; OSP 1-2000, f. & cert. ef. 3-15-00; OSP 2-2000(Temp), f. & cert. ef. 7-14-00 thru 1-9-01; Administrative correction 6-12-01; OSP 1-2006, f. 3-29-06, cert. ef. 3-31-06; OSP 1-2009(Temp), f. & cert. ef. 8-6-09 thru 1-31-10; OSP 2-2009, f. 10-8-09 cert. ef. 1-1-10; OSP 3-2009(Temp), f. 12-18-09, cert. ef. 1-1-10 thru 6-29-10; OSP 3-2010, f. 6-1-10, cert. ef. 6-30-10; OSP 5-2010(Temp), f. 7-13-10, cert. ef. 7-14-10 thru 1-10-11; Administrative correction 1-25-11; OSP 4-2011, f. 9-2-11, cert. ef. 9-7-11; OSP 2-2016(Temp), f. & cert. ef. 11-18-16 thru 5-16-17; OSP 1-2017, f. & cert. ef. 3-8-17

257-050-0145

Felony Convictions

(1) The Department shall deny a tow business' application for a letter of appointment or revoke a qualified tow business' letter of appointment for any of the following reasons:

(a) A qualified tow business, tow business, manager of daily operations, or principal is convicted of any Oregon felony offense, or any offense in another United States court that is equivalent to an Oregon felony offense, within the preceding fifteen (15) years from the date the application for a letter of appointment is received by the Department. This subsection is subject to the provisions set forth under ORS 166.270(4)(b).

(b) A qualified tow business, tow business, manager of daily operations, or principal is convicted of two or more felony offenses. This subsection applies regardless of the date of the conviction.

(c) A manager of daily operations or principal is convicted of any felony offense, or any offense in another United States court that is the equivalent of an Oregon felony offense, where a weapon was used or threatened to be used in the commission of the crime. This subsection applies regardless of the date of the conviction.

(d) A manager of daily operations or principal is convicted of any sex crimes. This subsection applies regardless of the date of the conviction.

(2) Disqualified drivers.

(a) A driver that has any conviction described in subsection (1) of this administrative rule is disqualified from operating any tow vehicle on behalf of a qualified tow business and shall not participate in the towing of vehicles for a qualified tow business under the Department's non-preference tow program.

(b) A qualified tow business that employs a driver that has any conviction described in subsection (1) of this administrative rule will remain eligible to participate in the Department's non-preference tow program under a letter of appointment. However, the qualified tow business shall not allow a driver that is ineligible under this subsection to participate in the towing of vehicles on behalf of the qualified tow business under any letter of appointment issued by the Department.

(c) Qualified tow businesses, tow businesses, managers of daily operations, and principals who become aware that a driver is disqualified under this subsection shall immediately notify the Department of the driver and the reason for the disqualification.

(3) The Department may, at any time, conduct Oregon LEDS checks of qualified tow businesses, tow businesses, managers of daily operations, principals, and drivers in order to enforce its administrative rules. The Department may also conduct checks of court records in order to determine the existence of felony convictions, dates of convictions, and other disqualifying factors under its administrative rules.

(4) These rules apply to any application for a letter of appointment or any letter of appointment in effect before, on, or after the effective date of these rule amendments.

Stat. Auth.: ORS 181A.350

Stats. Implemented: ORS 181A.350

Hist.: OSP 5-2005, f. & cert. ef. 11-18-05; OSP 1-2006, f. 3-29-06, cert. ef. 3-31-06; OSP 1-2009(Temp), f. & cert. ef. 8-6-09 thru 1-31-10; OSP 2-2009, f. 10-8-09 cert. ef. 1-1-10; OSP 3-2009(Temp), f. 12-18-09, cert. ef. 1-1-10 thru 6-29-10; OSP 3-2010, f. 6-1-10, cert. ef. 6-30-10; OSP 2-2016(Temp), f. & cert. ef. 11-18-16 thru 5-16-17; OSP 1-2017, f. & cert. ef. 3-8-17

ADMINISTRATIVE RULES

Department of State Police, Oregon State Athletic Commission Chapter 230

Rule Caption: This rule amendment allows weigh-ins to be conducted beyond 24 hours prior to the event.

Adm. Order No.: SAC 1-2017

Filed with Sec. of State: 2-28-2017

Certified to be Effective: 2-28-17

Notice Publication Date: 1-1-2017

Rules Amended: 230-030-0150

Subject: OAR 230-030-0150 Dictates the procedure for which competitors are weighed in at an Oregon State Athletic Commission regulated event. Subsection two states that boxing and mixed martial arts competitors shall be officially weighed in within twenty-four hours prior to the commencement of the event.

Current research shows that allowing weigh-in more than twenty-four hours prior to the event allows competitors more time to rehydrate. This allows the commission to better protect the health and safety of the competitors.

Rules Coordinator: Trista Robischon—(503) 378-3580

230-030-0150

Weigh-In, Pre-fight Physical Examination and Post-fight Physical Examination

(1) No boxing or mixed martial arts competitor shall be weighed-in or administered a pre-fight physical examination unless the competitor is properly licensed by the Superintendent.

(2) Weigh-in. Unless approved by an authorized representative of the superintendent, boxing and mixed martial arts competitors shall be officially weighed within 24 hours prior to the commencement of the event.

(a) The weigh-in shall occur at a time and place designated or approved by the Director, and in the presence of the Director or the authorized representative of the Superintendent.

(b) Scales approved by the Director shall be utilized for the official weigh-in.

(c) Any boxing or mixed martial arts competitor who has been signed to a contract to compete at any boxing or mixed martial arts event may be ordered by the Superintendent or the Superintendent's representative to appear at any time to be weighed by the Director or the authorized representative of the Superintendent.

(d) If a boxing or mixed martial arts competitor is late to the weigh-in or to the pre-fight physical examination, both the competitor and the competitor's manager may be subject to disciplinary action.

(e) If a boxing or mixed martial arts competitor appears at the weigh-in, and the competitor's body weight is 5% or more over the agreed upon weight, the competitor shall be disqualified from the bout, and the competitor and the competitor's manager may be subject to disciplinary action by the Superintendent.

(f) If in an attempt to make weight, the boxing or mixed martial arts competitor shows evidence of significant dehydration, of having taken diuretics or other drugs, or of having used any other harsh modality, the examining ringside physician or other medical personnel may refuse to medically certify the competitor to participate in an event and may recommend disciplinary action be imposed by the Superintendent.

(g) A professional boxing or mixed martial arts competitor who fails to make the weight contractually agreed upon in his or her bout agreement forfeits 20% of his or her purse to his or her opponent, if the competitor is unable to make the contractually agreed upon weight within two hours directly following the weigh-in, and the bout takes place. If the professional competitor is able to make the contractually agreed upon weight or weighs less than 1 pound outside the agreed limits, no forfeit may be imposed or fine assessed upon the competitor. All boxing or mixed martial arts competitors are permitted two hours directly following their weigh-in to make weight regardless of whether the competitor is competing in a professional or amateur bout.

(A) If a professional boxing or mixed martial arts competitor agrees to fight an opponent who has failed to make weight, the fight may take place, if approved by the Director or authorized representative of the Superintendent. The bout agreement shall be amended to reflect the agreed upon weight.

(B) The 1 pound allowance set forth in this section does not apply to championship or title bouts. In bouts deemed to be championship or title bouts, the competitors must be at or below the agreed upon weight.

(3) Pre-fight Physical Examination. Boxing and mixed martial arts competitors shall undergo a pre-fight physical examination within 24 hours prior to the commencement of the event.

(a) The pre-fight physical examination shall occur at a time and place designated or approved by the Director, and in the presence of the Director or the authorized representative of the Superintendent.

(b) The promoter shall provide a suitable room in which to conduct pre-fight physical examinations.

(c) Only the boxing or mixed martial arts competitor and an authorized representative of the Superintendent are allowed in the examination room while the pre-fight physical examination is being conducted unless the competitor and examining ringside physician or other medical personnel agrees otherwise.

(d) The ringside physician or other medical personnel conducting the pre-fight physical examination shall determine the fitness of the boxing or mixed martial arts competitor to compete in the event based on standards recommended by the Medical Advisory Committee and adopted by the Commission. Standards adopted by the Commission are found referenced on the "Pre/Post Fight Physical Examination Record" form and are available on the Commission website located at http://www.oregon.gov/osp/gaming/Pages/b_w_welcome.aspx.

(e) During the course of the administration of the pre-fight physical examination and the weigh-in, the boxer or mixed martial arts competitor and their manager must make full disclosure of all information required by the ringside physician or other medical personnel and the authorized representative of the Superintendent. Falsification of entries on the pre-fight physical examination form may result in disqualification, suspension or fine of both the competitor and their manager.

(f) The competitor and their manager shall conduct themselves in an appropriate manner and shall desist from unruly, boisterous, or disruptive behavior at all times.

(4) Should any competitor who has been examined and deemed medically unfit for competition or any referee deemed medically unfit for officiating by the ringside physician or other medical personnel, the competitor or referee shall be rejected and an immediate report of that fact shall be made to the Director or authorized representative of the Superintendent. This determination may be made during the pre-fight physical examination for a competitor or at the event for competitors or referees.

(5) Post-Fight Physical Examination. Immediately upon completion of the bout, boxing and mixed martial arts competitors must participate in a post-fight physical examination by the ringside physician or other medical personnel assigned to the event. The ringside physician or other medical personnel conducting the examination shall submit to the Director a report documenting each competitor's injuries and indicating any recommended medical waiting periods if deemed necessary. Medical waiting periods shall include limits on contact as well as participation in future competition. Medical waiting periods may also include any required tests or follow-up treatment recommended by the ringside physician or other medical personnel conducting the examination.

Stat. Auth.: ORS 463.113

Stats. Implemented: ORS 463.113 & 463.047

Hist.: BWC 1-1988, f. 3-22-88, cert. ef. 3-29-88; BWC 1-1991, f. & cert. ef. 9-20-91, Renumbered from 230-060-0250; BWC 1-1995, f. 10-10-95, cert. ef. 10-13-95; BWC 1-1996, f. & cert. ef. 4-8-96; BWC 1-2002(Temp), f. & cert. ef. 2-15-02 thru 8-13-02; BWC 2-2002, f. & cert. ef. 8-15-02; SAC 1-2015, f. & cert. ef. 2-9-15; SAC 1-2016(Temp), f. 8-25-16, cert. ef. 9-30-16 thru 3-28-17; SAC 1-2017, f. & cert. ef. 2-28-17

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

Rule Caption: Changes advisory committee member term from a fixed period to variable period

Adm. Order No.: DMV 4-2017

Filed with Sec. of State: 2-22-2017

Certified to be Effective: 2-22-17

Notice Publication Date: 1-1-2017

Rules Amended: 735-150-0005

Subject: ODAC members currently serve a fixed three-year term. Over time and due to unforeseen circumstances, multiple committee member terms now expire at the same time. The proposed amendment of OAR 735-150-0005 changes member terms from a fixed three-year term to a variable term of up to three years. The revision provides greater flexibility in making appointments to ensure committee continuity.

Rules Coordinator: Lauri Kunze—(503) 986-3171

ADMINISTRATIVE RULES

735-150-0005

Oregon Dealer Advisory Committee

(1) The Oregon Dealer Advisory Committee is established pursuant to ORS 802.370.

(2) The committee's membership will consist of the following individuals appointed by the DMV Administrator:

- (a) Two individuals who represent franchise dealers of new vehicles;
- (b) Two individuals who represent dealers of used vehicles;
- (c) Two individuals who represent Oregon dismantlers;
- (d) Two individuals who represent the interests of the general public;
- (e) One individual who represents recreational vehicle dealers;
- (f) One individual who represents vehicle dealership office management interests;

(g) One individual who represents auto auctions;

(h) One individual who represents Oregon towing businesses; and

(i) One individual who represents dealers of motorcycles, mopeds, or all-terrain vehicles.

(j) In addition to the committee membership described under subsections (a) through (i) of this section, membership may also include one individual, whose term of appointment and interest of representation is determined by the administrator.

(3) DMV will designate one member listed in section (2) of this rule as chair of the committee. The chair's term expires December 31 of each year.

(4) Committee members serve up to a three-year term, at the pleasure of the administrator, and may be reappointed. Appointments are staggered to ensure committee continuity. All terms expire on December 31. In the event of a vacancy, the administrator will appoint a new committee member to serve the remaining term.

(5) DMV will seek the recommendation of existing ODAC members or a trade or professional association generally recognized to represent a membership category before appointing a committee member, however, DMV is not bound by any recommendation.

(6) Meetings will be held quarterly beginning in January of each year, unless a meeting is cancelled, postponed or rescheduled as agreed to by DMV and a majority of the committee members. A committee member may be replaced by the administrator for missing two consecutive quarterly meetings without good cause.

(7) DMV will consult with the committee before:

- (a) Adopting administrative rules under ORS 822.035;
- (b) Taking disciplinary action against a dealer under ORS 822.050 to revoke, suspend or place a dealer on probation;
- (c) Levying a civil penalty against a dealer under ORS 822.009(1); or
- (d) Taking disciplinary action against an Oregon dismantler under OAR 735-152-0050 to revoke, suspend or place a dismantler on probation.

(8) DMV may consult with the committee as required by section (7) of this rule at a committee meeting, or by mail, telephone, or other electronic means. DMV will provide written information on a proposed action described in section (7) of this rule to the committee members at least seven days before a committee meeting or the date a recommendation from the committee members is due. DMV may provide the written information by mail, fax, or other electronic means.

(9) The requirements of section (8) of this rule do not apply if DMV determines it must take immediate disciplinary action because the continued operation of a business regulated under ORS Chapter 822 jeopardizes public health or safety. DMV will consult with the committee before taking any action described under this section. Following the action, DMV will provide written notification of DMV's action to the committee.

(10) Recommendations of the committee and the individual committee members are advisory only and the Department of Transportation, including DMV, is not bound by any recommendation.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 822.035

Stats. Implemented: ORS 802.370

Hist.: MV 19-1992, f. 12-23-92, cert. ef. 1-1-93; DMV 6-1994, f. & cert. ef. 7-21-94; DMV 20-2004, f. & cert. ef. 8-20-04; DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06; DMV 4-2006, f. & cert. ef. 5-25-06; DMV 7-2009, f. & cert. ef. 3-20-09; DMV 19-2009(Temp), f. & cert. ef. 9-29-09 thru 3-20-10; DMV 5-2010, f. & cert. ef. 2-25-10; DMV 4-2017, f. & cert. ef. 2-22-17

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Rule Caption: Changes advisory committee member term from a fixed period to variable period

Adm. Order No.: DMV 5-2017

Filed with Sec. of State: 3-7-2017

Certified to be Effective: 3-7-17

Notice Publication Date: 1-1-2017

Rules Amended: 735-150-0005

Subject: ODAC members currently serve a fixed three-year term. Over time and due to unforeseen circumstances, multiple committee member terms now expire at the same time. The proposed amendment of OAR 735-150-0005 changes member terms from a fixed three-year term to a variable term of up to three years. The revision provides greater flexibility in making appointments to ensure committee continuity.

Rules Coordinator: Lauri Kunze—(503) 986-3171

735-150-0005

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- (c) Two individuals who represent Oregon dismantlers;
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- (e) One individual who represents recreational vehicle dealers;
- (f) One individual who represents vehicle dealership office management interests;

(g) One individual who represents auto auctions;

(h) One individual who represents Oregon towing businesses; and

(i) One individual who represents dealers of motorcycles, mopeds, or all-terrain vehicles.

(j) In addition to the committee membership described under subsections (a) through (i) of this section, membership may also include one individual, whose term of appointment and interest of representation is determined by the administrator.

(3) DMV will designate one member listed in section (2) of this rule as chair of the committee. The chair's term expires December 31 of each year.

(4) Committee members serve up to a three-year term, at the pleasure of the administrator, and may be reappointed. Appointments are staggered to ensure committee continuity. All terms expire on December 31. In the event of a vacancy, the administrator will appoint a new committee member to serve the remaining term.

(5) DMV will seek the recommendation of existing ODAC members or a trade or professional association generally recognized to represent a membership category before appointing a committee member, however, DMV is not bound by any recommendation.

(6) Meetings will be held quarterly beginning in January of each year, unless a meeting is cancelled, postponed or rescheduled as agreed to by DMV and a majority of the committee members. A committee member may be replaced by the administrator for missing two consecutive quarterly meetings without good cause.

(7) DMV will consult with the committee before:

- (a) Adopting administrative rules under ORS 822.035;
- (b) Taking disciplinary action against a dealer under ORS 822.050 to revoke, suspend or place a dealer on probation;
- (c) Levying a civil penalty against a dealer under ORS 822.009(1); or
- (d) Taking disciplinary action against an Oregon dismantler under OAR 735-152-0050 to revoke, suspend or place a dismantler on probation.

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(9) The requirements of section (8) of this rule do not apply if DMV determines it must take immediate disciplinary action because the continued operation of a business regulated under ORS Chapter 822 jeopardizes public health or safety. DMV will consult with the committee before taking any action described under this section. Following the action, DMV will provide written notification of DMV's action to the committee.

(10) Recommendations of the committee and the individual committee members are advisory only and the Department of Transportation, including DMV, is not bound by any recommendation.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 822.035

Stats. Implemented: ORS 802.370

Hist.: MV 19-1992, f. 12-23-92, cert. ef. 1-1-93; DMV 6-1994, f. & cert. ef. 7-21-94; DMV 20-2004, f. & cert. ef. 8-20-04; DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06; DMV 4-2006, f. & cert. ef. 5-25-06; DMV 7-2009, f. & cert. ef. 3-20-09; DMV 19-

ADMINISTRATIVE RULES

2009(Temp), f. & cert. ef. 9-29-09 thru 3-20-10; DMV 5-2010, f. & cert. ef. 2-25-10; DMV 4-2017, f. & cert. ef. 2-22-17; DMV 5-2017, f. & cert. ef. 3-7-17

2013, f. & cert. ef. 1-17-13; MCTD 1-2013, f. & cert. ef. 1-17-13; MCTD 7-2013, f. 12-20-13, cert. ef. 1-1-14; MCTD 2-2015, f. & cert. ef. 5-26-15; MCTD 2-2016, f. & cert. ef. 7-27-16; MCTD 1-2017, f. & cert. ef. 2-22-17

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**Department of Transportation,
Motor Carrier Transportation Division
Chapter 740**

Rule Caption: Annual re-adoption of IRP, HVUT and IFTA regulations

Adm. Order No.: MCTD 1-2017

Filed with Sec. of State: 2-22-2017

Certified to be Effective: 2-22-17

Notice Publication Date: 1-1-2017

Rules Amended: 740-200-0010, 740-200-0020, 740-200-0040

Subject: This amendment constitutes an adoption of the rules of the International Registration Plan (IRP) to the date of January 1, 2017. Interest is not charged in an audit assessment. The rulemaking removes this requirement and aligns the Department with IRP requirements. Title 26 Code of Federal Regulations Part 41 (HVUT) requires the State to confirm proof of payment of the tax, and require proof of payment by the State as a condition of issuing a registration for a highway motor vehicle. The amendment of OAR 740- 740-200-0020 adopts HVUT and amendments with the effective date of January 1, 2017, and ensures Oregon remains current with national commercial motor vehicle registration standards. International Fuel Tax Agreement (IFTA) and associated material are applicable to Oregon-based motor carriers who participate in IFTA as a way to report and pay fuel tax to other jurisdictions. The revision to OAR 740-200-0040 adopts the most recent version of IFTA and associated material as the procedures and guidelines for Oregon-based IFTA participants with the effective date of January 1, 2017 to ensure Oregon remains current with the international IFTA standards.

Rules Coordinator: Lauri Kunze—(503) 986-3171

740-200-0010

Prorate Registration

(1) The provisions contained in the “International Registration Plan” (IRP), the IRP Audit Procedures Manual and all amendments thereto in effect January 1, 2017, are hereby adopted and prescribed by the Oregon Department of Transportation and apply to the apportioned registration of vehicles. Unless otherwise revised by written delegation, the designated person to cast a vote on an IRP ballot for Oregon is the Administrator of the Motor Carrier Transportation Division.

(2) In addition to the requirements described in section (1) of this rule, the following requirements apply to Oregon-based motor carriers who participate in IRP:

(a) Records required to be maintained for distance data must denote intermediate trip stops;

(b) Audit assessments are subject to penalty and late payment charges described in IRP and the IRP Audit Procedures Manual;

(c) Any person against whom a proposed assessment is made by the Department may petition the Department for reassessment within 30 days after service upon the person of the assessment notice. If a petition for reassessment is not filed within the 30-day period, the assessment becomes final. If a petition for reassessment is timely filed, the Department will reconsider the assessment. The decision of the Department upon a petition for reassessment will become final 30 days after notice of the decision is served upon the petitioner. A petitioner may submit a request for hearing in the petition for reassessment; and

(d) If a request for hearing is timely received, a hearing will be scheduled and conducted in accordance with the provisions of ORS Chapter 183. The petitioner will be provided a minimum of 10 days’ notice of the time and place of the hearing. The Department may assess a penalty of \$150 for failure to appear at a scheduled hearing.

(3) The mileage reporting period for application and renewal purposes will be the previous July through June twelve-month period.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 184.616, 184.619, 823.011 & 826.003

Stats. Implemented: ORS 826.005 & 826.007

Hist.: PUC 8-1990, f. & cert. ef. 5-25-90 (Order No. 90-834); PUC 7-1993, f. & cert. ef. 3-19-93 (Order No. 93-285); MCT 3-1996, f. & cert. ef. 3-14-96; Renumbered from 860-081-0005; MCTB 6-2002, fr. & cert. ef. 11-18-02; MCTD 8-2003, f. & cert. ef. 11-18-03, cert. ef. 1-1-04; MCTD 4-2004, f. 12-28-04, cert. ef. 1-1-05; MCTD 2-2008, f. 6-23-08, cert. ef. 7-1-08; MCTD 1-2011, f. & cert. ef. 2-18-11; MCTD 6-2012, f. & cert. ef. 7-19-12; MCTD 1-

740-200-0020

Adoption of Federal Rules Governing Payment of Heavy Vehicle Use Tax (HVUT)

The Department hereby adopts the rules of the United States Internal Revenue Service contained in 26 CFR Part 41 (HVUT) and all amendments thereto in effect January 1, 2017. These rules apply to carriers conducting operations subject to ORS Chapter 826. As provided in CFR Title 26 Part 41.6001-2(b)(3), the Department will suspend the registration of a vehicle for which proof of HVUT payment has not been received within four months of the effective date of registration.

Stat. Auth.: ORS 184.616, 184.619, 823.011 & 826.003

Stats. Implemented: ORS 803.370(5) & 826.007

Hist.: PUC 19-1990, f. & cert. ef. 12-31-90 (Order No. 90-1919); PUC 7-1993, f. & cert. ef. 3-19-93 (Order No. 93-285); MCT 3-1996, f. & cert. ef. 3-14-96; Renumbered from 860-081-0015; MCTB 6-2002, fr. & cert. ef. 11-18-02; MCTD 8-2003, f. & cert. ef. 11-18-03, cert. ef. 1-1-04; MCTD 4-2004, f. 12-28-04, cert. ef. 1-1-05; MCTD 2-2008, f. 6-23-08, cert. ef. 7-1-08; MCTD 1-2011, f. & cert. ef. 2-18-11; MCTD 2-2012, f. & cert. ef. 2-21-12; MCTD 1-2013, f. & cert. ef. 1-17-13; MCTD 7-2013, f. 12-20-13, cert. ef. 1-1-14; MCTD 2-2015, f. & cert. ef. 5-26-15; MCTD 2-2016, f. & cert. ef. 7-27-16; MCTD 1-2017, f. & cert. ef. 2-22-17

740-200-0040

Adoption of International Fuel Tax Agreement

(1) The provisions contained in the International Fuel Tax Agreement (IFTA) Articles of Agreement, the IFTA Audit Manual and the IFTA Procedures Manual, and all amendments thereto in effect January 1, 2017, are hereby adopted and prescribed by the Oregon Department of Transportation (ODOT) and apply to Oregon-based motor carriers who participate in IFTA.

(2) In addition to the requirements described in section (1) of this rule, the following requirements apply to Oregon-based motor carriers who participate in IFTA:

(a) Records required to be maintained for distance data must denote intermediate trip stops;

(b) Records of monthly over the road and bulk fuel reconciliations must be maintained;

(c) The Department will assess a penalty of \$50 or 10 percent of the amount of delinquent taxes due, whichever is greater, for failing to file a return, filing a late return, or underpaying taxes due on a return;

(d) The Department will assess a penalty of 10 percent of the amount of delinquent taxes due, for additional assessments as the result of an audit;

(e) Any person against whom a proposed assessment is made by the Department may petition the Department for reassessment within 30 days after service upon the person of the assessment notice. If a petition for reassessment is not filed within the 30-day period, the assessment becomes final. If a petition for reassessment is timely filed, the Department will reconsider the assessment. The decision of the Department upon a petition for reassessment will become final 30 days after notice of the decision is served to the petitioner. A petitioner may submit a request for hearing in the petition for reassessment;

(f) If a request for hearing is timely received, a hearing will be scheduled and conducted in accordance with the provisions of ORS Chapter 183. The petitioner will be provided a minimum of 10 days’ notice of the time and place of the hearing; and

(g) An amendment may be made to, or audit conducted of, a tax return not more than four (4) years from the date the taxes or fees were filed.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 184.616, 184.619 & 823.011

Stat. Implemented: ORS 825.490, 825.494 & 825.555

Hist.: MCTB 6-2002, fr. & cert. ef. 11-18-02; MCTD 8-2003, f. & cert. ef. 11-18-03, cert. ef. 1-1-04; MCTD 4-2004, f. 12-28-04, cert. ef. 1-1-05; MCTD 2-2008, f. 6-23-08, cert. ef. 7-1-08; MCTD 4-2009, f. 12-22-09, cert. ef. 1-1-10; MCTD 1-2011, f. & cert. ef. 2-18-11; MCTD 2-2012, f. & cert. ef. 2-21-12; MCTD 1-2013, f. & cert. ef. 1-17-13; MCTD 7-2013, f. 12-20-13, cert. ef. 1-1-14; MCTD 8-2014, f. & cert. ef. 9-22-14; MCTD 2-2015, f. & cert. ef. 5-26-15; MCTD 2-2016, f. & cert. ef. 7-27-16; MCTD 1-2017, f. & cert. ef. 2-22-17

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Rule Caption: Annual re-adoption of IRP, HVUT and IFTA regulations

Adm. Order No.: MCTD 2-2017

Filed with Sec. of State: 3-7-2017

Certified to be Effective: 3-7-17

Notice Publication Date: 1-1-2017

Rules Amended: 740-200-0010, 740-200-0020, 740-200-0040

Subject: This amendment constitutes an adoption of the rules of the International Registration Plan (IRP) to the date of January 1, 2017.

ADMINISTRATIVE RULES

Interest is not charged in an audit assessment. The rulemaking removes this requirement and aligns the Department with IRP requirements. Title 26 Code of Federal Regulations Part 41 (HVUT) requires the State to confirm proof of payment of the tax, and require proof of payment by the State as a condition of issuing a registration for a highway motor vehicle. The amendment of OAR 740-740-200-0020 adopts HVUT and amendments with the effective date of January 1, 2017, and ensures Oregon remains current with national commercial motor vehicle registration standards. International Fuel Tax Agreement (IFTA) and associated material are applicable to Oregon-based motor carriers who participate in IFTA as a way to report and pay fuel tax to other jurisdictions. The revision to OAR 740-200-0040 adopts the most recent version of IFTA and associated material as the procedures and guidelines for Oregon-based IFTA participants with the effective date of January 1, 2017 to ensure Oregon remains current with the international IFTA standards.

Rules Coordinator: Lauri Kunze—(503) 986-3171

740-200-0010

Prorate Registration

(1) The provisions contained in the “International Registration Plan” (IRP), the IRP Audit Procedures Manual and all amendments thereto in effect January 1, 2017, are hereby adopted and prescribed by the Oregon Department of Transportation and apply to the apportioned registration of vehicles. Unless otherwise revised by written delegation, the designated person to cast a vote on an IRP ballot for Oregon is the Administrator of the Motor Carrier Transportation Division.

(2) In addition to the requirements described in section (1) of this rule, the following requirements apply to Oregon-based motor carriers who participate in IRP:

(a) Records required to be maintained for distance data must denote intermediate trip stops;

(b) Audit assessments are subject to penalty and late payment charges described in IRP and the IRP Audit Procedures Manual;

(c) Any person against whom a proposed assessment is made by the Department may petition the Department for reassessment within 30 days after service upon the person of the assessment notice. If a petition for reassessment is not filed within the 30-day period, the assessment becomes final. If a petition for reassessment is timely filed, the Department will reconsider the assessment. The decision of the Department upon a petition for reassessment will become final 30 days after notice of the decision is served upon the petitioner. A petitioner may submit a request for hearing in the petition for reassessment; and

(d) If a request for hearing is timely received, a hearing will be scheduled and conducted in accordance with the provisions of ORS Chapter 183. The petitioner will be provided a minimum of 10 days’ notice of the time and place of the hearing. The Department may assess a penalty of \$150 for failure to appear at a scheduled hearing.

(3) The mileage reporting period for application and renewal purposes will be the previous July through June twelve-month period.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 184.616, 184.619, 823.011 & 826.003

Stats. Implemented: ORS 826.005 & 826.007

Hist.: PUC 8-1990, f. & cert. ef. 5-25-90 (Order No. 90-834); PUC 7-1993, f. & cert. ef. 3-19-93 (Order No. 93-285); MCT 3-1996, f. & cert. ef. 3-14-96; Renumbered from 860-081-0005; MCTB 6-2002, fr. & cert. ef. 11-18-02; MCTD 8-2003, f. & cert. ef. 11-18-03, cert. ef. 1-1-04; MCTD 4-2004, f. 12-28-04, cert. ef. 1-1-05; MCTD 2-2008, f. 6-23-08, cert. ef. 7-1-08; MCTD 1-2011, f. & cert. ef. 2-18-11; MCTD 6-2012, f. & cert. ef. 7-19-12; MCTD 1-2013, f. & cert. ef. 1-17-13; MCTD 1-2013, f. & cert. ef. 1-17-13; MCTD 7-2013, f. 12-20-13, cert. ef. 1-1-14; MCTD 2-2015, f. & cert. ef. 5-26-15; MCTD 2-2016, f. & cert. ef. 7-27-16; MCTD 1-2017, f. & cert. ef. 2-22-17; MCTD 2-2017, f. & cert. ef. 3-7-17

740-200-0020

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081-0015; MCTB 6-2002, fr. & cert. ef. 11-18-02; MCTD 8-2003, f. & cert. ef. 11-18-03, cert. ef. 1-1-04; MCTD 4-2004, f. 12-28-04, cert. ef. 1-1-05; MCTD 2-2008, f. 6-23-08, cert. ef. 7-1-08; MCTD 1-2011, f. & cert. ef. 2-18-11; MCTD 2-2012, f. & cert. ef. 2-21-12; MCTD 1-2013, f. & cert. ef. 1-17-13; MCTD 7-2013, f. 12-20-13, cert. ef. 1-1-14; MCTD 2-2015, f. & cert. ef. 5-26-15; MCTD 2-2016, f. & cert. ef. 7-27-16; MCTD 1-2017, f. & cert. ef. 2-22-17; MCTD 2-2017, f. & cert. ef. 3-7-17

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Stat. Auth.: ORS 184.616, 184.619 & 823.011

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Hist.: MCTB 6-2002, fr. & cert. ef. 11-18-02; MCTD 8-2003, f. & cert. ef. 11-18-03, cert. ef. 1-1-04; MCTD 4-2004, f. 12-28-04, cert. ef. 1-1-05; MCTD 2-2008, f. 6-23-08, cert. ef. 7-1-08; MCTD 4-2009, f. 12-22-09, cert. ef. 1-1-10; MCTD 1-2011, f. & cert. ef. 2-18-11; MCTD 2-2012, f. & cert. ef. 2-21-12; MCTD 1-2013, f. & cert. ef. 1-17-13; MCTD 7-2013, f. 12-20-13, cert. ef. 1-1-14; MCTD 8-2014, f. & cert. ef. 9-22-14; MCTD 2-2015, f. & cert. ef. 5-26-15; MCTD 2-2016, f. & cert. ef. 7-27-16; MCTD 1-2017, f. & cert. ef. 2-22-17; MCTD 2-2017, f. & cert. ef. 3-7-17

Economic Recovery Review Council

Chapter 966

Rule Caption: Relating to the designation of a new Regionally Significant Industrial Area.

Adm. Order No.: ERRC 1-2017

Filed with Sec. of State: 3-14-2017

Certified to be Effective: 3-14-17

Notice Publication Date: 2-1-2017

Rules Adopted: 966-100-0900

Subject: The Economic Recovery Review Council approved the South Coast Industrial Area as a Regionally Significant Industrial Area (RISA) on October 28, 2016. The RISA is located in Coos County and consists of six sites, totaling 753.59 acres. This rule describes the new RISA and the six sites it is comprised of.

Rules Coordinator: Mindee Sublette—(503) 986-0036

966-100-0900

South Coast Industrial Area

(1) The South Coast Industrial Area, located in Coos County, was approved by the ERRC as a designated RISA on October 28, 2016.

(2) The South Coast Industrial Area consists of six sites totaling 753.59 acres and is comprised of the following:

ADMINISTRATIVE RULES

(a) Southern Oregon Marine (SOMAR) Industrial Site comprised of one parcel totaling 61 acres: Tax Lot- 6962-292900: Acres- 61 Property ID- 25S13W25

(b) Henderson Site comprised of two parcels totaling 352.20 acres:

(A) Tax Lot- TL0030000: Acres- 182.50 Property ID- 25S13W05

(B) Tax Lot- TL0020000: Acres- 169.70 Property ID- 25S13W00

(c) North Bay Marine Industrial Park comprised of four parcels totaling 246.15 acres:

(A) Tax Lot- TL0010000: Acres- 190.50 Property ID- 25S13W18

(B) Tax Lot- TL0020200: Acres- 17.40 Property ID- 25S13W18

(C) Tax Lot- TL00105Z1: Acres- 34.50 Property ID- 25S13W18

(D) Tax Lot- TL00199Z0: Acres- 3.75 Property ID- 25S13W18

(e) Charleston Boat Yard comprised of ten parcels totaling 27.74 acres:

(A) Tax Lot- TL00300: Acres- .58 Property ID- 26S14W12BB

(B) Tax Lot- TL00500: Acres- .94 Property ID- 26S14W12BB

(C) Tax Lot- TL00600: Acres- 25.03 Property ID- 26S14W12BB

(D) Tax Lot- TL00603Z1: Acres- .51 Property ID- 26S14W12BB

(E) Tax Lot- TL00604Z1: Acres- .11 Property ID- 26S14W12BB

(F) Tax Lot- TL00605Z1: Acres- .17 Property ID- 26S14W12BB

(G) Tax Lot- TL00606Z1: Acres- .17 Property ID- 26S14W12BB

(H) Tax Lot- TL00607Z1: Acres- .11 Property ID- 26S14W12BB

(I) Tax Lot- TL00608Z1: Acres- .05 Property ID- 26S14W12BB

(J) Tax Lot- TL00610Z1: Acres- .07 Property ID- 26S14W12BB

(e) North Bank comprised of two parcels totaling 34 acres:

(A) Tax Lot- TL02300: Acres- 29.60 Property ID- 27S13W21

(B) Tax Lot- TL01401: Acres- 4.40 Property ID- 27S13W21BB

(f) Bolon Island comprised of one parcel totaling 32.50 acres:

(A) Tax Lot- R27039: Acres- 32.50 Property ID- 21122601200

Stats Auth: ORS 197.723

Stats Implemented: ORS 197.723

Hist.: ERRC 1-2017, f. & cert. ef. 3-14-17

Employment Department Chapter 471

Rule Caption: Align definition of “Reasonable Assurance” with federal guidance

Adm. Order No.: ED 2-2017(Temp)

Filed with Sec. of State: 2-27-2017

Certified to be Effective: 2-27-17 thru 8-25-17

Notice Publication Date:

Rules Amended: 471-030-0075

Subject: Section (4) of Oregon Administrative Rule (OAR) 471-030-0075 currently indicates that “Reasonable assurance cannot be ended or abated by any unilateral action of the individual. A decision to quit work, even for good cause, and even if the employer accepts the resignation, does not end or abate reasonable assurance.”

The Oregon Employment Department is temporarily changing Section (4) of the rule to indicate “An individual who voluntarily quits work for good cause, as defined under OAR 471-030-0038, does not have reasonable assurance with the employer from whom the person quit.”

This change will enable employees of educational institutions who the department determines to have voluntarily quit work with good cause to be eligible for unemployment insurance benefits. This makes Oregon’s rule consistent with recently issued federal guidance on this topic.

Rules Coordinator: Cristina Koreski—(503) 947-1471

471-030-0075

“Reasonable Assurance” Defined

(1) With respect to the application of ORS 657.167 and 657.221, “reasonable assurance” means a written contract, written notification or any agreement, express or implied, that the employee will perform services immediately following the academic year, term, vacation period or holiday recess which is in the same or similar capacity unless the economic terms and conditions of the employment in the second year or period are substantially less than the employment in the first year or period. A finding of reasonable assurance may be based on the totality of circumstances.

(2) As used in this rule, “substantially less” means:

(a) The gross weekly wage offered is less than 90% of the gross weekly wage earned in the prior academic year or term which preceded the weeks of unemployment or,

(b) The average number of hours the individual will be working is less than 90% of the average number of hours worked in the prior academic year or term, which preceded the weeks of unemployment;

(c) For the purpose of this section, employer paid benefits are not to be considered.

(3) With respect to (1) of this rule, “same or similar capacity” refers to the type of services provided: i.e., a “professional” capacity as provided by ORS 657.167 or a “nonprofessional” capacity as provided by 657.221.

(4) An individual who voluntarily quits work for good cause, as defined under OAR 471-030-0038, does not have reasonable assurance with the employer from whom the person quit.

Stat. Auth.: ORS 657

Stats. Implemented: ORS 657.167 & 657.221

Hist.: 1DE 150, f. & ef. 2-9-76; 1DE 152, f. 9-28-77, ef. 10-4-77; 1DE 1-1984, f. & ef. 3-21-84; 1DE 3-1985, f. & ef. 12-16-85; ED 4-2004, f. 7-30-04, cert. ef. 8-1-04; ED 13-2006(Temp), f. 12-1-06, cert. ef. 12-3-06 thru 6-1-07; ED 1-2007, f. & cert. ef. 1-29-07; ED 2-2017(Temp), f. & cert. ef. 2-27-17 thru 8-25-17

Land Conservation and Development Department Chapter 660

Rule Caption: Adoption of new rules governing selection of pilot projects that amend UGB for affordable housing

Adm. Order No.: LCDD 2-2017

Filed with Sec. of State: 2-24-2017

Certified to be Effective: 2-27-17

Notice Publication Date: 1-1-2017

Rules Adopted: 660-039-0000, 660-039-0010, 660-039-0020, 660-039-0030, 660-039-0040, 660-039-0050, 660-039-0060, 660-039-0070, 660-039-0080, 660-039-0090, 660-039-0100

Subject: The rules implement HB 4079, Oregon Laws 2016, Chapter 52, regarding an affordable housing pilot project program.

660-039-0000 sets forth the purpose of the pilot project program.

660-039-0010 sets forth definitions for the purposes of this division of rules.

660-039-0020 sets forth the process by which the Department of Land Conservation and Development will accept pre-applications and then applications from cities submitting pilot project nominations, and sets forth the submittal requirements for both pre-applications and applications.

660-039-0030 sets forth exemptions from compliance with statewide planning goals and implementing rules, statutes as authorized by Oregon Laws 2016, Chapter 52, and statewide planning goals and implementing rules for which the applications must show compliance.

660-039-0040 sets forth requirements for provision of public facilities and services to the pilot project site.

660-039-0050 sets forth pilot project requirements for buffering from nearby farm and forest uses and protection on-site natural resources.

660-039-0060 sets forth requirements for cities submitting pilot project requirements to demonstrate sufficient measures within existing urban growth boundaries to promote affordable and needed housing.

660-039-0070 sets forth requirements for affordable and market-rate housing amounts and characteristics within the pilot project.

660-039-0080 sets forth the pilot project selection process for the Land Conservation and Development Commission.

660-039-0090 sets forth the subsequent actions necessary, after selection, by the cities whose pilot projects were selected for implementation by the Land Conservation and Development Commission.

660-039-0100 sets forth the annual reporting requirements for cities whose pilot projects were selected for implementation by the Land Conservation and Development Commission.

Rules Coordinator: Casaria Taylor—(503) 373-0050, ext. 322

660-039-0000

Purpose

The affordable housing pilot program is intended to:

(1) Encourage local governments to provide an adequate supply of land within urban growth boundaries that is dedicated to affordable housing;

ADMINISTRATIVE RULES

- (2) Encourage the development of affordable housing on land dedicated to affordable housing;
- (3) Protect land dedicated to affordable housing from conversion to other uses before or after the development of affordable housing;
- (4) Enhance public understanding of the relationship of land supply to the development of affordable and needed housing; and
- (5) Enhance public understanding of how cities can increase the amount of affordable and needed housing.

Stat. Auth.: ORS 197.040, OL 2016, Ch. 52
Stats. Implemented: OL 2016, Ch. 52
Hist.: LCDD 2-2017, f. 2-24-17, cert. ef. 2-27-17

660-039-0010

Definitions

The definitions in ORS 197.015, the statewide planning goals, and the following definitions apply to this division:

- (1) "Affordable housing" means:

- (a) Housing units available for rent, with or without government assistance, by households who meet applicable maximum income limits, not to exceed 80 percent of the area median income, adjusted for family size, as determined based on data from the United States Department of Housing and Urban Development or its successor agency, and in a manner so that no more than 30 percent of the household's gross income will be spent on rent and utilities;

- (b) Housing units available for purchase, with or without government assistance, by households who meet applicable maximum income limits, not to exceed 80 percent of the area median income, adjusted for family size, as determined based on data from the United States Department of Housing and Urban Development or its successor agency, and in a manner so that no more than 30 percent of the household's gross income will be spent on home loan or mortgage payments, amortized interest, property taxes, insurance, and condominium or association fees, if any; or

- (c) Spaces in manufactured dwelling parks available for rent, with or without government assistance, by households who meet applicable maximum income limits, not to exceed 100 percent of the area median income, adjusted for family size, as determined based on data from the United States Department of Housing and Urban Development or its successor agency.

- (2) "Affordable housing unit" means a single housing unit, or a single space in a manufactured dwelling park, that meets the definition of affordable housing.

- (3) "High-value farmland" has the meaning provided in ORS 195.300.

- (4) "Housing unit" means a single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.

- (5) "Market rate housing unit" means a single housing unit, or a single space in a manufactured dwelling park, that does not qualify as affordable housing.

- (6) "Public facilities and services" means sanitary sewers, domestic water, fire protection, parks, recreation, streets and roads, and mass transit.

- (7) "Qualifying city" means any incorporated city except for:

- (a) Any incorporated city within Clackamas, Marion, Multnomah, Polk and Washington Counties; and

- (b) Culver, Madras, Metolius, or any other incorporated city within the portion of Jefferson County that is also within the boundary of the North Unit Irrigation District.

- (8) "Site" means one or more contiguous lots or parcels.

Stat. Auth.: ORS 197.040, OL 2016, Ch. 52
Stats. Implemented: OL 2016, Ch. 52
Hist.: LCDD 2-2017, f. 2-24-17, cert. ef. 2-27-17

660-039-0020

Preliminary Application and Final Application Requirements

- (1) The director shall set deadlines for qualifying cities to submit:

- (a) A preliminary application for a pilot project site; and

- (b) A final application for a pilot project site.

- (2) The director may revise either deadline under section (1) as the director determines is appropriate to accomplish the purpose of the pilot program.

- (3) To participate in the pilot program, a qualifying city must submit a preliminary application for a pilot project site to the department. A preliminary application must include:

- (a) A map of the pilot project site;

- (b) The total acreage of the pilot project site;

- (c) The existing land use designation and zoning of the pilot project site, and surrounding land within a minimum one-half mile radius;

- (d) Demonstration that the pilot project site does not include high-value farmland;

- (e) The number and type of affordable housing units, and, if the pilot project is a mixed income project, the number and type of market rate housing units, to be developed on the pilot project site;

- (f) The identity of entities that may partner with the qualifying city in development of the pilot project site; and

- (g) A brief statement of how the pilot project site will be provided with public facilities and services.

- (4) The department will review a preliminary application submitted under section (3) to determine whether the preliminary application is complete. If the preliminary application is not complete, the department shall notify the applicant in writing of what information is missing within 30 days of receipt of the application and allow the applicant to submit the missing information. The department will contact each pre-applicant to discuss the proposed pilot project.

- (5) An applicant may revise information included in a preliminary application as part of a final application submitted pursuant to section (6).

- (6) In order to be selected as a pilot project, a qualifying city that submitted a complete preliminary application must submit a final application to the department that includes:

- (a) A map of the pilot project site;

- (b) The total acreage of the pilot project site;

- (c) The existing land use designation and zoning of the pilot project site, and surrounding land within a minimum one-half mile radius, including demonstration that the pilot project site does not include high-value farmland;

- (d) A concept plan narrative and map showing generalized land uses and public facilities that includes:

- (A) The number and type of affordable housing units;

- (B) If the project is a mixed income project, the number and type of market rate housing units;

- (C) The development phasing of affordable housing and any market rate housing included on the pilot project site, including a phasing timeline for the entire project;

- (D) The applicable maximum income limits of households eligible to rent or purchase affordable housing within the pilot project site, expressed as a percentage of the area median income, adjusted for family size;

- (E) The prices at which affordable housing units within the pilot project site will be rented or sold to eligible tenants or homebuyers;

- (F) Draft language of the amendments to the qualifying city's comprehensive plan and land use regulations that would be required to implement the final application;

- (G) Information about how the pilot project site will be provided with public facilities and services, including:

- (i) The proposed network of streets and other transportation facilities designed to connect with existing street facilities and serve all modes of personal transportation, including mass transit; and

- (ii) The location of parks and recreational facilities;

- (H) Proposed buffering from adjacent and nearby farm and forest uses on farm and forest lands;

- (I) Location of any natural resources on the pilot project site requiring analysis and protection under Statewide Planning Goal 5, or mitigation of hazards under Statewide Planning Goal 7; and

- (J) If the pilot project is a mixed income project, a description of how the mixed income portion supports the development of affordable housing;

- (e) A resolution adopted by the governing body of the qualifying city stating if the pilot project is selected, the qualifying city will:

- (A) Implement the concept plan; and

- (B) Annex the pilot project site within two years of an acknowledged urban growth boundary amendment to include the site;

- (f) A resolution of support for the pilot project adopted by the governing body of the county in which the pilot project site is located;

- (g) A resolution of support for the pilot project adopted by the governing body of any special district providing urban services to the pilot project site for sanitary sewer, domestic water, fire protection, parks, recreation, streets and roads, or mass transit;

- (h) A signed and notarized statement from all owners of the pilot project site consenting to all aspects of the final application and agreeing to designation of the site as a pilot project;

- (i) Citations for any code or ordinance provisions the qualifying city has adopted that implement housing measures described in OAR 660-039-0060, or any additional housing measures the qualifying city has adopted that accommodate and encourage the development of affordable or needed housing within its existing urban growth boundary;

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(j) Data on how the pilot project will serve identified populations in need of affordable housing, including:

(A) Household cost burden in the region, as determined using information from the United States Department of Housing and Urban Development;

(B) Conversion of manufactured home parks in the region;

(C) Availability of government assisted housing in the region; and

(D) Other data the qualifying city determines to be relevant.

(k) An explanation of why the development of a project similar to the proposed pilot project is unlikely to be developed within the existing urban growth boundary. The explanation may include, but is not limited to: land costs, redevelopment or remediation costs, site availability, or physical constraints;

(l) The identity and prior experience with the development of affordable or market-rate housing, of any other entity, public or private, that will be developing the pilot project site.

(m) An explanation of how the qualifying city will ensure affordable housing developed on the pilot project site will continue to be used as provided in the concept plan for a minimum of 50 years after selection of the pilot project site through one or more of the following:

(A) Zoning restrictions;

(B) Guaranteed rental rates or sales prices;

(C) Incentives, contract commitments, density bonuses or other voluntary regulations, provisions or conditions designed to increase the supply of moderate or lower cost housing units;

(D) Restrictive agreements entered into with sources of affordable housing funding; or

(E) Other regulations, provisions or conditions determined by the local government to be effective in maintaining the affordability of housing on the pilot project site.

(7) The department will review a final application submitted under section (6) to determine whether the final application is complete. If the final application is not complete, the department shall notify the applicant in writing of what information is missing within 30 days of receipt of the application and allow the applicant to submit the missing information.

(8) A final complete application must demonstrate the following to be considered for selection as a pilot project by the commission:

(a) The pilot project site is adjacent to the existing urban growth boundary of the applicant qualifying city;

(b) No tract within the pilot project site is high-value farmland;

(c) The total acreage of the pilot project site does not exceed 50 acres;

(d) The proposed gross residential density on the pilot project site is:

(A) At least seven housing units per acre for areas of the pilot project site proposed for affordable housing; and

(B) At least seven housing units per acre for areas of the pilot project site proposed for market rate housing;

(e) The pilot project site can be provided with public facilities and services as provided in OAR 660-039-0040(1) to (3);

(f) The pilot project avoids or minimizes adverse effects on natural resources and nearby farm and forest uses as provided in OAR 660-039-0050(1), (2), and (4);

(g) The qualifying city has adopted the required number of housing measures into its development code as provided in OAR 660-039-0060;

(h) The pilot project satisfies the housing requirements as provided in OAR 660-039-0070(1) to (6);

(i) The project will serve identified populations in need of affordable housing;

(j) The qualifying city has explained why the development of a project similar to the proposed pilot project is unlikely to be developed within the existing urban growth boundary; and

(k) The qualifying city has demonstrated that the entity developing the pilot project will be able to complete the development.

Stat. Auth.: ORS 197.040, OL 2016, Ch. 52

Stats. Implemented: OL 2016, Ch. 52

Hist.: LCDD 2-2017, f. 2-24-17, cert. ef. 2-27-17

660-039-0030

Compliance with Goals, Statutes, Administrative Rules

(1) Regarding the pilot project site, a qualifying city submitting a pilot project nomination is exempt from compliance, and the commission is not required to select a pilot project that complies, with:

(a) ORS 197A.320;

(b) The Land Need or Boundary Location provisions of Goal 14;

(c) Goals 3, 4, 6, 8, 9, 10, 12, 13, and 19;

(d) Goal 11, except that portion applicable to the impact of development of the pilot project site upon existing and planned public facilities within the qualifying city's urban growth boundary;

(e) Goal 15, unless the land is within the Willamette River Greenway Boundary;

(f) Goals 16, 17, and 18, unless the land is within a coastal shorelands boundary; or

(g) Any administrative rules implementing, clarifying, or interpreting these goals.

(2) A qualifying city submitting a pilot project nomination is required to make findings showing compliance, and the commission is required to select a pilot project that complies with:

(a) Goal 5, regarding resources located on the project site; and

(b) Goal 7.

(3) Notwithstanding section (1), a qualifying city may not bring high-value farmland within its urban growth boundary to implement a pilot project.

Stat. Auth.: ORS 197.040, OL 2016, Ch. 52

Stats. Implemented: OL 2016, Ch. 52

Hist.: LCDD 2-2017, f. 2-24-17, cert. ef. 2-27-17

660-039-0040

Provision of Public Facilities and Services

(1) A qualifying city submitting a pilot project nomination shall demonstrate that, for sanitary sewers, domestic water, fire protection, parks or recreation, and streets and roads the pilot project site can be reasonably provided with public facilities and services and the provider(s) of the public facilities and services have the capacity and financial resources to serve development on the site as proposed in the concept plan.

(2)(a) A qualifying city with a population of 25,000 or less shall demonstrate that, either:

(A) For mass transit corridors, the affordable housing units within the pilot project site are accessible or can be made accessible to a transit stop served by a fixed transit corridor with at least four weekday trips in each direction, or four weekday trips at the terminus of a fixed transit corridor, that is within a three-quarters mile distance via sidewalk or pedestrian walkway; or

(B) If transit service described in paragraph (A) is unavailable, the pilot project site is served by public demand response transit service that does not exclude any segment of the general population.

(b) If transit service is not currently available, the qualifying city shall provide an official resolution or other action of the governing body providing mass transit service stating that, if the project is selected, mass transit service that satisfies the standards under subsection (a) will be provided concurrently with development of the affordable housing units.

(3) A qualifying city with a population greater than 25,000 shall demonstrate that, for mass transit corridors, the affordable housing units within the pilot project site are accessible or can be made accessible to a transit stop served by a fixed transit corridor with at least eight weekday trips in each direction, or eight weekday trips at the terminus of a fixed transit corridor, that is within a three-quarters mile distance via sidewalk or pedestrian walkway. If transit service is not currently available, the qualifying city shall provide an official resolution or other action of the governing body providing mass transit service stating that, if the project is selected, mass transit service with such minimum frequency and distance from affordable housing units will be provided concurrently with development of the affordable housing units.

(4) The commission may consider the following aspects of the nomination when determining the strength of the public facilities and services committed to serving the pilot project site pursuant to OAR 660-039-0080(2)(b)(B):

(a) The proximity of the pilot project site to adequate existing public facilities and services;

(b) The projected expense of providing necessary public facilities and services to the pilot project site; and

(c) The availability and quality of the proposed transportation facilities and services provided for bicyclists, pedestrians, and mass transit users within the pilot project site and connecting to the pilot project site from other areas within the qualifying city.

Stat. Auth.: ORS 197.040, OL 2016, Ch. 52

Stats. Implemented: OL 2016, Ch. 52

Hist.: LCDD 2-2017, f. 2-24-17, cert. ef. 2-27-17

660-039-0050

Impacts on Natural Resources and Nearby Farm and Forest Uses

(1) The pilot project site shall be buffered from adjacent lands in an exclusive farm use zone, forest zone, or mixed farm and forest zone, by a

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minimum 100-foot-wide buffer on the pilot project site. The buffer shall include features, such as terrain differential, natural or introduced vegetation, and constructed berms, designed to provide additional buffering quality within the buffer area.

(2) In lieu of the buffer required under section (1), a qualifying city may propose an alternative method to avoid or minimize adverse effects on adjacent lands in an exclusive farm use zone, forest zone, or mixed farm and forest zone that would provide greater protection to land zoned farm, forest or mixed farm and forest than would otherwise be provided through the buffer.

(3) The commission shall consider the following when determining the strength of buffers pursuant to OAR 660-039-0080(2)(b)(C):

(a) The amount and percentage of the pilot project site perimeter that is not adjacent to lands in an exclusive farm use zone, forest zone, or mixed farm and forest zone;

(b) A proposed buffer that is wider than 100 feet, or that uses more thorough techniques within the buffer area to reduce impacts to farm and forest lands;

(c) The type and characteristics of farm and forest practices on the pilot project site over the past 20 years;

(d) The type and characteristics of farm and forest practices on lands adjacent to the pilot project site;

(e) The impact of the pilot project development on adjacent farm and forest practices including movement of farm and forest vehicles and equipment; and

(f) The impact of the pilot project development on fire protection, if adjacent to forest practices.

(4) If a qualifying city submits factual information demonstrating a Goal 5 resource site, or the impact areas of such a site, is included in the pilot project site to be added to the urban growth boundary, the qualifying city shall apply the requirements of OAR chapter 660, division 23. For purposes of this section, "impact area" is a geographic area within which conflicting uses could adversely affect a significant Goal 5 resource, as described in OAR 660-023-0040(3).

Stat. Auth.: ORS 197.040, OL 2016, Ch. 52

Stats. Implemented: OL 2016, Ch. 52

Hist.: LCDD 2-2017, f. 2-24-17, cert. ef. 2-27-17

660-039-0060

Measures to Accommodate and Encourage Needed and Affordable Housing within Existing Urban Growth Boundary

(1) A qualifying city submitting a pilot project nomination must demonstrate that its acknowledged comprehensive plan, acknowledged development code, or other relevant adopted city codes or other governing documents include:

(a) Affordable housing measures from the list in subsection (3)(a) equaling at least three points; and

(b) Affordable housing measures from the list in subsection (3)(a) or needed housing measures from the list in subsection (3)(b) equaling at least twelve points combined.

(2) For up to six of the twelve points required under subsection (1)(b), the qualifying city may demonstrate that its acknowledged comprehensive plan, acknowledged development code, or other relevant adopted city codes or other governing documents include an alternative housing measure not on the list of measures in section (3) that the qualifying city demonstrates, with appropriate findings, have a positive effect upon needed or affordable housing equal to or greater than an equivalent measure in section (3).

(3) A qualifying city may satisfy section (1) through adoption of the following measures, or alternative measures pursuant to section (2), to accommodate and encourage the development of needed housing and affordable housing within its existing urban growth boundary:

(a) Affordable housing measures

(A) Density bonus for affordable housing (three points maximum):

(i) Three points if code has a density bonus provision for affordable housing of at least 20 percent with no additional development review standards than required for development applications that do not include a density bonus, with reservation of affordable housing units for at least 50 years; or

(ii) One point if code has a density bonus provision for affordable housing of at least 20 percent, with additional development review standards required for development applications that do not include a density bonus.

(B) Systems development charges (three points maximum):

(i) Three points for code provisions that eliminate systems development charges for affordable housing units described in subparagraph (3)(a)(A)(i), or reduce systems development charges for such units by at

least 75 percent when compared to similar units that are not reserved for affordable housing; or

(ii) One point for code provisions deferring systems development charges for affordable housing units described in subparagraph (3)(a)(A)(i), to the date of occupancy of the housing unit.

(C) Property tax exemptions (Nine points maximum):

(i) Three points for code provision authorizing property tax exemptions under ORS 307.515 to 307.535 for low income housing development, under criteria in both ORS 307.517 and 307.518, with no additional development review standards;

(ii) Three points for code provisions authorizing property tax exemptions under ORS 307.540 to 307.548 for non-profit corporation low-income housing development, with no additional development review standards; and

(iii) Three points for code provision authorizing property tax exemptions under ORS 307.600 to 307.637 for multiple unit housing, with no additional restrictions on location of such housing in addition to those contained within ORS 307.600 to 307.637, and with required benefits pursuant to ORS 307.618 that are clear and objective and do not have the effect of discouraging the use of the property tax exemption through imposition of unreasonable cost or delay.

(D) Other property tax exemptions or assessment freezes (two points maximum):

(i) One point for code provision authorizing property tax exemptions for ORS 307.651 to 307.687 — single-unit housing in distressed areas — with clear and objective design standards that do not have the effect of discouraging use of the property tax exemption through unreasonable cost or delay; and

(ii) One point for code provision authorizing property tax freezes under ORS 308.450 to 308.481 — rehabilitated residential property — if the boundaries of the distressed area consist of at least 10 percent of the qualifying city's total land area, and clear and objective standards that do not have the effect of discouraging use of the program through unreasonable cost and delay.

(E) Inclusionary Zoning: Three points for code provision imposing inclusionary zoning requirements consistent with the provisions of ORS 197.309.

(F) Construction Excise Tax: Three points for code provision imposing construction taxes consistent with the provisions of Oregon Laws 2016, chapter 59, sections 8 and 9.

(b) Needed Housing Measures

(A) Accessory dwelling units (three points maximum):

(i) Three points for allowing accessory dwelling units in any zoning district that allows detached single family housing units, with no off-street parking requirement, any structure type allowed, allowing owner to live in either the primary or accessory dwelling unit, with no systems development charges for water, sewer, or transportation, and with clear and objective review standards; or

(ii) One point for allowing accessory dwelling units, but one or more of the attributes in subparagraph (3)(b)(A)(i) missing.

(B) Minimum density standard (three points maximum):

(i) Three points if all residential zoning districts have a minimum density standard of at least 70 percent of the maximum density allowed, with optional exemptions for lands that do not qualify as buildable lands under OAR 660-008-0005(2) and lands that are being partitioned as defined by ORS 92.010(7); or

(ii) One point if all residential zoning districts have a minimum density standard of at least 50 percent of maximum density allowed, with optional exemptions for lands that do not qualify as buildable lands under OAR 660-008-0005(2) and lands that are being partitioned as defined by ORS 92.010(7).

(C) Limitations on low density housing types (five points maximum):

(i) Three points for code provision that allows no more than 25 percent of residences in medium density residential zoning districts to be detached single family housing units, unless the detached single family housing unit is on a lot less than or equal to 3,000 square feet, with exemptions for lands that are being partitioned as defined by ORS 92.010(7);

(ii) One point for code provision that prohibits detached single family housing units in high density residential zoning districts; and

(iii) One point for code provision establishing maximum lot size for detached single family housing units in medium and high density residential zoning districts as less than or equal to 5,000 square feet.

(D) Off-street parking requirements for multiple family housing with four or more units (three points maximum):

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(i) Three points if off-street parking requirement is no more than one space per housing unit in multiple family housing developments of four or more units, and no more than 0.75 spaces per housing unit in multiple family housing developments of four or more units within one-quarter mile of transit service with weekday peak hour service headway of 20 minutes or less; or

(ii) One point if off-street parking requirement is no more than one space per housing unit in multiple family housing developments of four or more units, without additional reductions in subparagraph (3)(b)(D)(i).

(E) Off-street parking requirements for single family housing, duplexes, and triplexes (one point maximum): One point if off-street parking requirement for detached single family housing units, attached single family housing units, duplexes, and triplexes is no more than one space per housing unit.

(F) Amount of land in high density residential zoning districts (three points maximum):

(i) Three points if at least 15 percent of all residentially-zoned land in the qualifying city is zoned for high density residential development; or

(ii) One point if at least eight percent of all residentially-zoned land in the qualifying city is zoned for high density residential development.

(G) Duplexes in low density residential zoning districts (three points maximum):

(i) Three points if duplexes are allowed in low density residential zoning districts on any lot with no additional development review standards than required for detached single family dwellings; or

(ii) One point if duplexes are allowed on corner lots in low density residential zoning districts with no additional development review standards than required for detached single family housing units.

(H) Attached single-family residential housing units in low density residential zoning districts (one point maximum): One point if attached single-family residential housing units are allowed in low density residential zoning districts, with attached single-family residential lots having a minimum lot size no greater than 5,000 square feet.

(I) Residential street standards (three points maximum): Three points for allowance of local residential street pavement minimum widths of 28 feet or less with parking on both sides, 24 feet or less with parking on one side, or 20 feet or less with no parking.

(J) Mixed-use housing (three points maximum): Three points if at least 50 percent of land within commercial zoning districts in the qualifying city permits residential development with off-street parking requirement no greater than one space per housing unit and provisions for additional parking reductions for shared commercial and residential uses and in areas with approved parking management districts.

(K) Low density residential flexible lot sizes (one point maximum): One point if minimum lot size in low density residential zoning districts is at least 25 percent less than the minimum lot size that would correspond to the maximum density allowed in that zoning district.

(L) Cottage housing provisions (one point maximum): One point if development code has cottage housing code provision authorizing development at a maximum of at least 12 housing units per acre.

(M) Vertical housing provisions (one point maximum): One point if the Housing and Community Services Department has approved a vertical housing development zone under ORS 307.841 to 307.867 for the qualifying city;

(4) For the purposes of this rule:

(a) "High density residential zoning district" means a zoning district that allows a maximum residential density of 16 housing units per acre or more;

(b) "Low density residential zoning district" means a zoning district that allows a maximum residential density of eight housing units per acre or less; and

(c) "Medium density residential zoning district" means a zoning district that allows a maximum residential density greater than eight housing units per acre and less than 16 housing units per acre.

Stat. Auth.: ORS 197.040, OL 2016, Ch. 52

Stats. Implemented: OL 2016, Ch. 52

Hist.: LCDD 2-2017, f. 2-24-17, cert. ef. 2-27-17

660-039-0070

Housing Requirements

(1) The following types of affordable housing are allowed on pilot project sites:

(a) Attached and detached single-family housing and multiple family housing for both owner and renter occupancy;

(b) Government assisted housing;

(c) Manufactured dwelling parks as provided in ORS 197.475 to 197.490; and

(d) Manufactured homes on individual lots planned and zoned for single-family residential use that are in addition to lots within designated manufactured dwelling subdivisions.

(2) At least 30 percent of the total housing units proposed and developed on a pilot project site must be affordable housing units. In addition:

(a) At least 10 affordable housing units must be proposed and developed on a pilot project site from a qualifying city with a population of 25,000 or less; and

(b) At least 20 affordable housing units must be proposed and developed on a pilot project site from a qualifying city with a population greater than 25,000.

(3) Pilot project development phasing shall:

(a) Ensure all affordable housing units have been issued permanent certificates of occupancy prior to issuance of permanent certificates of occupancy to the last 50 percent of any market rate housing units included as part of the pilot project; or

(b) Phase development so that affordable housing units and market-rate housing units are issued permanent certificates of occupancy over time in a ratio similar to the ratio of affordable and market-rate housing units within the pilot project as a whole.

(4) All common areas and amenities accessible to residents of market-rate housing units within the pilot project site shall be equally accessible to residents of affordable housing units;

(5) The qualifying city must ensure all affordable housing units within the pilot project site are rented or sold exclusively to households described in OAR 660-039-0010(1) or, if the pilot project includes dedicated affordable housing units proposed under subsection (7)(b), to those households described, at the time of sale or rental during a period of at least 50 years after the selection of the pilot project site;

(6) The qualifying city must ensure that all housing units within the pilot project site are not used as vacation or short term rentals for any significant period during any calendar year.

(7) The commission shall consider the following when reviewing a final application pursuant to OAR 660-039-0080(2)(b)(A):

(a) Percentages or numbers of affordable housing units greater than the minimum percentages and numbers required in section (2);

(b) Dedication of affordable housing units for households with lower maximum incomes than described in the definition of affordable housing in OAR 660-039-0010(1); and

(c) In the case of a mixed income project, the total number and overall percentage of market rate housing units dedicated for households making 80 to 120 percent of the area median income.

(d) Other considerations that, in the determination of the commission, will advance affordable housing and knowledge about affordable housing in Oregon.

Stat. Auth.: ORS 197.040, OL 2016, Ch. 52

Stats. Implemented: OL 2016, Ch. 52

Hist.: LCDD 2-2017, f. 2-24-17, cert. ef. 2-27-17

660-039-0080

Commission Selection

(1) After the deadline for final applications established in OAR 660-039-0020(1)(b) or (2), the commission shall select two pilot projects for implementation:

(a) One from a qualifying city with a population of 25,000 or less, and

(b) One from a qualifying city with a population greater than 25,000.

(2) In selecting pilot projects, the commission may:

(a) Only consider applications that:

(A) The department determines are complete pursuant to OAR 660-039-0020(7); and

(B) The commission determines have met all of the requirements provided in OAR 660-039-0020(8);

(b) Consider recommendations of the director and determine which two pilot project proposal as provided in section (1) best satisfy the following factors:

(A) The housing considerations, as provided in OAR 660-039-0070(7);

(B) The proximity and quality of public facilities and services, including transportation facilities and transit service, for the pilot project site as provided in OAR 660-039-0040(4).

(C) The quality of measures to avoid or minimize adverse effects on adjacent lands in an exclusive farm use zone, forest zone, or mixed farm and forest zone as provided in OAR 660-039-0050(3).

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(D) The number and strength of measures the qualifying city has adopted to accommodate and encourage the development of needed and affordable housing within its existing urban growth boundary as provided in OAR 660-039-0060.

(c) Consider each factor in subsection (b) and select the application that best achieves the purposes as provided in OAR 660-039-0000.

(3) The commission shall make a preliminary selection of one pilot project site from a qualifying city in both subsection (1)(a) and (b). Within 60 days of the preliminary selection, each qualifying city shall submit to the commission specific information regarding:

(a) The form and content of provisions ensuring that affordable housing developed on the site continues to be used to provide affordable housing for a period of at least 50 years after the selection of the pilot project site; and

(b) The proposed comprehensive plan and zoning designations for the pilot project site.

(4) The commission shall review each qualifying city's information submitted pursuant to section (3). Once the form and content are satisfactory to the commission, the commission shall issue a final order selecting the pilot project site for the development proposed in the concept plan.

Stat. Auth.: ORS 197.040, OL 2016, Ch. 52

Stats. Implemented: OL 2016, Ch. 52

Hist.: LCDD 2-2017, f. 2-24-17, cert. ef. 2-27-17

660-039-0090

Subsequent Events

(1) Upon selection by the commission as provided in OAR 660-039-0080(4), the qualifying city shall:

(a) In concert with the county in which the urban growth boundary is located, amend the urban growth boundary to include the pilot project site, and identify the provisions of law and rules pursuant to OAR 660-039-0030 relating to urban growth boundary amendments that are not applied to allow the pilot project site to be included within the urban growth boundary;

(b) Annex the pilot project site to the qualifying city within two years of the acknowledged urban growth boundary amendment;

(c) Adopt plan and zone designations for the pilot project site that authorize development of the concept plan included in the application;

(d) Adopt measures ensuring that affordable housing developed on the pilot project site remains affordable for a period of at least 50 years after the selection of the pilot project site; and

(e) Issue permits for development on the pilot project site only after annexation of the site to the qualifying city and adoption of measures ensuring that housing developed on the pilot project site will continue to be used to provide affordable housing for a period of at least 50 years after the selection of the pilot project site.

(2) For a post-acknowledgement plan amendment or land use regulation change under OAR chapter 660, division 18 that proposes amendments with any effect upon existing comprehensive plan designations or provisions that impact residential development, or land use regulations that impact residential development, the qualifying city may not, for a period of 50 years after approval of the pilot project by the commission, consider the existence of housing units existing or approved on the pilot project site when making findings regarding the proposed amendment.

(3) The qualifying city for the pilot project site selected by the commission may not plan or zone the site to allow a use or mix of uses not authorized by the commission unless the qualifying city, in concert with the county, withdraws the pilot project site from the urban growth boundary and rezones the site pursuant to law, statewide land use planning goals and land use regulations implementing the goals that regulate allowable uses of land outside urban growth boundaries.

Stat. Auth.: ORS 197.040, OL 2016, Ch. 52

Stats. Implemented: OL 2016, Ch. 52

Hist.: LCDD 2-2017, f. 2-24-17, cert. ef. 2-27-17

660-039-0100

Reporting Requirements

(1) The qualifying city for a pilot project selected by the commission pursuant to OAR 660-039-0080 shall provide the following information in reports to the commission:

(a) Prior to construction of the project, documentation of the land cost for affordable and market portions of project, expected infrastructure costs, permitting costs, systems development charges, affordable housing incentives or subsidies, and expected construction costs;

(b) After construction of the project is complete, documentation showing the actual costs of all items indicated in subsection (a).

(c) If the project cannot be completed as approved, the contributing factors that prevented completion of the project as approved.

(d) On an annual basis once construction of the pilot project has begun, for a period of ten years:

(A) The number of affordable housing units on the pilot project site;

(B) The number of market rate housing units on the pilot project site;

(C) The vacancy rate of the affordable housing units;

(D) The vacancy rate of the market rate housing units;

(E) The current monthly rent for the affordable housing units, or sales price of the affordable housing units;

(F) The current monthly rent for the market rate housing units, or sales price of the market rate housing units;

(G) Any affordable housing incentives or subsidies applied to the pilot project site in addition to the incentives provided by the provisions of Oregon Laws 2016, chapter 52;

(H) Any housing measures from OAR 660-039-0060(3) that have been adopted or amended by the qualifying city; and

(I) A qualitative assessment of the pilot project and lessons learned from implementation of the pilot project, including the burden of reporting requirements and impacts on the city's overall housing market.

Stat. Auth.: ORS 197.040, OL 2016, Ch. 52

Stats. Implemented: OL 2016, Ch. 52

Hist.: LCDD 2-2017, f. 2-24-17, cert. ef. 2-27-17

Rule Caption: Procedures for updating comprehensive plans after a simplified urban growth boundary evaluation.

Adm. Order No.: LCDD 3-2017

Filed with Sec. of State: 2-28-2017

Certified to be Effective: 2-28-17

Notice Publication Date: 10-1-2016

Rules Amended: 660-025-0030

Subject: Creates procedures ensuring that comprehensive plans and land use regulations of a city comply with the statewide land use planning goals and are updated over time to reflect changing conditions and needs subsequent to urban growth boundary evaluations under the simplified method in OAR chapter 660, division 38.

Rules Coordinator: Casaria Taylor—(503) 373-0050, ext. 322

660-025-0030

Periodic Review Schedule

(1) The commission must approve, and update as necessary, a schedule for periodic review. The schedule must include the date when the department, pursuant to ORS 197.629, must send a local government a letter requesting the local government to commence the periodic review process.

(2) Except as provided in OAR 660-038-0020(15), the schedule developed by the commission must reflect the following:

(a) A city with a population of more than 2,500 within a metropolitan planning organization or a metropolitan service district shall conduct periodic review every seven years after completion of the previous periodic review.

(b) A city with a population of 10,000 or more inside its urban growth boundary that is not within a metropolitan planning organization shall conduct periodic review every 10 years after completion of the previous periodic review.

(c) A county with a portion of its population within the urban growth boundary of a city subject to periodic review under this section shall conduct periodic review for that portion of the county according to the schedule and work program set for the city.

(d) Notwithstanding subsection (c) of this section, if the schedule set for the county is specific as to that portion of the county within the urban growth boundary of a city subject to periodic review under this section, the county shall conduct periodic review for that portion of the county according to the schedule and work program set for the county.

(3) The commission may establish a schedule that varies from the standards in section (2) of this rule if necessary to coordinate approved periodic review work programs or to account for special circumstances. The commission may schedule a local government's periodic review earlier than provided in section (2) of this rule if necessary to ensure that all local governments in a region whose land use decisions would significantly affect other local governments in the region are conducting periodic review concurrently, but not sooner than five years after completion of the previous periodic review.

(4) The director must maintain and implement the schedule. Copies of the schedule must be provided upon request.

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(5) A city that is granted an exception to the requirements of this rule by OAR 660-038-0020(15) must complete an update of its comprehensive plan and land use regulations as provided in OAR 660-038-0210.

Stat. Auth.: ORS 197.040 & 197.633
Stats. Implemented: ORS 197.628 - 197.646
Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 4-2006, f. & cert. ef. 5-15-06; LCDD 4-2012, f. & cert. ef. 2-14-12; LCDD 3-2017, f. & cert. ef. 2-28-17

Rule Caption: Procedures for updating comprehensive plans after a simplified urban growth boundary evaluation

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Subject: Creates procedures ensuring that comprehensive plans and land use regulations of a city comply with the statewide land use planning goals and are updated over time to reflect changing conditions and needs subsequent to urban growth boundary evaluations under the simplified method in OAR chapter 660, division 38.

Rules Coordinator: Casaria Taylor—(503) 373-0050, ext. 322

660-038-0020

Applicability

(1) This division takes effect January 1, 2016. Rules in this division provide optional simplified methods for a city outside Metro to evaluate or amend its UGB. These methods are available to cities in addition to and not in lieu of the methods provided in OAR chapter 660, division 24. If a city uses this division to evaluate or amend a UGB, the requirements of division 24 do not apply to the UGB evaluation or amendment.

(2) A city that evaluates or amends its UGB using this division must demonstrate that:

(a) It has sufficient buildable lands and other development capacity, including land and capacity for needed housing and employment opportunities, within its UGB to meet the growth in population and employment that is forecast to occur over a 14-year period,

(b) It based its determination of the amount of buildable lands needed for housing, employment and other urban uses on the population and employment growth forecast to occur over a 14-year period, consistent with rules in this division, and

(c) Lands included within the UGB include sufficient serviceable land for at least a seven-year period and can all be serviceable over a 14-year period as provided in OAR 660-038-0200.

(3) A city using this division is not required to adopt findings to support the use of a number or a number within a range that is expressed by a rule in this division.

(4) A city that uses this division to add land to the UGB may not use a method in this division again to add land to the UGB until:

(a) The population of the city has grown by at least 50 percent of the amount of growth forecast to occur in conjunction with the previous use of the method by the city; or

(b) At least one-half of the lands identified as buildable lands for employment needs or for residential needs during the previous use of the method by the city have been developed.

(5) A city that adopts a UGB amendment using this division must evaluate whether the city needs to include additional land for residential or employment uses within the UGB before the population of the city has grown by 100 percent of the population growth forecast to occur in conjunction with the city's previous use of this division.

(6) A city that adopts a UGB amendment using this division may subsequently add land to the UGB using division 24 instead of the method described in this division. However, a city's determination of land need resulting from the previous use of this method shall not be considered by itself sufficient to support a housing or employment need determination under OAR chapter 660, division 24.

(7) A city may not use this division in order to evaluate or amend a UGB for purposes of OAR 660-024-0045 concerning Regional Large Lot Industrial Land.

(8) A city that elects to use this division shall notify the Department of Land Conservation and Development in the manner required by ORS 197.610, 197.615 and OAR chapter 660, division 18, regarding a proposed change to an acknowledged comprehensive plan or a land use regulation.

The city may revoke its election under this section at any time until the city makes a final decision to amend the UGB.

(9) A city that initiated an amendment of its UGB under OAR chapter 660, division 24, but has not submitted that amendment to the Department of Land Conservation and Development, may withdraw the proposed amendment and use a method described in this division by filing notice of the election with the Department of Land Conservation and Development in the manner required by ORS 197.610, 197.615, and OAR chapter 660, division 18 for notice of a post-acknowledgment plan amendment.

(10) Notwithstanding ORS 197.626, when a city evaluates or amends the UGB pursuant to this division, the Land Use Board of Appeals rather than the commission has jurisdiction for review of the final decision of the city.

(11) A city that amends a UGB under this division is not required to also satisfy the requirements of ORS 197.296 applicable to a UGB amendment for cities subject to that statute.

(12) A city that amends a UGB under this division is not required to also satisfy the requirements of Goals 9 and 10 with respect to the determinations of land need and land supply, the housing needs projection requirements of OAR chapter 660, division 8, or the economic opportunities analysis requirements of OAR chapter 660, division 9.

(13) All statewide planning goals and related administrative rules are applicable when establishing or amending a UGB, except as follows:

(a) The exceptions process in Goal 2 and OAR chapter 660, division 4, is not applicable to a UGB amendment unless a local government chooses to take an exception to a particular goal requirement, for example, as provided in OAR 660-004-0010(1), provided however that a local government may not take an exception to the UGB requirements of Goal 14;

(b) Goals 3 and 4 are not applicable;

(c) Goal 5 and related rules under OAR chapter 660, division 23, apply only to lands added to the UGB, except as required under OAR 660-023-0070 and 660-023-0250;

(d) The transportation planning rule requirements under OAR 660-012-0060 need not be applied at the time of a UGB amendment if the land added to the UGB is zoned as urbanizable land, either by retaining the zoning that was assigned prior to inclusion in the UGB or by assigning interim zoning that does not allow development that would generate more vehicle trips than development allowed by the zoning assigned prior to inclusion in the UGB;

(e) Goal 15 is not applicable to land added to the UGB unless the land is within the Willamette River Greenway Boundary;

(f) Goals 16 through 18 are not applicable to land added to the UGB unless the land is subject to acknowledged comprehensive plan or land use regulations that implement these goals;

(g) Goal 19 is not applicable to a UGB amendment.

(14) A city considering a UGB evaluation or amendment must apply its acknowledged citizen involvement program to ensure adequate notice and participation opportunities for the public and must assist the public in understanding the major local government decisions that are likely to determine the form of the city's growth.

(15) A city that is scheduled to commence periodic review as required by OAR 660-025-0030 is not required to commence periodic review if the city has amended its UGB pursuant to this division, or if the city has evaluated its UGB need and land supply using this division and determined that the UGB contains sufficient buildable land for a 14-year period, including a supply that is serviceable for a seven-year period and a supply that can be serviceable for a 14-year period as provided in OAR 660-038-0200. A city that is not required to commence periodic review pursuant to this section is subject to the requirements of OAR 660-038-0210.

(16) When a city is required to undertake an analysis or make a determination concerning lots or parcels under the rules in the division, the city may conduct such analyses using tax lot data shown on the most recent tax assessment rolls in the county in which the land is located.

(17) Beginning on or before January 1, 2023, the commission shall:

(a) Evaluate, every five years, the impact of this division on the population per square mile, livability in the area, the provision and cost of urban facilities and services, the rate of conversion of agriculture and forest lands and other considerations;

(b) Consider changes to the statewide land use planning goals or rules to address adverse outcomes; and

(c) Make recommendations to the Legislative Assembly, as necessary, for statutory changes.

Stat. Auth.: ORS 197.040, 197A.305, 197A.320 & 197.235

Stats. Implemented: ORS 197A.300, 197A.302, 197A.305, 197A.310, 197A.312, 197A.315, 197A.320 & 197A.325

Hist.: LCDD 6-2015, f. 12-29-15, cert. ef. 1-1-16; LCDD 4-2017, f. & cert. ef. 2-28-17

ADMINISTRATIVE RULES

660-038-0210

Plan Changes Following a Simplified Urban Growth Boundary Evaluation

(1) For the purposes of this rule, the following definitions apply in addition to those in OAR 660-038-0010:

(a) "Complete UGB evaluation" means changes to the comprehensive plan or land use regulation, or both, adopted by the city, and county if necessary, to enact needed updates identified during evaluation of the UGB under the provisions of this division when no UGB amendment is adopted.

(b) "Simplified UGB amendment" means an adopted change to the UGB of a city under the provisions of this division, "Simplified Urban Growth Boundary Method."

(2) A city that has adopted a simplified UGB amendment or complete UGB evaluation is not required to complete periodic review pursuant to ORS 197.628 to 197.651 and OAR chapter 660, division 25. A city that is subject to the periodic review schedule in ORS 197.629(1) and OAR 660-025-0030(2) that has adopted a simplified UGB amendment or complete UGB evaluation is subject to the requirements of this rule.

(3) Within one year after acknowledgment of the simplified UGB amendment or complete UGB evaluation, a city must prepare a work program for updating its comprehensive plan and land use regulations or determine that no work program is required, according to the requirements of this section.

(a) The city must complete a review to determine which, if any, parts of the comprehensive plan and land use regulations need to be updated in order to ensure that the comprehensive plan and land use regulations of the city comply with the statewide land use planning goals, statutes and administrative rules. The review must include, but is not limited to, the following:

(A) Changes identified during the simplified UGB amendment or complete UGB evaluation that were not adopted before or concurrently with the simplified UGB amendment or complete UGB evaluation;

(B) Changes to the public facilities and services plans to comply with the requirements of OAR chapter 660, division 11;

(C) Changes to the transportation system plan to comply with the requirements of OAR chapter 660, division 12;

(D) Change to comply with the requirements of ORS 197.660 to 197.670, Special Residences;

(E) Changes to comply with the requirements of ORS 195.110, School Facility Planning;

(F) Changes to comply with the requirements of OAR chapter 660, division 13, Airport Planning; and

(G) Changes to comply with the requirements of OAR chapter 660, division 23 commensurate with what would be required at the time of periodic review under OAR 660-023-0250(5).

(b) The city must notify the affected county, state agencies, and special districts that it is reviewing the comprehensive plan and land use regulations and provide an opportunity for the affected county, agencies and districts to offer comments on which elements of the comprehensive plan and land use regulations need to be updated. The department is an affected state agency;

(c) The city must follow its citizen involvement program for conducting the review and determination of the scope of a work program. The city must provide written notice of the proposed work program to persons who participated in the simplified UGB amendment or complete UGB evaluation; to those who request such notice in writing; and to the affected county, agencies and districts at least 21 days before the final hearing on the work program;

(d) The city must include the elements of the list required in subsection (a) in the work program unless:

(A) The city determines that the acknowledged element of the plan or land use regulation continues to comply with the statewide planning goals, statutes and administrative rules and therefore does not need to be changed; or

(B) The listed statute or administrative rule does not apply to the city;

(e) The work program or determination that no work program is required must be approved by the city council by order, resolution or ordinance, as the city deems appropriate, after at least one public hearing. If any of the elements listed in subsection (a) are not included on the work program, the city must adopt findings explaining why the element or elements were not included;

(f) If the city determines a work program is necessary, the work program must include dates by which the city expects each change to be complete. The city should attempt to complete all of the work on the work program within five years after the work program is approved under subsection (e).

(g) The city must, within 20 days of city council action, submit the approved work program to the department.

(4) If the city does not approve a work program or determination that no work program is required under this rule within one year after acknowledgment of the simplified UGB amendment or complete UGB evaluation and provide the work program to the department, the director must schedule a hearing before the commission. The commission may issue an order imposing one or more of the following sanctions until the work program receives final approval by the city under subsection (3)(e):

(a) Require the local government to apply those portions of the goals and rules to land use decisions as specified in the order. Sanctions may be imposed under this subsection only when necessary to resolve a specific deficiency identified in the order.

(b) Forfeiture of all or a portion of the grant money received to conduct the review or develop the work program under this rule.

(c) Completion of the work program by the department. The commission may require the city to pay the cost for completion of work performed by the department, following the withholding process set forth in ORS 197.335(4).

(d) Application of such interim measures as the commission deems necessary to ensure compliance with the statewide planning goals, statutes and administrative rules.

(5) The city, and the county if applicable, must change the comprehensive plan and land use regulations according to the work program in section (3) unless, during the course of the plan change process, the city determines no update is required.

(6) Changes to the comprehensive plan and land use regulations pursuant to this rule must comply with OAR 660-018-0020 through 660-018-0060.

(7) Commencing one year after the city approves a work program under subsection (3)(e), the city must submit an annual written report to the affected state agencies describing the status of changes to the comprehensive plan and land use regulations contained in the work program. The report must describe the progress made toward completion of the work program.

(8) At any time after receiving the first annual report required in section (7), the department may, after obtaining comments on an annual report from other affected state agencies, schedule a hearing before the commission to review the city's progress toward completion of the work program. If the commission finds that the city, and county if applicable, is not making satisfactory progress toward achieving compliance with the statewide planning goals, statutes and administrative rules, the commission may issue an order imposing one or more of the following sanctions until the changes to the comprehensive plan and land use regulations specified on the work program receive final approval by the city and county, if applicable:

(a) Require the local government to apply those portions of the goals and rules to land use decisions as specified in the order. Sanctions may be imposed under this subsection only when necessary to resolve a specific deficiency identified in the order.

(b) Forfeiture of all or a portion of the grant money received to conduct the work called for on the work program.

(c) Completion of the work by the department. The commission may require the city to pay the cost for completion of work performed by the department, following the withholding process set forth in ORS 197.335(4).

(d) Application of such interim measures as the commission deems necessary to ensure compliance with the statewide planning goals, statutes and administrative rules.

(9) The exemption from the requirement to complete periodic review in section (2) expires when, according to the most recent final forecast issued by the Portland State University Population Research Center under ORS 195.033, the population of the city has grown by 100 percent of the population growth forecast to occur in conjunction with the city's previous simplified UGB amendment or complete UGB analysis unless the city has completed a subsequent UGB evaluation pursuant to this division or OAR chapter 660, division 24.

Stat. Auth.: ORS 197.040 & 197A.325(3)

Stats. Implemented: ORS 197A.325(3)

Hist.: LCDD 4-2017, f. & cert. ef. 2-28-17

Rule Caption: Metropolitan Greenhouse Gas Reduction Targets

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ADMINISTRATIVE RULES

Rules Amended: 660-044-0000, 660-044-0005, 660-044-0020, 660-044-0025, 660-044-0030, 660-044-0035, 660-044-0040, 660-044-0060

Rules Repealed: 660-044-0010

Subject: The Land Conservation and Development Commission adopted OAR chapter 660, division 44 in response to direction provided in House Bill 2001 (2009) and Senate Bill 1059 (Special Session 2010) requiring rules setting greenhouse gas emission reductions targets for each of the state's metropolitan areas. The targets are based on transportation planning and measure emissions from motor vehicles with a gross vehicle weight rating of 10,000 pounds or less. At its May 2015 meeting, the Land Conservation and Development Commission determined that amendments to the targets in division 44 are warranted for three reasons: 1. Local governments are adopting transportation plans that look further into the future, beyond the 2035 targets; therefore targets are needed for future years through 2050. 2. New information about trends and projections for vehicle technology, fleet and fuels could affect targets. 3. There are two areas (Albany and Grants Pass) that are now designated as metropolitan areas, but are not included in the initial targets because they were not designated as metropolitan areas when the targets were adopted. The amendments to the rules incorporate the new information gathered through the Rulemaking Advisory Committee process.

Rules Coordinator: Casaria Taylor—(503) 373-0050, ext. 322

660-044-0000

Purpose

(1) This division implements provisions of chapter 865, section 37(6), Oregon Laws 2009, and chapter 85, section 5(1), Oregon Laws 2010, that direct the Land Conservation and Development Commission ("commission") to adopt rules setting targets for reducing greenhouse gas emissions from light vehicle travel in metropolitan areas consistent with the state goal in ORS 468A.205 to reduce the state's greenhouse gas emissions in 2050 to 75 percent below 1990 levels.

(2) This division also implements provisions of Oregon Laws 2009, chapter 865, section 38 regarding land use and transportation scenario planning to reduce greenhouse gas emissions in the Portland metropolitan area. The commission's intent and expectation is that the requirements set forth in this division will be integrated into and addressed as part of existing procedures for coordinated regional planning in the Portland metropolitan area. The requirements set forth in this division for scenario planning apply only to the Portland metropolitan area. Nothing in this division is intended to require other metropolitan areas to conduct scenario planning, or provide for commission or department review or approval of scenario plans that other metropolitan areas may develop or adopt. While a preferred scenario may include assumptions about state or federal policies, programs, or actions that would be put in place to reduce greenhouse gas emissions, nothing in this division or commission approval of a preferred scenario is intended to grant authority to the commission, Metro or local governments to approve or require implementation of those policies, programs or actions.

(3) The targets in this division provide guidance to local governments in metropolitan areas on the level of reduction in greenhouse gas emissions to achieve as they conduct land use and transportation scenario planning. Land use and transportation scenario planning to meet the targets in this division is required of the Portland metropolitan area and is encouraged, but not required, in other metropolitan areas. Success in developing scenarios that meet the targets will depend in large part on the state funding for scenario planning; on the state developing strategies and actions that reduce greenhouse gas emissions from light vehicle travel within metropolitan areas; and on state and local governments jointly and actively engaging the public on the costs and benefits of reducing greenhouse gas emissions.

(4) Land use and transportation scenario planning is intended to be a means for local governments in metropolitan areas to explore ways that urban development patterns and transportation systems would need to be changed to achieve significant reductions in greenhouse gas emissions from light vehicle travel. Scenario planning is a means to address benefits and costs of different actions to accomplish reductions in ways that allow communities to assess how to meet other important needs, including accommodating economic development and housing needs, expanding transportation options and reducing transportation costs.

(5) The expected result of land use and transportation scenario planning is information on the extent of changes to land use patterns and trans-

portation systems in metropolitan areas needed to significantly reduce greenhouse gas emissions from light vehicle travel in metropolitan areas, including information about the benefits and costs of achieving those reductions. The results of land use and transportation scenario planning are expected to inform local governments as they update their comprehensive plans, and to inform the legislature, state agencies and the public as the state develops and implements an overall strategy to meet state goals to reduce greenhouse gas emissions.

(6) The greenhouse gas emissions reduction targets in this division are intended to guide land use and transportation scenario planning. The targets are based on available information and current estimates about key factors, including improvements in vehicle technologies and fuels. Pursuant to OAR 660-044-0035, the commission shall review the targets by June 1, 2021, based on the results of scenario planning, and updated information about expected changes in vehicle technologies and fuels, state policies and other factors.

(7) Success in meeting the targets will require a combination of local, regional and state actions. State actions include not only improvements in vehicle technology and fuels, but also other statewide efforts to reduce greenhouse gas emissions from light vehicle travel. The Oregon Department of Transportation prepared a Statewide Transportation Strategy describing state actions that could be implemented to reduce greenhouse gas emissions. As metropolitan areas develop scenario plans to reduce greenhouse gas emissions and compare them to the targets in this division, it is incumbent that metropolitan areas and the state work as partners, with a shared responsibility of determining how local and statewide actions and programs can reach the targets.

(8) Nothing in this division is intended to amend statewide planning goals or administrative rules adopted to implement statewide planning goals.

Stat. Auth.: ORS 197.040; Ch 865 OL 2009 (HB 2001) § 37(6) and (8); Ch 85 OL 2010

Special Session (SB 1059) § 5

Stats. Implemented: Ch 865 OL 2009 (HB 2001) § 37(6) and (8); Ch 85 OL 2010 Special Session (SB 1059) § 5

Hist.: LCDD 5-2011, f. 5-26-11, cert. ef. 6-1-11; LCDD 10-2012, f. 12-4-12, cert. ef. 1-1-13; LCDD 5-2017, f. 2-28-17, cert. ef. 3-1-17

660-044-0005

Definitions

For the purposes of this division, the definitions in ORS 197.015 and the statewide planning goals apply. In addition, the following definitions shall apply:

(1) "Design type" means the conceptual areas described in the Metro Growth Concept text and map in Metro's regional framework plan, including central city, regional centers, town centers, station communities, corridors, main streets, neighborhoods, industrial areas and employment areas.

(2) "Framework plan" or "regional framework plan" means the plan adopted by Metro as defined by ORS 197.015(16).

(3) "Functional plan" or "regional functional plan" means an ordinance adopted by Metro to implement the regional framework plan through city and county comprehensive plans and land use regulations.

(4) "Greenhouse gas" has the meaning given in ORS 468A.210. Greenhouse gases are measured in terms of carbon dioxide equivalents, which means the quantity of a given greenhouse gas multiplied by a global warming potential factor provided in a state-approved emissions reporting protocol.

(5) "Greenhouse gas emissions reduction target" or "target" means a reduction from 2005 emission levels of per capita greenhouse gas emissions from travel in light vehicles. Targets are the reductions beyond reductions in emissions that are likely to result from the use of improved vehicle technologies and fuels. Travel in light vehicles includes all travel by members of households or university group quarters living within a metropolitan area regardless of where the travel occurs, and local commercial vehicle travel that is a function of household labor or demand regardless of where the travel occurs. Examples include commuting to work, going to school, going shopping, traveling for recreation, delivery vehicles, service vehicles, travel to business meetings, and travel to jobsites.

(6) "Land use and transportation scenario planning" means the preparation and evaluation by local governments of two or more land use and transportation scenarios and the cooperative selection of a preferred scenario that accommodates planned population and employment growth while achieving a reduction in greenhouse gas emissions from light vehicle travel in the metropolitan area. Land use and transportation scenario planning may include preparation and evaluation of alternative scenarios that do not meet targets specified in this division.

(7) "Light vehicles" means motor vehicles with a gross vehicle weight rating of 10,000 pounds or less.

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(8) "Metro" means the metropolitan service district organized for the Portland metropolitan area under ORS Chapter 268.

(9) "Metropolitan planning area" or "metropolitan area" means lands within the planning area boundary of a metropolitan planning organization.

(10) "Metropolitan planning organization" means an organization located wholly within the State of Oregon and designated by the Governor to coordinate transportation planning in an urbanized area of the state pursuant to 49 U.S.C. 5303(c). The Longview-Kelso-Rainier metropolitan planning organization and the Walla Walla Valley metropolitan planning organization are not metropolitan planning organizations for the purposes of this division.

(11) "Planning period" means the period of time over which the expected outcomes of a scenario plan are estimated, measured from a 2005 base year, to a future year that corresponds with greenhouse gas emission targets set forth in this division.

(12) "Preferred land use and transportation scenario" means a generalized plan for the Portland metropolitan area adopted by Metro through amendments to the regional framework plan that achieves the targets for reducing greenhouse gas emissions set forth in OAR 660-044-0020 as provided in 660-044-0040.

(13) "Statewide Transportation Strategy" means the statewide strategy accepted by the Oregon Transportation Commission as part of the state transportation policy to aid in achieving the greenhouse gas emissions reduction goals set forth in ORS 468A.205 as provided in chapter 85, section 2, Oregon Laws 2010.

Stat. Auth.: ORS 197.040; Ch. 865 OL 2009 (HB 2001) § 37(6) and (8); Ch. 85 OL 2010 Special Session (SB 1059) § 5
Stats. Implemented: Ch. 865 OL 2009 (HBI 2001) § 37(6) and (8); Ch. 85 OL 2010 Special Session (SBI 1059) § 5
Hist.: LCDD 5-2011, f. 5-26-11, cert. ef. 6-1-11; LCDD 10-2012, f. 12-4-12, cert. ef. 1-1-13; LCDD 5-2017, f. 2-28-17, cert. ef. 3-1-17

660-044-0020

Greenhouse Gas Emissions Reduction Target for the Portland Metropolitan Area

(1) Metro shall use the greenhouse gas emissions reduction targets in this rule as it develops two or more alternative land use and transportation scenarios that accommodate planned population and employment growth while achieving a reduction in greenhouse gas emissions from light vehicle travel in the metropolitan area as required by OAR 660-044-0040 through 660-044-0060.

(2) This rule only applies to the Portland metropolitan area.

(3) The greenhouse gas emissions reduction target is a 20 percent reduction in the year 2035.

(4) Targets for the years 2040 through 2050 are:

- (a) By 2040, a 25 percent reduction.
- (b) By 2041, a 26 percent reduction.
- (c) By 2042, a 27 percent reduction.
- (d) By 2043, a 28 percent reduction.
- (e) By 2044, a 29 percent reduction.
- (f) By 2045, a 30 percent reduction.
- (g) By 2046, a 31 percent reduction.
- (h) By 2047, a 32 percent reduction.
- (i) By 2048, a 33 percent reduction.
- (j) By 2049, a 34 percent reduction.
- (k) By 2050, a 35 percent reduction.

Stat. Auth.: ORS 197.040; Ch. 865 OL 2009 (HB 2001) §37(6); Ch. 85 OL 2010 Special Session (SB 1059) §5
Stats. Implemented: Ch. 865 OL 2009 (HBI 2001) §37(6); Ch. 85 OL 2010 Special Session (SBI 1059) §5
Hist.: LCDD 5-2011, f. 5-26-11, cert. ef. 6-1-11; LCDD 5-2017, f. 2-28-17, cert. ef. 3-1-17

660-044-0025

Greenhouse Gas Emissions Reduction Targets for Other Metropolitan Areas

(1) Purpose and effect of targets

(a) Local governments in metropolitan planning areas not covered by OAR 660-044-0020 may use the relevant targets set forth in section (2) of this rule as they conduct land use and transportation scenario planning to reduce greenhouse gas emissions.

(b) This rule does not require that local governments or metropolitan planning organizations conduct land use and transportation scenario planning. This rule does not require that local governments or metropolitan planning organizations that choose to conduct land use or transportation scenario planning develop or adopt a preferred land use and transportation scenario plan to meet targets in section (2) of this rule.

(2) Targets for the years 2040 through 2050 are:

- (a) By 2040, a 20 percent reduction.

(b) By 2041, a 21 percent reduction.

(c) By 2042, a 22 percent reduction.

(d) By 2043, a 23 percent reduction.

(e) By 2044, a 24 percent reduction.

(f) By 2045, a 25 percent reduction.

(g) By 2046, a 26 percent reduction.

(h) By 2047, a 27 percent reduction.

(i) By 2048, a 28 percent reduction.

(j) By 2049, a 29 percent reduction.

(k) By 2050, a 30 percent reduction.

Stat. Auth.: ORS 197.040; Ch. 865 OL 2009 (HB 2001) § 37(6); Ch. 85 OL 2010 Special Session (SB 1059) § 5

Stats. Implemented: Ch. 865 OL 2009 (HBI 2001) § 37(6); Ch. 85 OL 2010 Special Session (SBI 1059) § 5

Hist.: LCDD 5-2011, f. 5-26-11, cert. ef. 6-1-11; LCDD 5-2017, f. 2-28-17, cert. ef. 3-1-17

660-044-0030

Methods for Estimating Greenhouse Gas Emissions and Emissions Reductions

(1) Applicability: If local governments within a metropolitan area are conducting land use and transportation scenario planning to demonstrate that their plans would meet the greenhouse gas emissions reductions targets established in this division, then they shall use the provisions and options in this rule to project future emissions.

(2) Projected Emission Rates: Projections of greenhouse gas emissions must use the emission rates specified in subsection (a) or the flexible option described in subsection (b).

(a) Projections of greenhouse gas emissions may use the emission rates listed below, which are based on the Statewide Transportation Strategy and reflect reductions likely to result by the use of improved vehicle technologies and fuels. Rates are measured in grams of carbon dioxide equivalent per vehicle mile.

(A) In 2040, 140 grams per mile.

(B) In 2041, 134 grams per mile.

(C) In 2042, 128 grams per mile.

(D) In 2043, 123 grams per mile.

(E) In 2044, 117 grams per mile.

(F) In 2045, 112 grams per mile.

(G) In 2046, 108 grams per mile.

(H) In 2047, 103 grams per mile.

(I) In 2048, 99 grams per mile.

(J) In 2049, 94 grams per mile.

(K) In 2050, 90 grams per mile.

(b) Projections of greenhouse gas emissions may use emission rates lower than the rates in subsection (a) if local or regional programs or actions can be demonstrated to result in changes to vehicle fleet, technologies, or fuels above and beyond the assumption in the Statewide Transportation Strategy. One example would be a program to add public charging stations that is estimated to result in use of hybrid or electric vehicles greater than the statewide assumption in the Statewide Transportation Strategy.

(3) Actions in the Statewide Transportation Strategy: Projections of greenhouse gas emissions may assume state actions specified in subsection (a), and may use the flexibility for local actions described in subsection (b).

(a) State Actions: Projections of greenhouse gas emissions may include reductions projected to result from state actions, programs, and associated interactions up to, but not exceeding, the levels identified in the Statewide Transportation Strategy.

(b) Local and Regional Actions: Projections of greenhouse gas emissions may include local or regional actions similar to actions in the Statewide Transportation Strategy if the local governments have authority to and have adopted plans that would implement the actions.

Stat. Auth.: ORS 197.040; Ch. 865 OL 2009 (HB 2001) § 37(6); Ch. 85 OL 2010 Special Session (SB 1059) § 5

Stats. Implemented: Ch. 865 OL 2009 (HBI 2001) § 37(6); Ch. 85 OL 2010 Special Session (SBI 1059) § 5

Hist.: LCDD 5-2011, f. 5-26-11, cert. ef. 6-1-11; LCDD 5-2017, f. 2-28-17, cert. ef. 3-1-17

660-044-0035

Review and Evaluation of Greenhouse Gas Reduction Targets

(1) The commission shall by June 1, 2021, and at four year intervals thereafter, conduct a review of the greenhouse gas emissions reduction targets in OAR 660-044-0020 and 660-044-0025.

(2) The review by the commission shall evaluate whether revisions to the targets established in this division are warranted considering the following factors:

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(a) Results of land use and transportation scenario planning conducted within metropolitan planning areas to reduce greenhouse gas emissions from light vehicles;

(b) New or revised federal and state laws or programs established to reduce greenhouse gas emissions from light vehicles;

(c) State plans or policies establishing or allocating greenhouse gas emissions reduction goals to specific sectors or subsectors;

(d) Policies and recommendations in the Statewide Transportation Strategy adopted by the Oregon Transportation Commission;

(e) Additional studies or analysis conducted by the Oregon Department of Transportation, the Department of Environmental Quality, the Oregon Department of Energy or other agencies regarding greenhouse gas emissions from light vehicle travel, including but not limited to changes to vehicle technologies, fuels and the vehicle fleet;

(f) Changes in population growth rates, metropolitan planning area boundaries, land use or development patterns in metropolitan planning areas that affect light vehicle travel;

(g) Efforts by local governments in metropolitan areas to reduce greenhouse gas emissions from all sources;

(h) Input from affected local governments and metropolitan planning organizations;

(i) Land use feasibility and economic studies regarding land use densities; and

(j) State funding and support for scenario planning and public engagement.

(3) The department shall, in consultation and collaboration with affected local governments, metropolitan planning organizations and other state agencies, prepare a report addressing factors listed in section (2) of this rule to aid the commission in determining whether revisions to targets established in this division are warranted.

Stat. Auth.: ORS 197.040; Ch. 865 OL 2009 (HB 2001) § 37(6); Ch. 85 OL 2010 Special Session (SB 1059) § 5

Stats. Implemented: Ch. 865 OL 2009 (HBI 2001) § 37(6), Ch. 85 OL 2010 Special Session (SBI 1059) § 5

Hist.: LCDD 5-2011, f. 5-26-11, cert. ef. 6-1-11; LCDD 5-2017, f. 2-28-17, cert. ef. 3-1-17

660-044-0040

Cooperative Selection of a Preferred Scenario; Initial Adoption

(1) Within one year of adoption or amendment of a preferred scenario, Metro shall amend the regional framework plan and the regional growth concept to select and incorporate a preferred land use and transportation scenario that meets targets in OAR 660-044-0020 consistent with the requirements of this division.

(2) In preparing and selecting a preferred land use and transportation scenario Metro shall:

(a) Consult with affected local governments, the Port of Portland, TriMet, and the Oregon Department of Transportation;

(b) Consider adopted comprehensive plans and local aspirations for growth in developing and selecting a preferred land use and transportation scenario;

(c) Use assumptions about population, housing and employment growth consistent with the coordinated population and employment projections for the metropolitan area for the planning period;

(d) Use evaluation methods and analysis tools for estimating greenhouse gas emissions that are:

(A) Consistent with the provisions of this division;

(B) Reflect best available information and practices; and,

(C) Coordinated with the Oregon Department of Transportation.

(e) Make assumptions about state and federal policies and programs expected to be in effect over the planning period, including the Statewide Transportation Strategy, in coordination with the responsible state agencies;

(f) Evaluate a reference case scenario that reflects implementation of existing adopted comprehensive plans and transportation plans;

(g) Evaluate at least two alternative land use and transportation scenarios for meeting greenhouse gas reduction targets and identify types of amendments to comprehensive plans and land use regulations likely to be necessary to implement each alternative scenario;

(h) Develop and apply evaluation criteria that assess how alternative land use and transportation scenarios compare with the reference case in achieving important regional goals or outcomes;

(i) Evaluate if the preferred scenario relies on new investments or funding sources to achieve the target, the feasibility of the investments or funding sources including:

(A) A general estimate of the amount of additional funding needed;

(B) Identification of potential/likely funding mechanisms for key actions, including local or regional funding mechanisms; and,

(C) Coordination of estimates of potential state and federal funding sources with relevant state agencies (i.e. the Oregon Department of Transportation for transportation funding); and,

(D) Consider effects of alternative scenarios on development and travel patterns in the surrounding area (i.e. whether proposed policies will cause change in development or increased light vehicle travel between metropolitan area and surrounding communities compared to reference case).

(3) The preferred land use and transportation scenario shall include:

(a) A description of the land use and transportation growth concept providing for land use design types;

(b) A concept map showing the land use design types;

(c) Policies and strategies intended to achieve the target reductions in greenhouse gas emissions in OAR 660-044-0020;

(d) Planning assumptions upon which the preferred scenario relies including:

(A) Assumptions about state and federal policies and programs;

(B) Assumptions about vehicle technology, fleet or fuels, if those are different than those provided in OAR 660-044-0030;

(C) Assumptions or estimates of expected housing and employment growth by jurisdiction and land use design type; and

(D) Assumptions about proposed regional programs or actions other than those that set requirements for city and county comprehensive plans and land use regulations, such as investments and incentives;

(e) Performance measures and targets to monitor and guide implementation of the preferred scenario. Performance measures and targets shall be related to key elements, actions and expected outcomes from the preferred scenario. The performance measures shall include performance measures adopted to meet requirements of OAR 660-012-0035(5); and

(f) Recommendations for state or federal policies or actions to support the preferred scenario.

(4) When amending the regional framework plan, Metro shall adopt findings demonstrating that implementation of the preferred land use and transportation scenario meets the requirements of this division and can reasonably be expected to achieve the greenhouse gas emission reductions as set forth in the target in OAR 660-044-0020. Metro's findings shall:

(a) Demonstrate Metro's process for cooperative selection of a preferred alternative meets the requirements in subsections (2)(a)–(i);

(b) Explain how the expected pattern of land use development in combination with land use and transportation policies, programs, actions set forth in the preferred scenario will result in levels of greenhouse gas emissions from light vehicle travel that achieve the target in OAR 660-044-0020;

(c) Explain how the framework plan amendments are consistent with and adequate to carry out the preferred scenario, and are consistent with other provisions of the Regional Framework Plan; and,

(d) Explain how the preferred scenario is or will be made consistent with other applicable statewide planning goals or rules.

(5) Guidance on evaluation criteria and performance measures.

(a) The purpose of evaluation criteria referred to in subsection (2)(h) is to encourage Metro to select a preferred scenario that achieves greenhouse gas emissions reductions in a way that maximizes attainment of other community goals and benefits. This rule does not require the use of specific evaluation criteria. The following are examples of categories of evaluation criteria that Metro might use:

(A) Public health;

(B) Air quality;

(C) Household spending on energy or transportation;

(D) Implementation costs;

(E) Economic development;

(F) Access to parks and open space; and,

(G) Equity

(b) The purpose of performance measures and targets referred to in subsection (3)(e) is to enable Metro and area local governments to monitor and assess whether key elements or actions that make up the preferred scenario are being implemented, and whether the preferred scenario is achieving the expected outcomes. This rule does not establish or require use of particular performance measures or targets. The following are examples of types of performance measures that Metro might establish:

(A) Transit service revenue hours;

(B) Mode share;

(C) People per acre by 2040 Growth Concept design type;

(D) Percent of workforce participating in employee commute options programs; and

(E) Percent of households and jobs within one-quarter mile of transit.

Stat. Auth.: ORS 197.040 & 2009 OL Ch. 865 §37(8) (HB 2001)

Stats. Implemented: 2009 OL Ch. 865 §37(8) (HB 2001)

Hist.: LCDD 10-2012, f. 12-4-12, cert. ef. 1-1-13; LCDD 5-2017, f. 2-28-17, cert. ef. 3-1-17

ADMINISTRATIVE RULES

660-044-0060

Monitoring

(1) Metro shall as part of reports required by ORS 197.301 prepare a report monitoring progress in implementing the preferred scenario including status of performance measures and performance targets adopted as part of the preferred scenario.

(2) Metro's report shall assess whether the region is making satisfactory progress in implementing the preferred scenario; identify reasons for lack of progress, and identify possible corrective actions to make satisfactory progress. Metro may update and revise the preferred scenario as necessary to ensure that performance targets are being met.

(3) The commission shall review the report and shall either find Metro is making satisfactory progress or provide recommendations for corrective actions to be considered or implemented by Metro prior to or as part of the next update of the preferred scenario.

Stat. Auth.: ORS 197.040, 197.301, 197.274(2) & 2009 OL Ch. 865 § 37(8) (HB 2001)

Stats. Implemented: ORS 197.301 & 2009 OL Ch. 865 § 37(8) (HB 2001)

Hist.: LCDD 10-2012, f. 12-4-12, cert. ef. 1-1-13; LCDD 5-2017, f. 2-28-17, cert. ef. 3-1-17

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Occupational Therapy Licensing Board

Chapter 339

Rule Caption: Amend 339-010-0020 Unprofessional Conduct to include failure to follow principles in AOTA Code of Ethics

Adm. Order No.: OTLB 3-2017

Filed with Sec. of State: 2-16-2017

Certified to be Effective: 2-16-17

Notice Publication Date: 1-1-2017

Rules Amended: 339-010-0020

Subject: 339-010-0020

Unprofessional Conduct

(1) Unprofessional conduct relating to patient/client safety, integrity and welfare includes:

(a) Intentionally harassing, abusing, or intimidating a patient/client, either physically or verbally;

(b) Intentionally divulging, without patient/client consent, any information gained in the patient relationship other than what is required by staff or team for treatment;

(c) Engaging in assault and/or battery of patient/client;

(d) Failing to respect the dignity and rights of patient/client, regardless of social or economic status, personal attributes or nature of health problems;

(e) Engaging in sexual improprieties or sexual contact with patient/client;

(f) Offering to refer or referring a patient/client to a third person for the purpose of receiving a fee or other consideration from the third person or receiving a fee from a third person for offering to refer or referring a patient/client to a third person;

(g) Taking property of patient/client without consent.

(h) Failing to follow principles and related standards of conduct as defined in the Occupational Therapy Code of Ethics (2015), by the American Occupational Therapy Association, to the extent they do not conflict with ORS 675.210 through 675.340.

(2) Unprofessional conduct relating to professional competency includes:

(a) Engaging in any professional activities for which licensee is not currently qualified;

(b) Failing to maintain competency;

(c) Failing to provide a comprehensive service that is compatible with current research and within an ethical and professional framework;

(d) Failing to obtain a physician's referral in situations where an OT is using a modality not specifically defined in ORS 675.210(3);

(e) Failing to provide professional occupational therapy based on evaluation of patient's/client's needs and appropriate treatment procedures;

(f) Using an occupational therapy aide in violation of the law or Board rules regarding occupational therapy.

(3) Unprofessional conduct relating to the Board includes:

(a) Practicing occupational therapy without a current Oregon license;

(b) Failing to renew license in a timely manner;

(c) Failing to provide the Board with any documents requested by the Board;

(d) Failing to answer truthfully and completely any question asked by the Board;

(e) Failing to provide evidence of competency when requested;

(f) Violating the Practice Act, Board rules or Board Orders;

(4) Unprofessional conduct relating to impaired function includes:

(a) Engaging in or assisting in the practice of occupational therapy while impaired by alcohol or other drugs;

(b) Use of alcohol or other drugs in a manner that creates a risk of harm to patient/client;

(c) Engaging in the practice of occupational therapy while one's ability to practice is impaired by reason of physical or mental disability or disease.

(5) Unprofessional conduct relating to federal or state law or rules:

(a) Intentionally making or filing a false or misleading report or failing to file a report when it is required by law or third person or intentionally obstructing or attempting to obstruct another person from filing such report;

(b) Obtaining or attempting to obtain compensation by misrepresentation;

(c) Engaging in assault and/or battery of any person;

(d) Conviction of a crime or engaging in any act which the Board determines substantially relates to the practice of occupational therapy or indicates an inability to safely and proficiently engage in the practice of occupational therapy; or failing to notify the Board within 10 working days of a conviction of a misdemeanor, or an arrest for or conviction of a felony;

(e) Disciplinary actions imposed by another professional licensing body based on acts by the licensee similar to acts giving rise to discipline under the Practice Act or rules of the Board;

(f) Engaging in false, misleading or deceptive advertising.

(g) Fails to notify the appropriate licensing board of any conduct by another licensed medical provider when the licensee has reasonable cause to believe that the medical provider has engaged in prohibited or unprofessional conduct. As used in this subparagraph, "prohibited conduct" means a criminal act against a patient or a criminal act that creates a risk of harm to a patient and "unprofessional conduct" means conduct unbecoming a medical provider or detrimental to the best interests of the public, including conduct contrary to recognized standards of ethics of the medical provider's profession or conduct that endangers the health, safety or welfare of a patient.

(h) Fails to notify the Board of a change in the licensee's name, address, contact telephone number or place of employment or business as required by OAR 339-010-0018.

Stat. Auth.: ORS 675.230, 675.240, 675.250, 675.300 & 675.310
Stats. Implemented: ORS 675.300(1)(a)

Hist.: OTLB 1-1979, f. & ef. 6-7-79; OTLB 1-1988, f. & cert. ef. 1-29-88; OTLB 1-1994, f. & cert. ef. 1-24-94; OTLB 1-1996, f. & cert. ef. 4-16-96; OTLB 1-1999, f. & cert. ef. 10-27-99; OTLB 1-2001, f. & cert. ef. 1-12-01; OTLB 1-2011, f. 6-13-11, cert. ef. 7-1-11

Rules Coordinator: Nancy Schuberg—(971) 673-0198

339-010-0020

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(b) Intentionally divulging, without patient/client consent, any information gained in the patient relationship other than what is required by staff or team for treatment;

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ADMINISTRATIVE RULES

(e) Engaging in sexual improprieties or sexual contact with patient/client;

(f) Offering to refer or referring a patient/client to a third person for the purpose of receiving a fee or other consideration from the third person or receiving a fee from a third person for offering to refer or referring a patient/client to a third person;

(g) Taking property of patient/client without consent.

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(b) Failing to maintain competency;

(c) Failing to provide a comprehensive service that is compatible with current research and within an ethical and professional framework;

(d) Failing to obtain a physician's referral in situations where an OT is using a modality not specifically defined in ORS 675.210(3);

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(5) Unprofessional conduct relating to federal or state law or rules:

(a) Intentionally making or filing a false or misleading report or failing to file a report when it is required by law or third person or intentionally obstructing or attempting to obstruct another person from filing such report;

(b) Obtaining or attempting to obtain compensation by misrepresentation;

(c) Engaging in assault and/or battery of any person;

(d) Conviction of a crime or engaging in any act which the Board determines substantially relates to the practice of occupational therapy or indicates an inability to safely and proficiently engage in the practice of occupational therapy; or failing to notify the Board within 10 working days of a conviction of a misdemeanor, or an arrest for or conviction of a felony;

(e) Disciplinary actions imposed by another professional licensing body based on acts by the licensee similar to acts giving rise to discipline under the Practice Act or rules of the Board;

(f) Engaging in false, misleading or deceptive advertising.

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(h) Fails to notify the Board of a change in the licensee's name, address, contact telephone number or place of employment or business as required by OAR 339-010-0018.

Stat. Auth.: ORS 675.230, 675.240, 675.250, 675.300 & 675.310

Stats. Implemented: ORS 675.300(1)(a)

Hist.: OTLB 1-1979, f. & ef. 6-7-79; OTLB 1-1988, f. & cert. ef. 1-29-88; OTLB 1-1994, f. & cert. ef. 1-24-94; OTLB 1-1996, f. & cert. ef. 4-16-96; OTLB 1-1999, f. & cert. ef. 10-27-

99; OTLB 1-2001, f. & cert. ef. 1-12-01; OTLB 1-2011, f. 6-13-11, cert. ef. 7-1-11; OTLB 1-2017, f. & cert. ef. 1-27-17; OTLB 3-2017, f. & cert. ef. 2-16-17

Rule Caption: Amending Rule 339-010-0005 Definitions (b) and (c) to allow routine and general supervision via telehealth.

Adm. Order No.: OTLB 4-2017

Filed with Sec. of State: 3-13-2017

Certified to be Effective: 3-13-17

Notice Publication Date: 1-1-2017

Rules Amended: 339-010-0005

Subject: 339-010-0005

Definitions

(1) "Supervision," is a process in which two or more people participate in a joint effort to promote, establish, maintain and/or evaluate a level of performance. The occupational therapist is responsible for the practice outcomes and documentation to accomplish the goals and objectives. Levels of supervision:

(a) "Close supervision" requires daily, direct contact in person at the work site;

(b) "Routine supervision" requires the supervisor to have direct contact in person at least every two weeks at the work site or via telehealth as defined in OAR 339-010-0006 (9) with interim supervision occurring by other methods, such as telephone or written communication;

(c) "General supervision" requires the supervisor to have at least monthly direct contact in person with the supervisee at the work site or via telehealth as defined in OAR 339-010-0006 (9) with supervision available as needed by other methods.

(2) "Leisure," as it is used in ORS 675.210(3) means occupational behavior that is developed as part of an individual occupational therapy evaluation and treatment process. This process is goal oriented toward the maximum health of the patient by the interaction of self-care, work and leisure, and is not used as an isolated recreation activity. The use in this way does not include leisure activities as used by therapeutic recreation specialists.

(3) "Licensed occupational therapy practitioner," for purposes of these rules, means an individual who holds a current occupational therapist or occupational therapy assistant license.

(4) "Occupational therapy aide," as it is used in OAR 339-010-0005, means an unlicensed worker who is assigned by the licensed occupational therapy practitioner to perform selected tasks.

(5) "Mentorship," as it is used in these rules, is a collaborative experience of direct contact between currently licensed occupational therapy practitioners for the purpose of updating professional skills. Mentorship may include, but is not limited to, mentee observation of the mentor's practice, classroom work, case review and discussion, and review and discussion of professional literature.

(6) "Occupational Therapy" further defines scope of practice as meaning the therapeutic use of everyday life activities (occupations) with individuals or groups for the purpose of participation in roles and situations in home, school, workplace, community, and other settings. Occupational therapy services are provided for the purpose of promoting health and wellness and to those who have or are at risk for developing an illness, injury, disease, disorder, condition, impairment, disability, activity limitation, or participation restriction. Occupational therapy addresses the physical, cognitive, psychosocial, sensory, and other aspects of performance in a variety of contexts to support engagement in everyday life activities that affect health, well-being, and quality of life:

(a) Occupational Therapists use selected methods or strategies to direct the process of interventions such as:

(A) Establish, remediate or restore skill or ability that has not yet developed or is impaired;

(B) Compensate, modify, or adapt activity or environment to enhance performance;

(C) Maintain and enhance capabilities without which performance in everyday life activities would decline;

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(D) Promote health and wellness to enable or enhance performance in everyday life activities;

(E) Prevent barriers to performance, including disability prevention.

(b) Occupational Therapists evaluate factors affecting activities of daily living (ADL), instrumental activities of daily living (IADL), education, work, play, leisure, and social participation, including:

(A) Client factors, including body functions (such as neuromuscular, sensory, visual, perceptual, cognitive) and body structures (such as cardiovascular, digestive, integumentary, genitourinary systems);

(B) Habits, routines, roles and behavior patterns;

(C) Cultural, physical, environmental, social, and spiritual contexts and activity demands that affect performance;

(D) Performance skills, including motor, process, and communication/interaction skills.

(c) Occupational Therapists use the following interventions and procedures to promote or enhance safety and performance in activities of daily living (ADL), instrumental activities of daily living (IADL), education, work, play, leisure, and social participation, including

(A) Therapeutic use of occupations, exercise, and activities;

(B) Training in self-care, self-management, home management and community/work reintegration;

(C) Development, remediation, or compensation of physical, cognitive, neuromuscular, sensory functions and behavior skills;

(D) Therapeutic use of self, including one's personality, insights, perceptions, and judgments, as part of the therapeutic process;

(E) Education and training of individuals, including family members, caregivers, and others;

(F) Care coordination, case management, and transition services;

(G) Consultative services to groups, programs, organizations, or communications;

(H) Modification of environments (home, work, school, or community) and adaptation of processes, including the application of ergonomic principles;

(I) Assessment, design, fabrication, application, fitting, and training in assistive technology, adaptive device, and orthotic devices, and training in the use of prosthetic devices;

(J) Assessment, recommendation, and training in techniques to enhance functional mobility, including wheelchair management;

(K) Driver rehabilitation and community mobility;

(L) Management of feeding and eating to enable swallowing performance;

(M) Application of physical agent modalities, and use of a range of specific therapeutic procedures (such as wound care management; techniques to enhance sensory, perceptual, and cognitive processing, manual therapy techniques) to enhance performance skills as they relate to occupational therapy services.

Stat. Auth.: ORS 675.320(11), (13) & (14)

Stats. Implemented: ORS 675.210(4) & 675.320(13)

Hist.: OTLB 1-1979, f. & ef. 6-7-79; OTLB 1-1988, f. & cert. ef. 1-29-88; OTLB 2-1990, f. & cert. ef. 12-20-90; OTLB 1-1996, f. & cert. ef. 4-16-96; OTLB 1-1999, f. & cert. ef. 10-27-99; OTLB 2-2003, f. & cert. ef. 9-11-03; OTLB 1-2005, f. & cert. ef. 8-11-05; OTLB 1-2007, f. & cert. ef. 8-1-07

Rules Coordinator: Nancy Schuberg—(971) 673-0198

339-010-0005

Definitions

(1) "Supervision," is a process in which two or more people participate in a joint effort to promote, establish, maintain and/or evaluate a level of performance. The occupational therapist is responsible for the practice outcomes and documentation to accomplish the goals and objectives. Levels of supervision:

(a) "Close supervision" requires daily, direct contact in person at the work site;

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defined in ORS 339-010-0006(9) with interim supervision occurring by other methods, such as telephone or written communication;

(c) "General supervision" requires the supervisor to have at least monthly direct contact in person with the supervisee at the work site or via telehealth as defined in ORS 339-010-0006(9) with supervision available as needed by other methods.

(2) "Leisure," as it is used in ORS 675.210(3) means occupational behavior that is developed as part of an individual occupational therapy evaluation and treatment process. This process is goal oriented toward the maximum health of the patient by the interaction of self-care, work and leisure, and is not used as an isolated recreation activity. The use in this way does not include leisure activities as used by therapeutic recreation specialists.

(3) "Licensed occupational therapy practitioner," for purposes of these rules, means an individual who holds a current occupational therapist or occupational therapy assistant license.

(4) "Occupational therapy aide," as it is used in ORS 339-010-0055, means an unlicensed worker who is assigned by the licensed occupational therapy practitioner to perform selected tasks.

(5) "Mentorship," as it is used in these rules, is a collaborative experience of direct contact between currently licensed occupational therapy practitioners for the purpose of updating professional skills. Mentorship may include, but is not limited to, mentee observation of the mentor's practice, classroom work, case review and discussion, and review and discussion of professional literature.

(6) "Occupational Therapy" further defines scope of practice as meaning the therapeutic use of everyday life activities (occupations) with individuals or groups for the purpose of participation in roles and situations in home, school, workplace, community, and other settings. Occupational therapy services are provided for the purpose of promoting health and wellness and to those who have or are at risk for developing an illness, injury, disease, disorder, condition, impairment, disability, activity limitation, or participation restriction. Occupational therapy addresses the physical, cognitive, psychosocial, sensory, and other aspects of performance in a variety of contexts to support engagement in everyday life activities that affect health, well-being, and quality of life:

(a) Occupational Therapists use selected methods or strategies to direct the process of interventions such as:

(A) Establish, remediate or restore skill or ability that has not yet developed or is impaired;

(B) Compensate, modify, or adapt activity or environment to enhance performance;

(C) Maintain and enhance capabilities without which performance in everyday life activities would decline;

(D) Promote health and wellness to enable or enhance performance in everyday life activities;

(E) Prevent barriers to performance, including disability prevention.

(b) Occupational Therapists evaluate factors affecting activities of daily living (ADL), instrumental activities of daily living (IADL), education, work, play, leisure, and social participation, including:

(A) Client factors, including body functions (such as neuromuscular, sensory, visual, perceptual, cognitive) and body structures (such as cardiovascular, digestive, integumentary, genitourinary systems);

(B) Habits, routines, roles and behavior patterns;

(C) Cultural, physical, environmental, social, and spiritual contexts and activity demands that affect performance;

(D) Performance skills, including motor, process, and communication/interaction skills.

(c) Occupational Therapists use the following interventions and procedures to promote or enhance safety and performance in activities of daily living (ADL), instrumental activities of daily living (IADL), education, work, play, leisure, and social participation, including

(A) Therapeutic use of occupations, exercise, and activities;

(B) Training in self-care, self-management, home management and community/work reintegration;

(C) Development, remediation, or compensation of physical, cognitive, neuromuscular, sensory functions and behavior skills;

(D) Therapeutic use of self, including one's personality, insights, perceptions, and judgments, as part of the therapeutic process;

(E) Education and training of individuals, including family members, caregivers, and others;

(F) Care coordination, case management, and transition services;

(G) Consultative services to groups, programs, organizations, or communications;

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(H) Modification of environments (home, work, school, or community) and adaptation of processes, including the application of ergonomic principles;

(I) Assessment, design, fabrication, application, fitting, and training in assistive technology, adaptive device, and orthotic devices, and training in the use of prosthetic devices;

(J) Assessment, recommendation, and training in techniques to enhance functional mobility, including wheelchair management;

(K) Driver rehabilitation and community mobility;

(L) Management of feeding and eating to enable swallowing performance;

(M) Application of physical agent modalities, and use of a range of specific therapeutic procedures (such as wound care management; techniques to enhance sensory, perceptual, and cognitive processing, manual therapy techniques) to enhance performance skills as they relate to occupational therapy services.

Stat. Auth.: ORS 675.320(11), (13) & (14)
Stats. Implemented: ORS 675.210(4) & 675.320(13)
Hist.: OTLB 1-1979, f. & cert. ef. 6-7-79; OTLB 1-1988, f. & cert. ef. 1-29-88; OTLB 2-1990, f. & cert. ef. 12-20-90; OTLB 1-1996, f. & cert. ef. 4-16-96; OTLB 1-1999, f. & cert. ef. 10-27-99; OTLB 2-2003, f. & cert. ef. 9-11-03; OTLB 1-2005, f. & cert. ef. 8-11-05; OTLB 1-2007, f. & cert. ef. 8-1-07; OTLB 3-2016, f. & cert. ef. 10-28-16; OTLB 2-2017, f. & cert. ef. 2-15-17; OTLB 4-2017, f. & cert. ef. 3-13-17

Oregon Business Development Department Chapter 123

Rule Caption: New rule division relating to the Solar Development Incentive Program.

Adm. Order No.: OBDD 1-2017

Filed with Sec. of State: 2-22-2017

Certified to be Effective: 2-22-17

Notice Publication Date: 12-1-2016

Rules Adopted: 123-093-0100, 123-093-0200, 123-093-0300, 123-093-0400, 123-093-0500, 123-093-0600, 123-093-0700, 123-093-0800, 123-093-0900, 123-093-1000

Subject: The 2016 Legislature passed HB 4037 which created the Solar Development Incentive Program. The program was established to incentivize the generation of electricity derived from solar photovoltaic energy. These rules clarify, specify and establish standards and criteria for the program.

Rules Coordinator: Mindie Sublette—(503) 986-0036

123-093-0100

Purpose

This division of administrative rules clarifies, specifies and establishes standards and criteria for the Solar Development Incentive (SDI) program (program) and Fund established by the 2016 Legislative session through HB 4037. The SDI program was established to incentivize the generation of electricity from solar photovoltaic energy.

(1) Program overview. The SDI program offers a flat cents-per-kilowatt hour (kWh) payment for all output from an Enrolled Project for up to 5 years. Oregon Business Development Department (Department) will make monthly payments to an owner or operator of an Enrolled Project. Owners of eligible solar photovoltaic (PV) energy systems with a Nameplate Capacity of between 2 and 10 megawatts (MW) enrolled in the SDI program can receive a monthly payment of \$0.005/kWh electricity demonstrably generated by the Enrolled Project for a period of up to 5 years.

(2) Application review. Application for the SDI program is subject to program qualification review and a project readiness assessment. Projects that are deemed qualified will be evaluated by a selection committee designated by the Department to determine if Applicants demonstrated that the project will likely be executed within program timelines. The selection committee will generate an enrollment queue based on the likelihood of a project's ability to begin generating electricity no later than January 2, 2018. The Department will offer enrollment to projects according to their position in the queue and cap participation of a single owner or operator at 35MWs of projects.

Stat. Auth.: Ch. 63, OL 2016 (HB 4037)
Stats. Implemented: Ch. 63, OL 2016 (HB 4037)
Hist.: OBDD 1-2017, f. & cert. ef. 2-22-17

123-093-0200

Definitions

The following definitions apply unless the context requires otherwise:

(1) "Affiliated Entity" means all businesses or individuals controlling, controlled by, or under common control with the owner or operator or otherwise affiliated with the owner or operator. In making the determination, the Department will consider, among other factors, ownership and contractual relationships among businesses, including but not limited to ownership interests, financial relationships, purchase options, partnership flips, and expected or scheduled changes in ownership interests or percentages.

(2) "Applicant" means an owner or operator of a solar PV project who submits a solar PV project for SDI enrollment consideration.

(3) "Application Date" means the date and time at which the Applicant submitted an SDI application online.

(4) "Capacity Factor" as defined by the Energy Information Administration, means the ratio of the electrical energy produced by a generating unit for the period of time considered to the electrical energy that could have been produced at continuous full power operation during the same period.

(5) "Commercially Operational" means a solar PV facility that is generating and selling electricity in accordance with a Power Purchase Agreement with the purchasing utility.

(6) "Department" refers to the Oregon Business Development Department.

(7) "Eligible Project" means a Qualified and Ready Project whose owner, operator, or Affiliated Entities, would, after enrollment of the project, own or operate, collectively, no more than 35MWac of Solar PV Energy Systems enrolled in the SDI Program, as determined by the Department.

(8) "Enrollee/Program Enrollee" means the owner or operator of Solar PV Energy System enrolled in the SDI Program. The Enrollee is responsible for managing relationships and reporting requirements associated with the SDI program.

(9) "Enrolled Project" means the SDI Program Enrollee's Qualified, Ready, and Eligible Solar PV Energy System that has been selected to participate in the SDI program, for which the Enrollee has completed required contracting and documentation to participate in the SDI program and as such is eligible to receive the production-based incentive.

(10) "Enrollment Date" is the date assigned by the Department that serves as the earliest date from which production data can be submitted for SDI payment. It also serves as the date from which Enrollees have 12 months to generate electricity before experiencing reductions in their total incentive payments.

(11) "Investor-Owned Utility" means an investor-owned utility, as defined in ORS 469.631 that distributes electricity.

(12) "Nameplate Capacity" means the maximum rated output of a generator, inverter, or other electric power production equipment measured in alternating current under specific conditions designated by the manufacturer of the equipment.

(13) "Off-taking Entity" means the buyer of the electricity produced by a generating facility.

(14) "Publicly Owned Utility" has the meaning given that term in ORS 469.649.

(15) "SDI Payee" means the Enrolled Project Owner or Operator entity to whom SDI payments will be issued.

(16) "Project Owner or Operator" means the entity that has primary control over a project.

(17) "Solar Photovoltaic Energy System" or "Solar PV Energy System" means equipment and devices that have the primary purpose of collecting solar energy and generating electricity by photovoltaic effect.

(18) "Qualified Project" means a Solar PV Energy System that meets the criteria set forth in OAR 123-093-0400 as a stand-alone project.

(19) "Qualified and Ready Project" means a Qualified Project that is more likely to begin generating electricity no later than January 2, 2018.

Stat. Auth.: Ch. 63, OL 2016 (HB 4037)
Stats. Implemented: Ch. 63, OL 2016 (HB 4037)
Hist.: OBDD 1-2017, f. & cert. ef. 2-22-17

123-093-0300

Application Process Overview

(1) Application. Applicants complete and submit the online application and upload all supporting materials to:

(a) Demonstrate their project is qualified to be included in the program.

(b) Demonstrate project readiness.

(2) Complete Application. Applications are considered complete if all required questions on the application form have been answered, all available and applicable supporting documents have been uploaded or the Applicant includes explanation pertaining to the lack of supporting docu-

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mentation, and the application has been submitted using the online form. The Department may, but is not obligated to, ask for response clarification and additional supporting documentation. A determination of a completed application will be made at the sole discretion of the Department.

(3) Application Date. Applications shall be considered received on the date marked received by the online form, unless the application is determined to be incomplete. Requests for supporting documentation for otherwise complete applications will not affect the Application Date.

(4) Incomplete Applications. Applicants must answer all the required questions completely. If any portion of the application is left blank, it shall be interpreted as incomplete and may lead to the rejection of the application. Required fields will be indicated as such on the online application form. If a written response is required for a question that does not apply, Applicants must indicate that the question does not apply. The online submission form will notify Applicants of incomplete applications.

(5) Unique applications for each project. Applicants must submit unique applications for each project submitted for consideration to receive the SDI.

(6) Deadline. All Applicants must complete and submit the application and all required supporting documentation by January 2, 2017.

Stat. Auth.: Ch. 63, OL 2016 (HB 4037)

Stats. Implemented: Ch. 63, OL 2016 (HB 4037)

Hist: OBDD 1-2017, f. & cert. ef. 2-22-17

123-093-0400

Qualification

The Department, in consultation with external organizations including, but not limited to, the Oregon Department of Energy (ODOE) will determine if a proposed project is qualified. A solar PV system is qualified if it:

(1) Has applied by January 2, 2017

(2) Is located in Oregon

(3) Has a Nameplate Capacity between 2 and 10 megawatts as measured in alternating current (MWac)

(4) Can be demonstrated, in a power purchase agreement (PPA), that it has an agreed upon commercial operation date (COD) of January 1, 2016 or later

(5) Is or will be either directly connected to the electrical system of an Oregon Investor-Owned Utility or Publicly Owned Utility, or is indirectly connected to the electrical system of an Investor-Owned Utility or Publicly Owned Utility in a manner that the Selection Committee determines is acceptable for Program Enrollees

(6) Has or will have a revenue grade meter or other device that monitors and measures the quantity of energy generated by the Solar PV Energy System

(7) Meets any other siting, design, interconnection, installation and electric output standards required by the laws of Oregon

Stat. Auth.: Ch. 63, OL 2016 (HB 4037)

Stats. Implemented: Ch. 63, OL 2016 (HB 4037)

Hist: OBDD 1-2017, f. & cert. ef. 2-22-17

123-093-0500

Project Evaluation

(1) The Department will establish a SDI program Selection Committee (Selection Committee) with representation from organizations including, but not limited to the Department and the Oregon Department of Energy.

(2) The Selection Committee will:

(a) Assist in determining if projects are qualified to participate in the SDI program,

(b) Evaluate Qualified Projects to assess project readiness, and

(c) Meet to discuss evaluated projects in order to generate an enrollment queue that prioritizes projects that are more likely to generate electricity by January 2, 2018.

(3) The elements of project readiness that will be assessed include:

(a) Business Strength (40%) — Preference will be given to projects that are led by demonstrably creditworthy companies with teams that demonstrate an ability to complete projects of similar scale, type, and location within projected timeframes. This includes an evaluation of:

(A) Secured funding sources, demonstrable with a signed Commitment to Lend or term sheet confirming secured funding sources, amounts and where applicable, expiration dates. Additional material may include award letters, confirmation emails, and other communications to support demonstration of participation in other incentive programs, where applicable.

(B) Team experience, demonstrable with a list of renewable energy project team members, roles, and qualifications; resumes of renewable

energy project managers and other key team members; lists of similar renewable energy projects completed.

(a) Status of Agreements/Permits (30%) — Preference will be given to projects for which Applicants can demonstrate that required permits, agreements, and supply chains have been secured. This includes an evaluation of:

(C) Permitting status, demonstrable with applicable documents including, but not limited to, Conditional Use Permit (application and signed if available), Notice to Proceed from Authority Having Jurisdiction (AHJ), and other signed required permits as well as a narrative explaining the status of required permits that have yet to be granted.

(D) Site control agreement(s), such as land ownership documentation or a long-term lease.

(E) Status of Power Purchase Agreement (PPA), demonstrable with a signed PPA or a description of the status of the agreement.

(F) Status of Interconnection Agreement (IA), demonstrable with a signed IA or a description of the status of the IA, including the status of studies.

(G) Status of Transmission Agreement (TA) when applicable, demonstrable with a signed TA or a description of the status of the TA, including the status of studies.

(H) Contractors' status, demonstrable with signed contractor agreements, paid invoices or cancelled checks indicating security deposits or service payments made to contractors.

(I) Supply status, demonstrable with supply invoices, contracts, bids, or proposals.

(b) Project Plan (30%) — Preference will be given to projects for which Applicants can demonstrate that project milestones have been and are likely to continue to be met, and that demonstrate likely commercial operation by January 2, 2018. This includes an evaluation of:

(A) Commercial Operation Date (COD), demonstrable with either an 'agreed upon' or 'proposed' COD between the Off-taking Entity and the project owner, and that can be demonstrated with a signed PPA.

(B) Project development timeline, demonstrable with a project Gantt chart or schedule that includes duration of each development stage, dates of major milestones (e.g., equipment procurement, equipment delivery on site, construction start and end dates, commissioning, etc.), and a description of project risks, including their influence on the project critical path and mitigation strategies.

(C) Community engagement/outreach, demonstrable with a list of past and proposed, required and voluntary community engagement activities, including goals, audience, tactics, and reach.

Stat. Auth.: Ch. 63, OL 2016 (HB 4037)

Stats. Implemented: Ch. 63, OL 2016 (HB 4037)

Hist: OBDD 1-2017, f. & cert. ef. 2-22-17

123-093-0600

Eligibility

(1) The Department will offer SDI program enrollment to Qualified Projects that are eligible for enrollment in the order in which they are arranged in the SDI queue until 150 MW of eligible projects have been enrolled.

(2) Once the SDI program has enrolled 150 MW of qualified and eligible projects, qualified and eligible projects that were not selected to participate will retain their location in the queue.

(a) In the event that Enrolled Projects are removed from the SDI program, their remaining program capacity may be released and reassigned to qualified and eligible projects, according to their assignment in the SDI queue.

(b) In the event that remaining program capacity is reassigned, the total incentive amount reassigned will be limited to the remaining released capacity and the project to which it is reassigned will be constrained to program sunset dates and as such might not receive a full five years of incentive payments.

(3) A project may be qualified but ineligible for enrollment if, by enrollment, the Applicant and any Affiliated Entity would own or operate, collectively, Solar PV Energy Systems enrolled in the SDI Program with a cumulative Nameplate Capacity in excess of 35MWac. A qualified but ineligible project will retain its position in the queue but will not be considered for enrollment unless all of the following criteria are met:

(a) An Enrolled Project is removed from the incentive program and that removal reduces the cumulative Nameplate Capacity of the qualified but previously ineligible project and all Solar PV Energy Systems enrolled in the SDI Program that are owned or operated by the Applicant, or any business controlling, controlled by, or under common control with the Applicant, to 35MWac or less,

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- (b) The SDI program has remaining capacity,
- (c) There are no other qualified and eligible projects in the queue ahead of the project, and
- (4) Partial Funding of Projects. For the above determination, the entire Nameplate Capacity of a project will be used. That is, if an entity has four qualified 10 MW projects, only three of them would be eligible. The fourth project would not be eligible for partial funding of a 5MW portion.

Stat. Auth.: Ch. 63, OL 2016 (HB 4037)
Stats. Implemented: Ch. 63, OL 2016 (HB 4037)
Hist: OBDD 1-2017, f. & cert. ef. 2-22-17

123-093-0700

Payment and Requirements

- (1) Payment
 - (a) Incentive structure. The SDI program offers a flat cents-per-kWh payment for all output from an Enrolled Project for up to five years. Subject to the terms and conditions of the program enrollment contract, the Department will make monthly payments to an Enrolled Project of \$0.005/kWh of electricity generated by the Enrolled Project during the preceding month. Payments shall continue for up to five years after the date on which the Department makes the initial payment to the Program Enrollee for energy generated by the Enrolled Project.
 - (b) Program enrollment. Enrollees will be required to sign a program enrollment contract detailing the conditions of enrolling their project in the SDI program and accepting SDI payments. Once all contracts and related materials have been received, Enrolled projects will be given an Enrollment Date, which will serve as the earliest date from which production data can be submitted for the incentive payment to the SDI Payee.
 - (c) Enrollment date. Enrollment date is determined to be January 2, 2017 (the SDI application closing date).
 - (d) Production demonstration. Enrolled projects will be required to demonstrate (via e.g. meter data or monthly utility purchase statements) the amount of electricity that is produced by the system on a monthly basis by submitting production data to the Department by the 15th day after the end of the previous month or as otherwise arranged and agreed upon with the Department. Enrollees who provide production demonstration data after the agreed upon date may experience a delay in payment.
 - (e) Payment. The Department will disburse to SDI Payees SDI payments of \$0.005/kWh of demonstrated production of solar energy generated during the preceding month(s). Payments will only be made in accordance with and subject to the terms and conditions of the program enrollment contract.
 - (f) Automated Clearing House (ACH) payment. The Department will issue direct deposit payment via ACH only. Program Enrollees will be required to complete necessary forms and approvals to facilitate ACH payments.
 - (g) Incentive reductions. Enrolled projects that are unable to begin generating electricity within one year of their Enrollment Date will have a reduction in the total number of months that they are eligible to receive payments. Beginning one year after an Enrolled Project's Enrollment Date, for each month that the Enrolled project does not generate electricity, the Department shall reduce, by one month, the number of monthly payments otherwise required to be paid to the SDI project Enrollee. For example, an Enrollee can receive 60 months of incentive payments for its Enrolled Project if the project is generating electricity by January 2, 2018 (i.e. within 12 months of the latest possible project Enrollment Date). If instead, the project does not begin to generate electricity until 18 months after the Enrollment Date, the project will only receive 54 months of incentive payments (60 months – 6 months when the project was not generating electricity past the 12-month timeframe = 54 months of incentive payments).
 - (h) Project removal. Projects that fail to perform, have a change in scope such that they become disqualified, or become ineligible, may be removed from the SDI program. Owners of Enrolled Projects that are removed from the SDI program will be assigned an ineligibility date by the Department, after which they will not receive any payments otherwise required to be paid to the Enrolled Project Owner for said removed Enrolled Project. Projects removed from the SDI program may have their program capacity released and reassigned to eligible projects according to their assignment in the SDI queue. Projects can be removed from the SDI program because of, but not limited to, the following scenarios:
 - (A) If by two years after the Enrolled Project's Enrollment Date the Enrolled Project is not interconnected, Commercially Operational, and generating electricity, the Department will remove the Solar PV Energy System from the SDI program.
 - (B) An Enrolled Project may become unqualified if, after enrollment, the scope of the project changes such that the project no longer meets the

project qualifications. The Department will remove unqualified solar PV projects from the SDI program.

(C) Enrolled projects that fail to comply with the obligations in the enrollment contract may be removed from the SDI program.

(D) Enrolled projects that fail to meet reporting obligations may be removed from the SDI program.

(E) Enrolled projects that make, or are discovered to have made, material misrepresentations regarding their Enrolled Project(s) will be removed from the SDI program.

(F) An Enrolled Project may become ineligible (even if it remains qualified) if, after enrollment, there is a change in a relationship between the owner or operator of the project and other businesses owning or operating Enrolled Projects. If, as a result of such change, Enrolled Projects' eligibility is jeopardized, the Department may remove projects from the SDI Program. Before removing a project from the SDI Program, the Department will consult with the owners and operators of all Enrolled Projects whose eligibility has been jeopardized by the change in relationships among owners and operators of Enrolled Projects.

(2) Capacity Factor. SDI program budget was projected based on an average project Capacity Factor of 25 percent. If Enrolled Projects consistently achieve actual Capacity Factors higher than what was used for projecting the budget, the Department will cap total incentive payments so that they do not exceed the program budget, and will distribute incentives based on actual monthly production to Enrolled Projects that produce electricity on a first come first serve basis, until the cap has been reached.

Stat. Auth.: Ch. 63, OL 2016 (HB 4037)
Stats. Implemented: Ch. 63, OL 2016 (HB 4037)
Hist: OBDD 1-2017, f. & cert. ef. 2-22-17

123-093-0800

Reporting Requirements

(1) Applicants of eligible projects selected to participate will be sent an email with an offer to enroll in the SDI program. If the Applicant wishes to enroll a selected project they will be required sign a program enrollment contract which includes the following reporting requirements:

(a) Enrollment Confirmation Project Description — Due as part of enrollment contracting and including, but not limited to, the following project components as applicable:

(A) Project ownership and Affiliated Entities details. This includes the disclosure of all individuals and entities that hold, directly or indirectly, ownership interests and/or control of the Enrolled Project. This also includes purchase options, partnership flips, and expected or scheduled changes in ownership interests or percentages. Project owners must also disclose entities in which they hold, directly or indirectly, ownership interests or control.

(B) Project specifications, such as:

(i) Site specifications

(ii) Production estimates

(iii) Off-taking entity(ies), Renewable Energy Certification status, and anticipated wheeling charges where applicable.

(C) Incentive program participation:

(i) A list of all other affiliated projects that have applied for SDI funds

(ii) A list of all other public incentive programs and associated amounts that the Enrolled Project is receiving or intends to apply to (e.g. federal tax credits, state loan programs, etc.)

(D) Project benefits, such as number of full-time-equivalent positions created, including both the construction jobs and operations and maintenance jobs and their associated average wages.

(b) Project status report(s). Projects that are not yet operational will be required to submit quarterly project status reports until the project is operational. Project status reports must be submitted to the Department on the 15th day of the month following the close of each calendar quarter until the Enrolled project is completed and online. Failure to submit reports may delay the process of future payments or result in removal from the SDI program. Quarterly project status reports include, but are not limited to, the following project details:

(A) Brief narrative summarizing project progress, including key milestones, and progress towards those milestones.

(B) Status of required permits and approvals

(C) Equipment procurement status

(D) Current ownership and any anticipated changes to ownership

(E) Installation status

(F) Inspection status

(c) Commissioning report. After an Enrolled Project is Commercially Operational, and prior to receiving incentive payments, Program Enrollees must submit a Commissioning Report. The Department will review the

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Commissioning report to ensure that reporting requirements are satisfied. Enrolled Projects that have satisfied the Commission reporting requirements will be given approval to begin submitting production reports. Enrolled Projects that are operational at the time of enrollment must complete a Commissioning Report prior to receiving incentive payments, which can be submitted at the same time as the Enrollment Confirmation Project Description report submission. Commissioning reports include, but are not limited to, the following project details:

(A) Project details such as online date, final installed size, and production data access mechanism, brief project narrative, including project description, biggest challenges and lessons learned;

(B) Project permit and agreements documentation, including such things as code and safety inspections from the Jurisdiction Having Authority (JHA), utility final inspection report, and fully executed Interconnection Agreement (IA) and indication of approval to connect project to the grid;

(C) Project financial summary, including such things as Commitment to Lend documentation, final installed cost, and confirmation of all funding sources and amounts;

(D) Current ownership structure and any anticipated changes to ownership; and

(E) Final list of associated projects and Affiliated Entities that have applied for SDI funding.

(d) Production reports. Projects that have submitted a satisfactory Commissioning report, and have been approved to submit Production reports must submit a monthly production report by the 15th day after the close of the previous month. Delays in reporting may result in a delay in payment. Production reports must include, at a minimum:

(A) Monthly kilowatt hour (kWh) production. Monthly kWh production as verified through:

(i) The Western Renewable Energy Generation Information System (WREGIS), including EIA Utility and Plant codes, and the WREGIS generator ID,

(ii) A Qualifying Reporting Entity,

(iii) A production statement from the purchasing utility, or

(iv) Another verifiable mechanism as agreed upon with the Department.

(B) Capacity Factor. Actual Capacity Factor for the preceding month

(C) Changes in capacity. Explanation of unanticipated capacity changes experienced in the previous month, both higher and lower, as well as large capacity deviations anticipated for projected production.

(D) Renewable Energy Certificates (REC) status. REC status including owners in Oregon and any changes in REC ownership.

(e) Change report. The incentive payments for Enrolled Projects are limited to the electricity produced by the Enrolled Project as described in the incentive program contract. Enrollees must notify the Department of any change in an Enrolled Project scope as soon as possible.

(A) Changes to project details, including but not limited to project current or anticipated future ownership, size, location, Off-taking Entity, or to any of the project details evaluated when determining qualifications and eligibility, must be reported to, and approved by the Department to determine if the project is still eligible.

(B) Project changes may affect program qualification or eligibility and could result in termination of, or adjustments to program incentive payments.

(C) Where a delay in project change reporting results in an overpayment the Department will seek to recapture overpayment and reserves the right to offset future payments as well as other remedies allowable by law to recapture overpayment.

(f) Annual report. Forty-five days after the end of the first half of each calendar year, SDI Program Enrollees will submit additional data with their monthly report, including, but not limited to

(A) Total number, average wages, and location of jobs associated with the project

(B) Federal tax credits claimed in Oregon,

(C) Property taxes paid (or total of fee in lieu of), and

(D) Total rents paid to land owner.

(g) Failure to report. Failure to provide required reports, or failure to fully and accurately report project details as required in each report type, may result in immediate termination of program incentives payments and the removal of all associated Enrolled projects from the SDI program. If the Department determines that a failure to report or a failure to fully and accurately report resulted in Enrollee overpayment, the Department will seek to recapture the overpayment and reserves the right to offset future payments as well as other remedies allowable by law to recapture overpayment.

Stat. Auth.: Ch. 63, OL 2016 (HB 4037)

Stats. Implemented: Ch. 63, OL 2016 (HB 4037)
Hist: OBDD 1-2017, f. & cert. ef. 2-22-17

123-093-0900

Ownership, Exclusions, and Transferability

(1) Enrollee ownership and control. SDI program participation is limited to 35 MW of projects per Enrollee Project Owner or Operator and any of the Program Enrollee's Affiliated Entities. The intent of this cap is to prevent a single or small number of solar developer owners or operators from reaping all or most of the benefits of the incentive program. Accordingly, a Qualified and Ready Project might not be an Eligible Project if inclusion in the SDI program would result in a breach of this cap.

(a) Ownership, control, and affiliation disclosure. Applicants are required to disclose all Affiliated Entities associated with the Enrolled Project

(b) Contractual agreement disclosure. Applicants are required to disclose contracts between the Applicant and other individuals or entities that own or operate Solar Photovoltaic Energy Systems in Oregon, and may be required to submit additional information on the nature of the contract.

(c) Failure to disclose. Failure to disclose ownership and control information, especially as it may pertain to Program Enrollees exceeding the 35 MW cap in SDI participation, may result in immediate termination of program incentive payments, the removal of all associated Enrolled projects from the SDI program, and if the Department determines that an Enrollee has been overpaid, the Department will seek to recapture overpayment and reserves the right to offset future payments as well as other remedies allowable by law to recapture overpayment.

(2) Project sale. The SDI payments may not be transferred without prior approval by the Department. For projects not yet generating electricity at the time of the proposed sale, the individual or entity to whom the project is being sold shall submit an updated application as described in this division of administrative rule. Enrolled projects that are generating electricity at the time of the proposed sale will work with the Department, who will determine if the project is still eligible to receive SDI. Failure to comply with this provision may result in immediate termination of program incentive payments and the removal of all associated Enrolled projects from the SDI program.

(3) Exclusion from Public Purpose Funding. Owners of Enrolled Projects are not eligible to receive Public Purpose funds (ORS 757.612(3)(b)(B)) unless the funds are received pursuant to an agreement entered into before March 16, 2016.

(4) Renewable Energy Certificate ownership. Owners of Enrolled Projects also own all renewable energy certificates under ORS 469A.130 that are associated with the generation of the Enrolled Project.

Stat. Auth.: Ch. 63, OL 2016 (HB 4037)
Stats. Implemented: Ch. 63, OL 2016 (HB 4037)
Hist: OBDD 1-2017, f. & cert. ef. 2-22-17

123-093-1000

Confidential Records

(1) The director or his or her designee shall provide nonexempt program records for inspection in accordance with Oregon Public Records Law.

(2) The person requesting inspection of the records may be charged in advance the Department's cost for locating, compiling, copying, and mailing the records. Such costs shall include but not be limited to costs incurred in locating records, separating exempt and nonexempt records, having a custodian present during the inspection, preparing lists of data, making photocopies, and telefaxing materials. Fees to be collected shall be set forth in the Department's schedule of fees and may be amended from time to time as the Department in its sole discretion may determine.

Stat. Auth.: ORS 285A.075 & Ch. 63 OL 2016
Stats. Implemented: ORS 192.430 & 285.035(5)
Hist: OBDD 1-2017, f. & cert. ef. 2-22-17

Oregon Department of Aviation Chapter 738

Rule Caption: Amends Divisions 124 and 125 ensuring compliance and fiscal responsibility of applicants for grants

Adm. Order No.: AVIA 1-2017(Temp)

Filed with Sec. of State: 3-8-2017

Certified to be Effective: 3-8-17 thru 9-1-17

Notice Publication Date:

Rules Amended: 738-124-0020, 738-125-0020

ADMINISTRATIVE RULES

Subject: These proposed amendments to the administrative rules ensure compliance with Divisions 124 and 125 as well as ensuring the fiscal responsibility of applicants for COAR Grants.

Rules Coordinator: Lauri Kunze—(503) 986-3171

738-124-0020

Application Submission Periods

(1) The Department will announce periods for submitting applications for funding from the Aviation System Action Program Fund.

(2) Project applications will be reviewed for compliance with the requirements as prescribed in Chapter 738, division 124 and 125 rules.

(3) Applications not funded may be resubmitted during subsequent application submission periods announced by the Department.

Stat. Auth.: ORS 835.035, 835.040, 835.112, OL 2015 c.700 Section 7
Stats. Implemented: ORS 835.015, 835.025, 836.015, 836.070, 319.020
Hist.: AVIA 1-2016(Temp), f. & cert. ef. 5-11-16 thru 11-4-16; AVIA 4-2016, f. & cert. ef. 10-31-16; AVIA 1-2017(Temp), f. & cert. ef. 3-8-17 thru 9-1-17

738-125-0020

Applicant Eligibility

(1) Public Use Airport Owners and Airport Sponsors, both private and public, including Oregon municipalities, as defined by ORS 836.005, may apply for FAM Grant Program assistance. In these rules a municipality is called “applicant” or “airport sponsor.”

(2) To qualify to apply for a FAM grant, an applicant must:

(a) Own or operate a public-use airport included in the current Oregon Aviation Plan (OAP), or be building or purchasing a public-use airport;

(b) Unless the application is for developing airport zoning, have enacted, or begun the process of enacting, airport zoning for the airport in accordance with OAR 660-013; and

(c) Unless the application is for developing an Airport Layout Plan (ALP), a non-NPIAS (National Plan of Integrated Airport System), the applicant must have a current ALP for the airport, consistent with Federal Aviation Administration (FAA) requirements, that meets these criteria:

(A) The ALP was completed within the last 10 years;

(B) The ALP has been accepted by the FAA or the Department; and

(C) The ALP has been adopted or is pending adoption by the municipality’s governing body. Adoption shall be by ordinance or by inclusion in the municipality’s comprehensive plan. More specifically:

(i) Adoption may occur after notification that the municipality has received a tentative award of FAM grant funds; however,

(ii) Adoption must occur before detailed project planning and engineering; and

(iii) Adoption must occur prior to disbursement of FAM grant funding to the municipality.

(3) Applicant must warrant that any grant award will be spent or obligated within the fiscal year for which the grant is made, or have an approved schedule showing completion of the project within 2 years.

(4) Applicant must warrant availability of required dollar match for any potential grant, as described in OAR 738-125-0030.

(5) Applicants that are delinquent on any financial obligation to federal, state or local governments may not receive a grant or grants from ODA. Any exceptions to this requirement must be approved by the State Aviation Board.

Stat. Auth.: ORS 835.035, 835.040 & 835.112
Stats. Implemented: ORS 835.015, 835.025, 836.015 & 836.070
Hist.: AVIA 2-2004, f. & cert. ef. 5-24-04; AVIA 2-2016, f. & cert. ef. 5-26-16; AVIA 1-2017(Temp), f. & cert. ef. 3-8-17 thru 9-1-17

Oregon Department of Education Chapter 581

Rule Caption: Implements Ballot Measure 98: the High School Graduation and Career Readiness Act

Adm. Order No.: ODE 3-2017

Filed with Sec. of State: 3-1-2017

Certified to be Effective: 3-1-17

Notice Publication Date: 1-1-2017

Rules Adopted: 581-013-0005, 581-013-0010, 581-013-0015, 581-013-0020, 581-013-0025, 581-013-0030, 581-013-0035

Subject: The rules implement Ballot Measure 98 (2016) which established the High School Graduation and College and Career Readiness Act. The rules establish guidelines for how the Department of Education will administer the High School Graduation and College and Career Readiness Fund. The rules establish eligibility requirements for school districts and public charter schools to receive

money from the High School Graduation and College and Career Readiness Fund. The rules also establish the reporting, monitoring, and technical assistance process.

Rules Coordinator: Cindy Hunt—(503) 947-5651

581-013-0005

Definitions

The following definitions apply to OAR 581-013-0005 to 581-013-0035:

(1) “Career Technical Education” or “CTE” means content, programs, and instructional strategies based on business and industry workplace skills and technical skill sets and needs. Instruction incorporates standards-based academic content, technical skills and workplace behaviors necessary for success in careers of the 21st century. Career Technical Education:

(a) Provides individuals with coherent and rigorous content aligned with challenging academic standards and relevant technical knowledge and skills needed to prepare students for their career pathway;

(b) Provides technical skill proficiency and may provide an industry-recognized credential, a post-secondary certificate or degree; and

(c) Includes applied learning that contributes to an individual’s academic and technical knowledge, higher-order reasoning and problem-solving skills, work attitudes and general employability skills.

(2) “CTE program” means a CTE Program of Study or CTE Start-up Program.

(3) “CTE Program of Study” means a sequence of courses, aligned to industry standards at the secondary and post-secondary level that integrates technical and career skill proficiencies with relevant academic content. A CTE Program of Study prepares students for the workplace, further education, training, and community roles. A CTE Program of Study is approved by the Oregon Department of Education.

(4) “CTE Start-up Program” means an intentional plan approved by ODE to develop a CTE Program of Study within an ODE agreed upon timeline. The program includes initial course(s), connections to economic need, and a proposed alignment to a community college CTE program.

(5) “Charter school” means a public charter school operating pursuant to ORS Chapter 338.

(6) “Dual credit courses” means dual credit courses, sponsored dual credit courses, and assessment based learning credit as those terms are defined by the Oregon Higher Education Coordinating Commission.

(7) “English Language Learner” or “ELL” means a child whose native language is other than English or who speaks a language other than English in the child’s home.

(8) “ESD” means education service district as defined in ORS 334.003.

(9) “Establish” means create or implement new programs, activities, or services for students.

(10) “Evidence-based” means an activity, strategy, or intervention that

(a) Demonstrates a statistically significant effect on improving student outcomes or other relevant outcomes based on

(A) Strong evidence from at least one well-designed and well-implemented experimental study;

(B) Moderate evidence from at least one well-designed and well-implemented quasi-experimental study using a large or multi-site sample; or

(C) Promising evidence from at least one well-designed and well-implemented correlational study with statistical controls for selection bias; or

(b) (A) Demonstrates a rationale based on high quality research findings or positive evaluation that such activity, strategy, or intervention adheres to antidiscrimination laws, and is likely to improve student outcomes or other relevant outcomes based on a well-specified logic model informed by research or an evaluation that suggests how the intervention will improve relevant outcomes; and

(B) Includes ongoing efforts to examine, evaluate and reflect upon the effectiveness of such activity, strategy, or intervention on the intended outcomes.

(11) “Expand” means to increase the course offerings, course participation, supports for students, activities, or services available to students or increase the number of students served.

(12) “Extended ADMw” means the extended weighted average daily membership computed as provided in ORS 327.103(1)(c).

(13) “High School Graduation and College and Career Readiness Fund” means the fund established by section 1, chapter 1, Oregon Laws 2017.

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(14) “Historically and traditionally marginalized students” means English language learners, Black and African American students, American Indian and Alaskan Native students, Latino and Hispanic students, Asian and Pacific Islander students, Multi-racial students, students experiencing poverty, and students with disabilities.

(15) “Historically underrepresented populations” means demographic groups whose representation in CTE, science, technology, engineering and math fields, college-level educational opportunities, does not mirror the demographics of the school building .

(16) “School district” means a common or union high school district.
Stat. Auth.: Sec. 1, Ch. 1, OL 2017
Stats. Implemented: Sec. 1, Ch. 1, OL 2017
Hist.: ODE 3-2017, f. & cert. ef. 3-1-17

581-013-0010 Equity Lens

(1) The Oregon Department of Education will apply the equity lens adopted by the Oregon Department of Education when reviewing biennial plans submitted by school districts or charter schools and when monitoring and providing technical assistance to school districts or charter schools.

(2) In determining how to spend funds from the High School Graduation and College and Career Readiness Fund, a school district or charter school shall identify which students or population of students are most at risk of not graduating or being ready for college or career. In making this determination, the school district or charter school shall apply an equity lens and review student data disaggregated by student population including historically and traditionally marginalized and historically underrepresented students. The district or charter school may use an equity lens that has been adopted by the school district or the equity lens that has been adopted by the Oregon Department of Education.

Stat. Auth.: Sec. 1, Ch. 1, OL 2017
Stats. Implemented: Sec. 1, Ch. 1, OL 2017
Hist.: ODE 3-2017, f. & cert. ef. 3-1-17

581-013-0015 Fund Administration

(1) For each biennium, the Oregon Department of Education shall determine the total amount of funds to be apportioned among the eligible school districts and charter schools for each year of the biennium.

(2) For each school year, the Oregon Department of Education shall determine the portion of funds available to each school district or charter school that serves students in grades 9 through 12 from the High School Graduation and College and Career Readiness Fund. In calculating the portion available to each school district and charter school, the Oregon Department of Education shall use the most current finalized extended ADMw from the State School Fund.

(3) Funds that are apportioned to a school district or charter school for a given biennium must be used by the school district, charter school, or ESD in that biennium. Funds that are not used by a school district, charter school, or ESD during year one of a given biennium may be carried over and used in year two of that same biennium. Any funds that are not used by a school district, charter school, or ESD at the end of a biennium will be returned to the High School Graduation and College and Career Readiness Fund and reapportioned among all school districts and charter schools in the next biennium.

(4) Funds received by a school district or charter school under this section must be separately accounted for and must be used in accordance with the school district or charter school’s approved biennial plan.

Stat. Auth.: Sec. 1, Ch. 1, OL 2017
Stats. Implemented: Sec. 1, Ch. 1, OL 2017
Hist.: ODE 3-2017, f. & cert. ef. 3-1-17

581-013-0020 Eligibility

The Oregon Department of Education shall allocate the High School Graduation and College and Career Readiness Fund based on the following criteria

(1) The following entities are able to receive funding from the High School Graduation and College and Career Readiness Fund:

- (a) School districts;
- (b) Charter schools that serve students in grades 9 through 12; and
- (c) ESDs where the ESD is coordinating a regional effort on behalf of a consortium of two or more school districts or charter schools, submitting a biennial plan on behalf of the consortium, and acting as the fiscal agent for the consortium.

(2) For the school year 2018-19 and biennia thereafter, to be eligible to receive an allocation from the High School Graduation and College and Career Readiness Fund a school district or charter school must

(a) Prepare a biennial plan that meets the requirements of OAR 581-013-0025 and is approved by the Oregon Department of Education;

(b) Establish a regular time for teachers and staff of students in grade 9 to collaboratively review current data on students’ grades, absences and discipline by school and by course and to develop strategies to ensure at-risk students stay on track to graduate;

(c) Implement district-wide, evidence-based practices for reducing chronic absenteeism in grades 9-12;

(d) Establish a system for assigning high school students to advanced and dual credit courses that, in order to avoid bias in course assignments, relies on multiple measures of academic qualifications indicating academic readiness such as grades in one or more subject area, test scores, cumulative GPA, validated assessment of content specific skills, or other measures approved by the ODE; and

(e) Implement systems to ensure that high school students, including English Language Learners, are taking courses required for on-time graduation.

(3) For the 2017-18 school year, to be eligible to receive an allocation from the High School Graduation and College and Career Readiness Fund a school district or charter school must have submitted a written request to the Oregon Department of Education using the template developed by the Oregon Department of Education.

Stat. Auth.: Sec. 1, Ch. 1, OL 2017
Stats. Implemented: Sec. 1, Ch. 1, OL 2017
Hist.: ODE 3-2017, f. & cert. ef. 3-1-17

581-013-0025 Biennial Plan

(1) School districts and charter schools must prepare a biennial plan that addresses proposed spending of High School Graduation and College and Career Readiness Fund monies. School districts and charter schools may collaborate and submit one plan on behalf of multiple participants. ESDs may prepare a biennial plan on behalf of a consortium of school districts and charter schools.

(2) The biennial plan must

(a) Comply with the requirements of section 1, chapter 1, Oregon Laws 2017 and rules adopted to implement section 1, chapter 1, Oregon Laws 2017;

(b) Cover a minimum of two years but may be longer;

(c) Address current data and analysis of contributing causes;

(d) Prioritize spending on programs that serve those students identified by the school district as most at-risk of not graduating or being college or career ready, historically and traditionally marginalized and historically underrepresented;

(e) Include plans to establish or expand upon current efforts by the school district or charter school with evidence-based practices in three areas:

(A) CTE programs in high schools;

(B) Access to college-level educational opportunities for students in high schools; and

(C) Drop-out prevention strategies in all high schools;

(f) Demonstrate coordination between the three areas of spending;

(g) Identify resources and specific strategies for historically and traditionally marginalized students and historically underrepresented students and demonstrate what will be accomplished;

(h) Identify supports for teachers, counselors, and administrators to implement specific strategies; and

(i) Identify projections for disaggregated targets related to graduation, student participation in CTE and dual credit, advanced placement, International Baccalaureate, or comparable college-level courses, improvements in attendance, and student progress towards career pathways.

(3) The deadline for biennial plan submission is July 1 of the first year of each biennium.

(4) The Oregon Department of Education must review biennial plans submitted by each district to determine whether the plan should be approved. Plans will be approved if they meet the requirements of (2) of this rule.

(5) School districts, charter schools, and ESDs may amend an approved biennial plan so long as the amendment is done in consultation with the Oregon Department of Education and the amended biennial plan is approved by the Oregon Department of Education as required in subsection (2) of this rule.

Stat. Auth.: Sec. 1, Ch. 1, OL 2017
Stats. Implemented: Sec. 1, Ch. 1, OL 2017
Hist.: ODE 3-2017, f. & cert. ef. 3-1-17

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581-013-0030

Reporting

(1) Prior to the end of each fiscal year, a school district, charter school, or ESD that has received funds from the High School Graduation and College and Career Readiness Fund must file with the Oregon Department of Education

(a) An expenditure report; and

(b) Verification that monies from the High School Graduation and College and Career Readiness Fund were used to establish or expand programs, opportunities, or strategies under section 1, chapter 1, Oregon Laws 2017 and were not used to maintain programs, opportunities, or strategies established prior to December 8, 2016, except when a use is necessary to replace the loss or expiration of time-limited grants, federal funds, and funds that support extended co-enrollment programs in effect prior to December 8, 2016.

(2) Prior to the end of each biennium, a school district, charter school, or ESD that has received funds from the High School Graduation and College and Career Readiness Fund must report to the Oregon Department of Education progress toward the agreed upon targets in the approved biennial plan.

Stat. Auth.: Sec. 1, Ch. 1, OL 2017
Stats. Implemented: Sec. 1, Ch. 1, OL 2017
Hist.: ODE 3-2017, f. & cert. ef. 3-1-17

581-013-0035

Monitoring and Technical Assistance

(1) To ensure the High School Graduation and College and Career Readiness Fund improves student's progress towards graduation beginning with grade 9, graduation rates, and college and career readiness, the Oregon Department of Education will monitor the following

(a) Participating school district, charter school, or ESD's spending to ensure that spending aligns with the school district, charter school, or ESD's approved biennial plan; and

(b) Progress on targets identified by the school district, charter school, or ESD in the biennial plan and on multiple-measure indicators designated by the Oregon Department of Education as reflecting college and career readiness.

(2) The Oregon Department of Education will rely on formative and summative reporting on spending and progress on targets and indicators.

(3) At the end of each fiscal year the Oregon Department of Education shall identify school districts, charter schools, and ESDs that are not spending High School Graduation and College and Career Readiness Fund monies in accordance with the school district, charter school, or ESD's approved biennial plan. The Oregon Department of Education shall partner and collaborate with the identified school districts, charter schools, and ESDs to ensure monies from the High School Graduation and College and Career Readiness Fund are being spent appropriately and, if necessary, direct the expenditure of funds or revise the school district, charter school, or ESD's biennial plan.

(4) At the end of each biennium, the Oregon Department of Education shall identify school districts and charter schools that are not making progress on the targets identified in the school district, charter school, or ESD's approved biennial plan or on the multiple-measure indicators designated by the Oregon Department of Education as reflecting college and career readiness. The Oregon Department of Education shall partner and collaborate with the identified school districts, charter schools, and ESDs to determine the specific interventions and technical assistance to be provided. The interventions and technical assistance must

(a) Include application of the equity lens adopted by the Oregon Department of Education; and

(b) Be individualized based on the school district, charter school, or ESD's needs and unique student population.

Stat. Auth.: Sec. 1, Ch. 1, OL 2017
Stats. Implemented: Sec. 1, Ch. 1, OL 2017
Hist.: ODE 3-2017, f. & cert. ef. 3-1-17

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Rule Caption: School Capital Matching Program

Adm. Order No.: ODE 4-2017

Filed with Sec. of State: 3-1-2017

Certified to be Effective: 3-1-17

Notice Publication Date: 2-1-2017

Rules Amended: 581-027-0005, 581-027-0010, 581-027-0015, 581-027-0020, 581-027-0025, 581-027-0030, 581-027-0035, 581-027-0040, 581-027-0045, 581-027-0050

Subject: Modifies rules relating to School Capital Matching Program and Technical Assistance Grant Program. Modifications include definitions, school district eligibility for programs and prioritization.

Rules Coordinator: Cindy Hunt—(503) 947-5651

581-027-0005

Definitions

The following definitions and abbreviations apply to rules within OAR 581, Div 27:

(1) "Adjusted Assessed Property Value Per ADM" means the value calculated per OAR 581-027-0010 to determine the ranking of Districts on the Priority List for Funding.

(2) "ADM" means Average Daily Membership.

(3) "ADM_r" or "Resident Average Daily Membership" means average daily membership as calculated under OAR 581-023-0006(6)-(7).

(4) "Assessed Value" means the total assessed value of all tangible property within the boundaries of the District as published by the Oregon Department of Revenue.

(5) "Average Daily Membership" means the number of students in a District as calculated under ORS 327.061 and includes all weights, and extended Average Daily Membership weighted, as calculated under ORS 327.013(1)(c).

(6) "Certified Contractor" means an entity or person who has gone through the process established by the Department that will certify the entity or person is qualified to perform the work.

(7) "Closing" means the date on which a District receives some or all of the proceeds of its Local GO Bonds.

(8) "Department" means the Oregon Department of Education.

(9) "District" or "Districts" means school districts, as defined in ORS 328.001(3), that are eligible to apply for a State Matching Grant.

(10) "DOGAMI" means the Oregon Department of Geology and Mineral Industries.

(11) "Facility Assessment" means an assessment conducted by a Certified Contractor that evaluates one or more facilities in a school district according to the requirements set forth in OAR 581-027-0035.

(12) "First in Time" means that portion of the Oregon School Capital Improvement Matching Account that is to be awarded to Districts based on the order in which the Department receives the applications.

(13) "Funding Cycle" means the period of time, as determined by the Department under OAR 581-027-0020(2)(b), before and after a May or a November general election during which the Department will accept applications and issue commitments for State Matching Grants under the OSCIM Program.

(14) "Gross Square Footage" means the total square footage of the building as measured by the outside wall of the building.

(15) "Guaranteed Tax Base Amount" or "GTBA" means a theoretical tax base of \$1,000,000 per ADM.

(16) "Guaranteed Tax Rate Amount" means \$1,000 which is the GTBA multiplied by .001 for \$1 of tax per \$1,000 of Assessed Value.

(17) "Local GO Bonds" means general obligation bonds approved by voters for the benefit of a District during the Funding Cycle for which the District applied for a State Matching Grant.

(18) "Long-Range Facility Plan" means a plan conducted by a Certified Contractor that determines the long-range needs and goals of a district according to the requirements set forth in OAR 581-027-0040

(19) "Oregon School Capital Improvement Matching Account" means an interest bearing account established in the State Treasury, separate and distinct from the General Fund, that consists of net proceeds from Article XI-P bonds issued under Article XI-P (School District Capital Costs) of the Oregon Constitution.

(20) "Oregon School Capital Improvement Matching Program" or "OSCIM Program" means the program created by Article XI-P of the Oregon Constitution and ORS 286A.769 to 286A.806.

(21) "Priority List" means the list created by the Department each biennium pursuant to ORS 286A.801 and the formula outlined in OAR 581-027-0010.

(22) "RVS" means Rapid Visual Screening data collected by DOGAMI and published on their website.

(23) "Seismic Assessment" means an assessment conducted by a contractor that evaluates one more facilities in a School District according to the requirements set forth in OAR 581-027-0050.

(24) "State Matching Grant" means the grant funds provided by the State through the OSCIM Program to match the proceeds of a District's Local GO Bonds.

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(25) “Students in Poverty” means the number of children, age 5 to 17, in families in poverty as described by the Small Area Income Poverty Estimate published by the U.S. Census Bureau.

(26) “Technical Assistance Grant” means a grant provided by the Department to a School District such that a school district can conduct a Facility Assessment, Long-Range Facility Plan, or Seismic Assessment.

(27) “Waiting List” means the list of Districts not initially awarded a State Matching Grant, based on either the District’s position on the Priority List or the District’s First in Time status, during any Funding Cycle.

Stat. Auth.: Sec. 2 & 5, Ch. 783, OL 2015 (Enrolled SB 447)

Stats. Implemented: Sec. 2, 4 & 5, Ch. 783, OL 2015 (Enrolled SB 447)

Hist.: ODE 30-2016, f. & cert. ef. 4-28-16; ODE 41-2016, f. & cert. ef. 7-20-16; ODE 4-2017, f. & cert. ef. 3-1-17

581-027-0010

Calculations for Oregon School Capital Improvement Matching Program Priority List

(1) For each Funding Cycle, the Department shall provide State Matching Grants to Districts from designated resources in the Oregon School Capital Improvement Matching Account. The Department shall determine and apportion the amount of available resources among the Funding Cycles in each biennium. The total amount of State Matching Grant funds available and awarded by the Department may vary during each Funding Cycle.

(2) Sixty percent (60%) of designated grant resources in the Oregon School Capital Improvement Matching Account shall be awarded based on the Priority List.

(3) The Priority List shall be based on a District’s Assessed Value, percentage of Students in Poverty, and Average Daily Membership.

(4) The Department shall update the Priority List every biennium. The Priority List will be updated no later than June 1 before the start of the next biennium. The updated Priority List will be effective at the start of the next biennium. To update the list, the Department will use the data from the most recent year for which all three sources have reported actual data.

(5) The Priority List shall be calculated as follows:

(a) The District’s Students in Poverty shall be multiplied by 20 to determine the Weighted Number of Students in Poverty.

(b) The District’s Weighted Number of Students in Poverty shall be divided by the District’s ADM to arrive at the District’s Percentage of Students in Poverty.

(c) The District’s Assessed Value shall be divided by the District’s ADM to determine the District’s Assessed Property Value per ADM.

(d) The District’s Assessed Property Value per ADM shall then be divided by 1 plus the Percentage of Students in Poverty to determine the District’s Adjusted Assessed Value per ADM.

(e) The Districts will be ranked from the smallest Adjusted Assessed Property Value per ADM to the highest. This ranking will ensure Districts with the highest rate of students in poverty and lowest assessed property wealth per ADM are provided the greatest chance for a State Matching Grant.

Stat. Auth.: Sec. 2 & 5, Ch. 783, OL 2015 (Enrolled SB 447)

Stats. Implemented: Sec. 2, 4 & 5, Ch. 783, OL 2015 (Enrolled SB 447)

Hist.: ODE 30-2016, f. & cert. ef. 4-28-16; ODE 4-2017, f. & cert. ef. 3-1-17

581-027-0015

Calculations for Oregon School Capital Improvement Matching Program Funding Formula

(1) The Department shall provide State Matching Grants to Districts from available resources in the Oregon School Capital Improvement Matching Account.

(2) Sixty percent (60%) of the available resources in the Oregon School Capital Improvement Matching Account for a biennium shall be awarded based on the Priority List.

(3) Forty percent (40%) of the available resources in the Oregon School Capital Improvement Matching Account for a biennium shall be awarded based on the order in which applications are received during the application period established by the Department for the Funding Cycle.

(4) The Department shall use a funding formula to determine the amount of State Matching Grant funds each District is eligible to receive from the Oregon School Capital Improvement Matching Account. This funding formula will be used to determine eligibility for State Matching Grants awarded through both the Priority List and First in Time application process.

(5) Districts whose voters pass \$4,000,000 or less in Local GO Bonds for District facility projects shall be eligible for a one-to-one match from State Matching Grant funds.

(6) Districts whose voters pass more than \$4,000,000 in Local GO Bonds for District facility projects shall be eligible for at least \$4,000,000 and no more than \$8,000,000 based on the following formula:

(a) The District’s Adjusted Assessed Property Value per ADM as determined by OAR 581-027-0010 shall be multiplied by the assumed tax rate of .001 (\$1 per \$1000 of assessed property value) to calculate the District’s Estimated Local Bond Revenue per ADM.

(b) The Estimated Local Bond Revenue per ADM shall be subtracted from the Guaranteed Tax Rate Amount to determine the amount of eligible State Matching Grant funds per ADM.

(c) The eligible State Matching Grant funds per ADM shall be multiplied by the District’s ADM to determine the maximum amount of State Matching Grant funds for which a District is eligible.

(7) In no case will the amount of a State Matching Grant exceed the lesser of the proceeds of the District’s Local GO Bonds or the principal amount of the District’s Local GO Bonds.

(8) Local GO Bonds used by a District to qualify for the OSCIM Program must be Closed within six months of the date of the election at which the Local GO Bonds were approved.

Stat. Auth.: Sec. 2 & 5, Ch. 783, OL 2015 (Enrolled SB 447)

Stats. Implemented: Sec. 2, 4 & 5, Ch. 783, OL 2015 (Enrolled SB 447)

Hist.: ODE 30-2016, f. & cert. ef. 4-28-16; ODE 4-2017, f. & cert. ef. 3-1-17

581-027-0020

Oregon School Capital Improvement Matching Program Application

(1) The Department shall create one application for Districts to apply for State Matching Grants from the Oregon School Capital Improvement Matching Account.

(2) The Department shall post the following on the Department’s web page:

(a) The application prior to when each Funding Cycle begins;

(b) The first date of the Funding Cycle on which the Department shall accept applications. No applications will be accepted prior to this date for a Funding Cycle; and

(c) The last date of the Funding Cycle on which the Department will accept applications.

(3) Applicants must submit their application electronically through secure file transfer protocol. Districts may submit applications only for an open and current Funding Cycle. The Department will not accept applications for later Funding Cycles.

(4) A District may not re-submit in the same Funding Cycle a revised or corrected application after the deadline for submission has passed and the Department has determined the original application was incomplete or otherwise not accepted for a funding commitment.

(5) The Department shall:

(a) Rank complete applications from Districts for each Funding Cycle according to the Priority List formula;

(b) Make funding commitments to Districts with the highest ranking on the priority list until sixty percent (60%) of the available resources for that Funding Cycle are used.

(c) Make funding commitments to the remaining Districts in accordance to the First in Time process for that Funding Cycle and based on the order in which the Department receives applications.

(6)(a) In order to promote equity across the state, the Department shall deem all applications received within a specified period of time for each Funding Cycle as being received at the same time. The Department shall establish multiple periods as necessary for the reception of applications as follows:

(A) Those applications received within the first time period shall be deemed to be the first in time for purposes of award commitments.

(B) Those applications received in subsequent time periods will be deemed to be received in order of the established time periods.

(b) The Department shall commit First in Time funding to Districts based on which time period the District is deemed to have submitted their application.

(c) If the First in Time funding is insufficient to provide a commitment to all Districts within a given time period for that Funding Cycle, the Department shall randomly select the Districts by a lottery process to determine which Districts will receive an award commitment.

(d) The lottery process shall be determined by the Department.

(e) All lottery results are final.

(7) The Department shall notify Districts that receive a funding commitment from the Oregon School Capital Improvement Matching Account within two weeks of the close of the application period for a Funding Cycle

(8) The Department shall post the eligibility and ranking of all Districts that applied during that Funding Cycle on the Department’s web-

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site. Districts that applied but did not receive a commitment will be notified of where they fall on the Waiting List.

(9) All funding commitments are contingent upon the District subsequently Closing the required Local GO Bonds within 6 months of that Funding Cycle's bond election.

(10) Any Districts on the Waiting List may choose to move forward seeking voter approval for Local GO Bonds in that Funding Cycle with the understanding that State Matching Grant funds may become available for that Funding Cycle if a District that has received a commitment is unsuccessful in passing their Local GO Bonds.

(11) All funding commitments to Districts that successfully pass their Local GO Bonds in the Funding Cycle will be officially awarded a State Matching Grant upon the execution of a grant agreement prescribed by the Department.

(12) All funding commitments to Districts that are not successful in passing their Local GO Bonds may be recommitted to Districts that have successfully passed Local GO Bonds and are on the Waiting List for that Funding Cycle.

(13) Funding commitments will not carry over from one Funding Cycle to the next. Funding commitments for future Funding Cycles will only be made to Districts that reapply during the designated application period for that Funding Cycle.

(14) All decisions of the Department regarding the completeness of the application or ranking under either the Priority List or First in Time process are final.

(15) Any funding remaining after all awards have been made for a Funding Cycle shall be moved forward to the next Cycle.

Stat. Auth.: Sec. 2 & 5, Ch. 783, OL 2015 (Enrolled SB 447)
Stats. Implemented: Sec. 2, 4 & 5, Ch. 783, OL 2015 (Enrolled SB 447)
Hist.: ODE 30-2016, f. & cert. ef. 4-28-16; ODE 4-2017, f. & cert. ef. 3-1-17

581-027-0025

Oregon School Capital Improvement Matching Program Grant Restrictions

(1) A District that receives a State Matching Grant will be ineligible for additional State Matching Grant funds for six years from the year in which the District successfully passed their Local GO Bond.

(2) A District may not use State Matching Grant funds to refinance other general obligation bonds issued by the District.

(3) A District must use State Matching Grant funds for capital costs as defined in ORS 286A.796(3).

(4) A District may use State Matching Grant funds to reimburse the District for capital costs incurred by the District prior to the Funding Cycle in which the District was awarded a grant only if:

(a) The Department approves the use of State Matching Grant funds for such purpose; and

(b) The District complies with all requirements of the OSCIM Program.

(c) The Department's approval or disapproval of the use of State Matching Grant funds is final. A District may not submit a revised request for use of funds.

(5) State Matching Grant funds shall be used only to match the proceeds of Local GO Bonds authorized by an election in the same Funding Cycle in which the District applied for State Matching Grant funds.

(6) If there are State Matching Grant funds available for disbursement after all the awards for all the Funding Cycles in a biennium have been made, the Department may award those uncommitted funds by lottery to Districts that have applied for State Matching Grant funds during the biennium and have Local GO Bond proceeds available to use as a basis for a match so long as the Local GO Bonds from which the proceeds are derived were approved by the voters during the biennium.

Stat. Auth.: Sec. 2 & 5, Ch. 783, OL 2015 (Enrolled SB 447)
Stats. Implemented: Sec. 2, 4 & 5, Ch. 783, OL 2015 (Enrolled SB 447)
Hist.: ODE 30-2016, f. & cert. ef. 4-28-16; ODE 4-2017, f. & cert. ef. 3-1-17

581-027-0030

Technical Assistance Grant Program Procedures

(1) The Department shall establish timelines for when Districts may submit an application for a Technical Assistance Grant.

(2) The Department shall establish a separate application for the Facility Assessment, Long-Range Facility Plan, and Seismic Assessment.

(3) Each District may submit one application for each type of assessment.

(4) All districts are eligible for each type of assessment.

(5) All applications are due by the date established by the Department. No late applications will be accepted.

(6) The Department shall evaluate each completed application by awarding preference points as established by this rule.

(7) An application will receive 1 point for each preference that the application meets.

(8) An application will receive a final score that is the total of the application's points.

(9) Applications will be funded from highest to lowest score.

(10) If there is not enough funding to provide a Technical Assistance Grant to all applications that have equal scores, then the Department shall create a lottery to determine which applications will receive a Technical Assistance Grant.

(11) The preference points for the Facility Assessment are:

(a) District has 25% or more of its ADMr identified as Students in Poverty. The number of Students in Poverty shall be same as used in OAR 581-027-0010;

(b) District has under 2,500 ADMr according to the annual reports for the same school year as used to calculate the Priority List under OAR 581-027-0010;

(c) District has not conducted a Facility Assessment in the last 10 years;

(d) District has not passed a general obligation bond in the last 15 years; and

(e) District's ADMr has changed by 10% or more over the last 5 years based on the latest annual reports submitted to the Department.

(12) The preference points for the Long-Range Facility Plan are:

(a) District has 25% or more of its ADMr identified as Students in Poverty. The number of Students in Poverty shall be same as used in OAR 581-027-0010;

(b) District has under 2,500 ADMr according to the annual reports for the same school year as used to calculate the Priority List under OAR 581-027-0010;

(c) District has not conducted a Long-Range Facility Plan in the last 10 years;

(d) District has not passed a general obligation bond in the last 15 years; and

(e) District's ADMr has changed by 10% or more over the last 5 years based on the latest annual reports submitted to the Department.

(13) The preference points for the Seismic Assessment are:

(a) District has 25% or more of its ADMr identified as Students in Poverty. The number of Students in Poverty shall be same as used in OAR 581-027-0010;

(b) District has under 2,500 ADMr according to the annual reports for the same school year as used to calculate the Priority List under OAR 581-027-0010;

(c) District has not conducted an assessment for an Oregon Infrastructure Finance Authority Seismic Rehabilitation Grant;

(d) District, using DOGAMI RVS data, identifies 50% or more of the buildings it intends to assess as:

(A) Built in 1995 or earlier; and

(B) The building's final type is URM, PC1, PC2, or C1; or has a type of vertical irregularity listed as "soft story."

(C) If the DOGAMI RVS data separates the building into different sub-buildings and any one of those sub-buildings meets the criteria in (i) and (ii), then the whole building will qualify for inclusion in the 50% minimum.

Districts who have buildings built before 1995 that are not listed in the RVS data may count those buildings toward the 50% minimum as if the buildings qualified as stated in subsection(d)(A)(i) and (ii);

(e) District's Mapped Spectral Acceleration for 1-second period (Ss) is greater than 0.6 as calculated by the United State Geological Survey and published on the USGS website for the district's central office. District may use a map created by USGS and published on ODE's website as an alternative means to calculation the Mapped Spectral Acceleration.

(14) A District may use an assessment performed before the start of the application period as a basis for an application, during the 2015-17 biennium, for a Technical Assistance Grant so long as:

(a) The District conducts the assessment according to the standards set forth in these rules;

(b) The District signed the contract for the work after July 1, 2015;

(c) The District used a Certified Contractor to conduct the assessment; and

(d) The District provides the Department with an electronic copy of the assessment in the format established by the Department.

(15) For the period of the 2015-17 biennium, the Department will waive requirements 14(c).

ADMINISTRATIVE RULES

(16) Districts are required to use certified assessors to complete the long-range facility plans and facility assessments.

(17) Districts are not required to use certified contractors to complete seismic assessments.

(18) Each District that submits an application that receives a Technical Assistance Grant will be required to enter into a grant agreement with the Department prior to issuance of funds.

(19) A District must reapply each time a new grant application is announced if a District did not receive a grant in a grant application period.

(20) Each District that receives a Technical Assistance Grant must submit an electronic copy of the finished report in form to be established by the Department.

(21) If a district receives a grant through the Technical Assistance Grant, the district cannot reapply for that specific grant for the next four years.

Stat. Auth.: Sec. 2 and 5, Ch. 783, OL 2015 (Enrolled Senate Bill 447)

Stats. Implemented: Sec. 5, Ch. 783, OL 2015 (Enrolled Senate Bill 447)

Hist.: ODE 41-2016, f. & cert. ef. 7-20-16; ODE 4-2017, f. & cert. ef. 3-1-17

581-027-0035

Facility Assessment Requirements

(1) Each Facility Assessment shall contain the following information:

(a) Building Information

(A) Name of building;

(B) Building ID Number;

(C) Physical Address;

(D) Gross Square Footage;

(E) Original Construction Date;

(F) Original Construction Type;

(G) Additions:

(i) Construction Date;

(ii) Construction Type;

(iii) Construction Square footage;

(iv) Construction Usage;

(H) Renovations:

(i) Construction Date;

(ii) Construction Type;

(iii) Construction Square footage; and

(iv) Renovation Construction Usage.

(b) Infrastructure Assessment

(A) UNIFORMAT II Assessment: An assessment of each applicable building element as listed in the American Society for Testing and Materials (ASTM) UNIFORMAT II Classification (October 1999) of Building Elements Level 3 that provides the following:

(i) ASTM Number;

(ii) System Name;

(iii) Description of System;

(iv) Number of systems or square footage of system in need of repair or want of replacement;

(v) Level of repair/replacement needed. The percent of the building affected should be noted to assist in cost estimating.

(vi) Notes as to what specifically needs to be done to repair or replace the system.

(B) Additional items

(i) A safety and security analysis of the facility that determines if the facility meets current best practices for providing a safe and secure environment;

(ii) An ADA assessment and listing of deficiencies;

(iii) Assessment of technology infrastructure in the facility including bandwidth, presence of wireless networks, and other means of providing access to information technology;

(iv) Assessment of indoor air quality; and

(v) Presence of harmful substances such as lead or asbestos in the facility based on district reports.

(c) Value Assessment

(A) The current replacement value of the building using cost per square foot standards as determined by the Department and updated annually.

(B) The Facilities Condition Index of the building as calculated by dividing the total estimated construction costs to completely repair the building by the current replacement value of the building.

(2) The Department shall establish a template for Districts and their Certified Contractors to use to collect the information required in (1).

(3) Districts and Certified Contractors shall use the template established by the Department to provide the final report to the Department in electronic format.

Stat. Auth.: Sec. 2 and 5, Ch. 783, OL 2015 (Enrolled Senate Bill 447)

Stats. Implemented: Sec. 5, Ch. 783, OL 2015 (Enrolled Senate Bill 447)

Hist.: ODE 41-2016, f. & cert. ef. 7-20-16; ODE 4-2017, f. & cert. ef. 3-1-17

581-027-0040

Long-Range Facility Plan Requirements

(1) Each Long Range Facility Plan shall contain the following information:

(a) Population projections by school age group for the next ten years using U.S. Census or Census partner data.

(b) Collaboration with local government planning agencies (city and/or county) that results in:

(A) Identification of suitable school sites if needed; and

(B) Site acquisition schedules and programs.

(c) Evidence of community involvement in determining:

(A) Educational vision of local community; and

(B) Proposals to fund long-range facility needs.

(d) Identification of buildings on historic preservation lists including the National Historic Register, State Historical Preservation Office, and local historic building lists.

(e) Analysis of district's current facilities' ability to meet current national educational adequacy standards:

(A) Identification of facility standards used to meet district educational vision as well as national educational adequacy standards;

(B) Identification of current facility capacity;

(C) Identification of ability of current facility capacity to meet current national educational adequacy standards;

(D) If current facilities are unable to meet current national educational adequacy standards district will then:

(i) Identify deficiencies in current facilities;

(ii) Identify changes needed to bring current facilities up to national educational adequacy standards; and

(iii) Identify potential alternatives to new construction or major renovation of current facilities to meet current national educational adequacy standards;

(E) A description of the plan the district will undertake to change its facility to match the projections and needs for the district for the next ten years.

(2) The Department shall establish a template for Districts and their Certified Contractors to use to collect the information required in OAR 581-027-0040 (1).

(3) Districts and Certified Contractors shall use the template established by the Department to provide the final report to the Department in electronic format.

Stat. Auth.: Sec. 2 and 5, Ch. 783, OL 2015 (Enrolled Senate Bill 447)

Stats. Implemented: Sec. 5, Ch. 783, OL 2015 (Enrolled Senate Bill 447)

Hist.: ODE 41-2016, f. & cert. ef. 7-20-16; ODE 4-2017, f. & cert. ef. 3-1-17

581-027-0045

Seismic Assessment Requirements

(1) Each Seismic Assessment shall contain the following:

(a) Name of building.

(A) Gross square footage of building.

(B) Physical address.

(C) Original construction date.

(D) Original construction type.

(E) Additions:

(i) Construction Date;

(ii) Construction Type;

(iii) Construction Square footage;

(iv) Construction Usage;

(v) Procedures used to determine the building's ability to perform to the Life Safety Standard in ASCE 41-13.

(vi) Evaluation of building using either ASCE 41-13 Tier I or Tier II evaluations methods except the levels of earthquake ground motion will be not less than 75% of BSE-1N design level earthquake per ASCE 41-13 section 2.4.1.2; instead of the 20% in 50 year ground motion used in the ASCE 41-13 standard.

(I) List of deficiencies that need to be corrected to bring building up to the Life Safety Standard listed in ASCE 41-13.

(II) List of schematic rehabilitation tasks to rectify listed deficiencies in accordance with ACSE 41-13 standard.

(III) List of portions of building that pose highest life safety threat and collapse potential of those building portions.

(IV) Cost estimate provided by professional with knowledge about the type of work to be done that includes contingencies built into all budget categories.

ADMINISTRATIVE RULES

(V) Certification of the final assessment provided by registered Structural Engineer licensed in the State of Oregon.

Stat. Auth.: Sec. 2 and 5, Ch. 783, OL 2015 (Enrolled Senate Bill 447)
Stats. Implemented: Sec. 5, Ch. 783, OL 2015 (Enrolled Senate Bill 447)
Hist.: ODE 41-2016, f. & cert. ef. 7-20-16; ODE 4-2017, f. & cert. ef. 3-1-17

581-027-0050

Contractor Certification Program

(1) The Department shall establish a program whereby entities or individuals can apply to become Certified Contractors for the purposes of the Technical Assistance Grants.

(2) The program shall contain a portion of instruction on the methods to be used by Certified Contractors in performing Facility Assessment and Long-Range Facility Plan work.

(3) The program shall contain a test such that those that pass will become Certified Contractors.

(4) The Department shall post on its website specific information for each time the training program is held.

(5) No entity or individual may become a Certified Contractor unless they complete the training program established by the Department.

Stat. Auth.: Sec. 2 and 5, Ch. 783, OL 2015 (Enrolled Senate Bill 447)
Stats. Implemented: Sec. 5, Ch. 783, OL 2015 (Enrolled Senate Bill 447)
Hist.: ODE 41-2016, f. & cert. ef. 7-20-16; ODE 4-2017, f. & cert. ef. 3-1-17

Oregon Health Authority, Health Systems Division: Medical Assistance Programs Chapter 410

Rule Caption: Amending Prior Authorization Approval Criteria Guide

Adm. Order No.: DMAP 5-2017(Temp)

Filed with Sec. of State: 2-21-2017

Certified to be Effective: 2-21-17 thru 6-29-17

Notice Publication Date:

Rules Amended: 410-121-0040

Subject: The Pharmaceutical Services program administrative rules (division 121) govern Division payments for services provided to certain clients. The Authority needs to amend this rule to update the Oregon Medicaid Fee for Service Prior Authorization Criteria Guide found at <http://www.oregon.gov/oha/healthplan/Pages/pharmacy-policy.aspx> based on the P&T (Pharmacy and Therapeutic) Committee recommendations.

Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-121-0040

Prior Authorization Required for Drugs and Products

(1) Prescribing practitioners shall obtain prior authorization (PA) for the drugs and categories of drugs requiring PA in this rule, using the procedures set forth in OAR 410-121-0060.

(2) All drugs and categories of drugs including, but not limited to, those drugs and categories of drugs that require PA shall meet the following requirements for coverage:

(a) Each drug shall be prescribed for conditions funded by the Oregon Health Plan (OHP) in a manner consistent with the Health Evidence Review Commission (HERC) Prioritized List of Health Services (OAR 410-141-0480 through 410-141-0520). If the medication is for a non-covered diagnosis, the medication may not be covered unless there is a co-morbid condition for which coverage would be allowed. The use of the medication shall meet corresponding treatment guidelines and be included within the client's benefit package of covered services and not otherwise excluded or limited;

(b) Each drug shall also meet other criteria applicable to the drug or category of drug in these pharmacy provider rules, including PA requirements imposed in this rule.

(3) The Authority may require PA for individual drugs and categories of drugs to ensure that the drugs prescribed are indicated for conditions funded by OHP and consistent with the Prioritized List of Health Services and its corresponding treatment guidelines (see OAR 410-141-0480). The drugs and categories of drugs that the Authority requires PA for this purpose are found in the Oregon Medicaid Fee-for-Service Prior Authorization Approval Criteria (PA Criteria guide) dated January 26, 2017, adopted and incorporated by reference and found at: <http://www.oregon.gov/oha/healthplan/pages/pharmacy-policy.aspx>

(4) The Authority may require PA for individual drugs and categories of drugs to ensure medically appropriate use or to address potential client safety risk associated with the particular drug or category of drug, as rec-

ommended by the Pharmacy & Therapeutics Committee (P&T) and adopted by the Authority in this rule. The drugs and categories of drugs for which the Authority requires PA for this purpose are found in the Pharmacy PA Criteria Guide.

(5) New drugs shall be evaluated when added to the weekly upload of the First Databank drug file:

(a) If the new drug is in a class where current PA criteria apply, all associated PA criteria shall be required at the time of the drug file load;

(b) If the new drug is indicated for a condition below the funding line on the Prioritized List of Health Services, PA shall be required to ensure that the drug is prescribed for a condition funded by OHP;

(c) PA criteria for all new drugs shall be reviewed by the DUR/P&T Committee.

(6) PA shall be obtained for brand name drugs that have two or more generically equivalent products available and that are not determined Narrow Therapeutic Index drugs by the DUR/P&T Committee:

(a) Immunosuppressant drugs used in connection with an organ transplant shall be evaluated for narrow therapeutic index within 180 days after United States patent expiration;

(b) Manufacturers of immunosuppressant drugs used in connection with an organ transplant shall notify the Authority of patent expiration within 30 days of patent expiration for section (5)(a) to apply;

(c) Criteria for approval are:

(A) If criteria established in section (3) or (4) of this rule applies, follow that criteria;

(B) If section (6)(A) does not apply, the prescribing practitioner shall document that the use of the generically equivalent drug is medically contraindicated and provide evidence that either the drug has been used and has failed or that its use is contraindicated based on evidence-based peer reviewed literature that is appropriate to the client's medical condition.

(7) PA shall be obtained for non-preferred Preferred Drug List (PDL) products in a class evaluated for the PDL except in the following cases:

(a) The drug is a mental health drug as defined in OAR 410-121-0000;

(b) The original prescription is written prior to 1/1/10;

(c) The prescription is a refill for the treatment of seizures, cancer, HIV, or AIDS; or

(d) The prescription is a refill of an immunosuppressant.

(8) PA may not be required:

(a) When the prescription ingredient cost plus the dispensing fee is less than the PA processing fees as determined by the Authority;

(b) For over-the-counter (OTC) covered drugs when prescribed for conditions covered under OHP; or

(c) If a drug is in a class not evaluated from the Practitioner-Managed Prescription Drug Plan under ORS 414.334.

Stat. Auth.: ORS 413.032, 413.042, 414.065, 414.330 to 414.414, 414.312 & 414.316

Stats. Implemented: 414.065, 414.334, 414.361, 414.371, 414.353 & 414.354

Hist.: AFS 56-1989, f. 9-28-89, cert. ef. 10-1-89; AFS 2-1990, f. & cert. ef. 1-16-90; HR 29-1990, f. 8-31-90, cert. ef. 9-1-90, Renumbered from 461-016-0170; HR 10-1991, f. & cert. ef. 2-19-91; HR 14-1993, f. & cert. ef. 7-2-93; HR 25-1994, f. & cert. ef. 7-1-94; HR 6-1995, f. 3-31-95, cert. ef. 4-1-95; HR 18-1996(Temp), f. & cert. ef. 10-1-96; HR 8-1997, f. 3-13-97, cert. ef. 3-15-97; OMAP 1-1999, f. & cert. ef. 2-1-99; OMAP 29-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 31-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 44-2002, f. & cert. ef. 10-1-02; OMAP 66-2002, f. 10-31-02, cert. ef. 11-1-02; OMAP 29-2003, f. 3-31-03 cert. ef. 4-1-03; OMAP 40-2003, f. 5-27-03, cert. ef. 6-1-03; OMAP 43-2003(Temp), f. 6-10-03, cert. ef. 7-1-03 thru 12-15-03; OMAP 49-2003, f. 7-31-03 cert. ef. 8-1-03; OMAP 84-2003, f. 11-25-03 cert. ef. 12-1-03; OMAP 87-2003(Temp), f. & cert. ef. 12-15-03 thru 5-15-04; OMAP 9-2004, f. 2-27-04, cert. ef. 3-1-04; OMAP 71-2004, f. 9-15-04, cert. ef. 10-1-04; OMAP 74-2004, f. 9-23-04, cert. ef. 10-1-04; OMAP 89-2004, f. 11-24-04 cert. ef. 12-1-04; OMAP 4-2006(Temp), f. & cert. ef. 3-15-06 thru 9-7-06; OMAP 32-2006, f. 8-31-06, cert. ef. 9-1-06; OMAP 41-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 4-2007, f. 6-14-07, cert. ef. 7-1-07; DMAP 26-2007, f. 12-11-07, cert. ef. 1-1-08; DMAP 9-2008, f. 3-31-08, cert. ef. 4-1-08; DMAP 16-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 14-2009 f. 6-12-09, cert. ef. 7-1-09; DMAP 39-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 17-2010, f. 6-15-10, cert. ef. 7-1-10; DMAP 40-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 27-2011(Temp), f. & cert. ef. 9-30-11 thru 3-15-12; DMAP 44-2011, f. 12-21-11, cert. ef. 1-1-12; DMAP 12-2012(Temp), f. & cert. ef. 3-16-12 thru 9-11-12; DMAP 18-2012, f. 3-30-12, cert. ef. 4-9-12; DMAP 23-2012(Temp), f. & cert. ef. 4-20-12 thru 10-15-12; DMAP 27-2012(Temp), f. & cert. ef. 5-14-12 thru 10-15-12; DMAP 29-2012, f. & cert. ef. 6-21-12; DMAP 33-2012(Temp), f. 7-18-12, cert. ef. 7-23-12 thru 1-18-13; DMAP 40-2012(Temp), f. & cert. ef. 8-20-12 thru 1-18-13; DMAP 44-2012(Temp), f. & cert. ef. 9-26-12 thru 1-18-13; DMAP 61-2012, f. 12-27-12, cert. ef. 1-1-13; DMAP 6-2013(Temp), f. & cert. ef. 2-21-13 thru 8-19-13; DMAP 23-2013(Temp), f. 4-30-13, cert. ef. 5-1-13 thru 8-19-13; Administrative correction, 7-18-13; DMAP 43-2013, f. & cert. ef. 8-16-13; DMAP 76-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14; DMAP 14-2014(Temp), f. 12-31-14, cert. ef. 3-21-14 thru 9-17-14; DMAP 27-2014(Temp), f. & cert. ef. 5-2-14 thru 6-30-14; DMAP 38-2014, f. & cert. ef. 6-30-14; DMAP 46-2014(Temp), f. & cert. ef. 7-15-14 thru 1-11-15; DMAP 49-2014(Temp), f. & cert. ef. 8-13-14 thru 1-11-15; DMAP 62-2014(Temp), f. 10-13-14, cert. ef. 10-14-14 thru 1-11-15; DMAP 75-2014, f. & cert. ef. 12-12-14; DMAP 76-2014(Temp), f. & cert. ef. 12-12-14 thru 6-7-15; DMAP 89-2014(Temp), f. 12-31-14, cert. ef. 1-1-15 thru 6-26-15; DMAP 4-2015(Temp), f. & cert. ef. 2-3-15 thru 6-26-15; DMAP 25-2015(Temp), f. 4-17-15, cert. ef. 4-18-15 thru 6-26-15; DMAP 34-2015, f. 6-25-15, cert. ef. 6-26-15; DMAP 36-2015(Temp), f. 6-26-15, cert. ef. 7-1-15 thru 12-27-15; DMAP 41-2015(Temp), f. & cert. ef. 8-7-15 thru 2-2-16; DMAP 44-2015(Temp), f. 8-21-15, cert. ef. 8-

ADMINISTRATIVE RULES

25-15 thru 12-27-15; DMAP 58-2015(Temp), f. & cert. ef. 10-9-15 thru 12-27-15; DMAP 80-2015, f. 12-23-15, cert. ef. 12-27-15; DMAP 83-2015(Temp), f. 12-23-15, cert. ef. 1-1-16 thru 6-28-16; DMAP 6-2016(Temp), f. 2-11-16, cert. ef. 2-12-16 thru 6-28-16; DMAP 19-2016(Temp), f. 4-28-16, cert. ef. 5-1-16 thru 6-28-16; DMAP 26-2016, f. 6-24-16, cert. ef. 6-28-16; DMAP 35-2016(Temp), f. 6-30-16, cert. ef. 7-1-16 thru 12-27-16; DMAP 54-2016(Temp), f. & cert. ef. 8-26-16 thru 12-27-16; DMAP 62-2016(Temp), f. & cert. ef. 10-13-16 thru 12-27-16; DMAP 68-2016, f. & cert. ef. 12-1-16; DMAP 79-2016(Temp), f. 12-29-16, cert. ef. 1-1-17 thru 6-29-17; DMAP 5-2017(Temp), f. & cert. ef. 2-21-17 thru 6-29-17

Rule Caption: Income Eligibility Guidelines for OCCS Medical Programs

Adm. Order No.: DMAP 6-2017(Temp)

Filed with Sec. of State: 2-28-2017

Certified to be Effective: 3-1-17 thru 8-27-17

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 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, 2017, 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: (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.

(5) 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.

(6) 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 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.

(7) 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.]

(8) 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.

(9) 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.

(10) 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 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.

(11) 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;

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(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.]

(e) Effective March 1, 2017, 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: (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.

(12) 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.

(13) 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 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.

(14) 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.]

(f) Effective March 1, 2017, 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: (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.

(15) 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.

(16) 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 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.

(17) 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.]

(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, 2017, if the MAGI-based income of the household group is below 163 percent of the 2017 federal poverty level as listed below, the Department deems the child eligible for the MAGI Child Program;

(18) 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.

(19) 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.

(20) 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 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.

(21) 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

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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.]

(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; DMAP 22-2016, f. & cert. ef. 5-18-16; DMAP 6-2017(Temp), f. 2-28-17, cert. ef. 3-1-17 thru 8-27-17

Rule Caption: Prioritized List Effective 1/1/17, Including Modifications to Biennial Changes January 1, 2016-December 31, 2017

Adm. Order No.: DMAP 7-2017

Filed with Sec. of State: 3-1-2017

Certified to be Effective: 3-1-17

Notice Publication Date: 2-1-2017

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 needs to amend 410-141-0520. This rule incorporates by reference new interim modifications to the Centers for Medicare and Medicaid Services' (CMS) approved biennial January 1, 2016-December 31, 2017, Prioritized List funded through line 475. The January 1, 2017, Prioritized List includes revised line items and new/revised guideline notes that supersede those found in the October 1, 2016, Prioritized List.

Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-141-0520

Prioritized List of Health Services

(1) The Health Evidence 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 new interim modifications to the Centers for Medicare and Medicaid Services' (CMS) approved biennial January 1, 2016-December 31, 2017, Prioritized List funded through line 475. The January 1, 2017, Prioritized List includes revised line items and new/revised guideline notes that supersede those found in the October 1, 2016, Prioritized List.

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 3-15-0; 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 ef. 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. 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; DMAP 37-2016(Temp), f. 6-30-16, cert. ef. 7-1-16 thru 12-27-16; DMAP 55-2016(Temp), f. 9-22-16, cert. ef. 10-1-16 thru 12-27-16; DMAP 66-2016, f. 11-30-16, cert. ef. 12-1-16; DMAP 73-2016(Temp), f. 12-28-16, cert. ef. 1-1-17 thru 6-29-17; DMAP 7-2017, f. & cert. ef. 3-1-17

Rule Caption: Amending Rules Relating to Estate Administration
Adm. Order No.: DMAP 8-2017(Temp)

Filed with Sec. of State: 3-1-2017

Certified to be Effective: 3-1-17 thru 8-27-17

Notice Publication Date:

Rules Amended: 410-120-0006

Subject: The Division needs to incorporate rules established in OAR Chapter 461 for all overpayment, personal injury liens, and estates administration for Authority programs covered under OAR 410-200. References in OAR Chapter 461 in contracts of the Authority are deemed to be references to the requirements of this rule and shall be construed to apply to all eligibility policies, procedures and determinations by or through the Authority. OAR 461-135-0832 and OAR 461-135-0835 need to be amended to implement an adverse Oregon Supreme Court decision by amending the definition of "estate" with respect to the collection of payments for assistance provided and limit when the Department collects against the spouse of a recipient.
Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-120-0006

Medical Eligibility Standards

As the state Medicaid and CHIP agency, the Oregon Health Authority (Authority) is responsible for establishing and implementing eligibility policies and procedures consistent with applicable law. As outlined in OAR 943-001-0020, the Authority and the Department of Human Services (Department) work together to adopt rules to assure that medical assistance eligibility procedures and determinations are consistent across both agencies.

(1) The Authority adopts and incorporates by reference the rules established in OAR Chapter 461 for all overpayment, personal injury liens and estates administration for Authority programs covered under OAR chapter 410, division 200.

(2) Any reference to OAR chapter 461 in contracts of the Authority are deemed to be references to the requirements of this rule and shall be construed to apply to all eligibility policies, procedures and determinations by or through the Authority.

(3) For purposes of this rule, references in OAR chapter 461 to the Department or to the Authority shall be construed to be references to both agencies.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.042, 414.065

Hist.: DMAP 10-2011, f. 6-29-11, cert. ef. 7-1-11; DMAP 18-2011(Temp), f. & cert. ef. 7-15-11 thru 1-11-12; DMAP 21-2011(Temp), f. 7-29-11, cert. ef. 8-11-11 thru 1-11-12; DMAP 25-2011(Temp), f. 9-28-11, cert. ef. 10-1-11 thru 1-11-12; DMAP 36-2011, f. 12-13-11, cert. ef. 1-1-12; DMAP 1-2012(Temp), f. & cert. ef. 1-13-12 thru 7-10-12; DMAP 2-2012(Temp), f. & cert. ef. 1-26-12 thru 7-10-12; DMAP 3-2012(Temp), f. & cert. ef. 1-31-12 thru 2-1-12;

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DMAP 4-2012(Temp), f. 1-31-12, cert. ef. 2-1-12 thru 7-10-12; DMAP 9-2012(Temp), f. & cert. ef. 3-1-12 thru 7-10-12; DMAP 21-2012(Temp), f. 3-30-12, cert. ef. 4-1-12 thru 7-10-12; DMAP 25-2012(Temp), f. & cert. ef. 5-1-12 thru 7-10-12; Administrative correction 8-1-12; DMAP 35-2012(Temp), f. & cert. ef. 7-20-12 thru 1-15-13; DMAP 45-2012(Temp), f. & cert. ef. 10-5-12 thru 1-19-13; DMAP 50-2012, f. 10-31-12, cert. ef. 11-1-12; DMAP 53-2012(Temp), f. & cert. ef. 11-1-12 thru 4-29-13; DMAP 56-2012(Temp), f. 11-30-12, cert. ef. 12-1-12 thru 4-1-13; DMAP 60-2012, f. 12-27-12, cert. ef. 1-1-13; DMAP 65-2012(Temp), f. 12-28-12, cert. ef. 1-1-13 thru 6-29-13; DMAP 2-2013(Temp), f. & cert. ef. 1-8-13 thru 6-29-13; DMAP 3-2013(Temp), f. & cert. ef. 1-30-13 thru 6-29-13; DMAP 5-2013(Temp), f. & cert. ef. 2-20-13 thru 6-29-13; DMAP 7-2013(Temp), f. & cert. ef. 3-1-13 thru 6-29-13; DMAP 12-2013, f. 3-27-13, cert. ef. 4-1-13; DMAP 17-2013, f. & cert. ef. 4-10-13; DMAP 24-2013, f. & cert. ef. 5-29-13; DMAP 32-2013, f. & cert. ef. 6-27-13; DMAP 39-2013(Temp), f. 7-26-13, cert. ef. 8-1-13 thru 1-28-14; DMAP 44-2013(Temp), f. 8-21-13, cert. ef. 8-23-13 thru 1-28-14; DMAP 51-2013, f. & cert. ef. 10-1-13; DMAP 52-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 55-2013(Temp), f. & cert. ef. 10-2-13 thru 3-31-14; DMAP 59-2013(Temp), f. 10-31-13, cert. ef. 11-1-13 thru 3-31-14; DMAP 9-2014(Temp), f. 1-31-14, cert. ef. 2-1-14 thru 3-31-14; DMAP 18-2014, f. 3-28-14, cert. ef. 3-31-14; DMAP 41-2014, f. & cert. ef. 7-1-14; DMAP 54-2014, f. & cert. ef. 9-23-14; DMAP 12-2015(Temp), f. 3-5-15, cert. ef. 3-19-15 thru 9-14-15; DMAP 33-2015, f. 6-24-15, cert. ef. 7-1-15; DMAP 49-2015, f. 9-3-15, cert. ef. 10-1-15; DMAP 70-2015, f. 12-8-15, cert. ef. 1-1-16; DMAP 32-2016, f. 6-29-16, cert. ef. 7-1-16; DMAP 46-2016, f. 7-18-16, cert. ef. 8-1-16; DMAP 58-2016, f. 9-30-16, cert. ef. 10-1-16; DMAP 8-2017(Temp), f. & cert. ef. 3-1-17 thru 8-27-17

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

Rule Caption: Rules Revisions Required to Comply with Federal 1915(i) Home and Community-based Regulations

Adm. Order No.: MHS 2-2017(Temp)

Filed with Sec. of State: 3-3-2017

Certified to be Effective: 3-4-17 thru 8-30-17

Notice Publication Date:

Rules Adopted: 309-035-0163, 309-035-0183, 309-035-0195, 309-035-0200, 309-035-0205, 309-035-0210, 309-035-0215, 309-035-0220, 309-035-0225

Rules Amended: 309-035-0100, 309-035-0105, 309-035-0110, 309-035-0115, 309-035-0120, 309-035-0125, 309-035-0130, 309-035-0135, 309-035-0140, 309-035-0145, 309-035-0150, 309-035-0155, 309-035-0165, 309-035-0170, 309-035-0175, 309-035-0185, 309-035-0190

Rules Suspended: 309-035-0113, 309-035-0117, 309-035-0157, 309-035-0159, 309-035-0167, 309-035-0250, 309-035-0260, 309-035-0270, 309-035-0280, 309-035-0290, 309-035-0300, 309-035-0310, 309-035-0320, 309-035-0330, 309-035-0340, 309-035-0350, 309-035-0360, 309-035-0370, 309-035-0380, 309-035-0390, 309-035-0400, 309-035-0410, 309-035-0420, 309-035-0430, 309-035-0440, 309-035-0450, 309-035-0460, 309-035-0500, 309-035-0550, 309-035-0560, 309-035-0570, 309-035-0580, 309-035-0590, 309-035-0600

Subject: Under Oregon Revised Statutes 413.042 and 413.450, the Authority licenses and has authority to regulate mental health treatment providers, including residential treatment facilities and residential treatment homes for adults with mental health disorders. The Authority's administrative rules set the minimum standards for providing services in licensed settings and describe the process by which the Authority regulates the service providers.

The temporary rule provides updated procedural detail regarding federal regulation requirements, as issued by the Centers for Medicare and Medicaid Services (CMS), for 1915(i) Home and Community-Based Services (HCBS). The purpose of these updated regulations is to ensure individuals receive HCBS in settings that are integrated in and support full access to the greater community. The temporary rule also provides clarification of current and appropriate behavioral health terminology, in particular, the use of "adults with mental health disorders" rather than "mentally or emotionally disturbed persons."

This amendment is necessary to provide for and clarify the Authority's and the providers of HCBS practices and procedures regarding each individual's federal rights under HCBS.

Rules Coordinator: Sandy Cafourek—(503) 945-6430

309-035-0100

Purpose and Scope

(1) These rules prescribe standards by which the Health Systems Division (Division) of the Oregon Health Authority (Authority) licenses community based residential treatment facilities and community based residential treatment homes for adults with mental health disorders. The standards promote optimum health, mental and social well-being, and recovery for adults with mental health disorders through the availability of a wide range of home and community based residential settings and services. They prescribe how services will be provided in safe, secure, and homelike environments that recognize the dignity, individuality, and right to self-determination of each individual.

(a) These rules incorporate and implement the requirements of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services for Home and Community-Based Services (HCBS) authorized under section 1915(i) of the Social Security Act;

(b) These rules establish requirements to ensure individuals receive services in settings that are integrated in and support the same degree of access to the greater community as individuals not receiving HCBS, consistent with the standards set out in OAR chapter 411, division 4.

(2) These rules apply to all Residential Treatment Homes (RTH) and Residential Treatment Facilities (RTF) providing services to adults with mental health disorders regardless of whether the program receives public funds. These rules prescribe distinct standards in some areas for Secure Residential Treatment Facilities (SRTF) or are based on the number of individuals receiving services in the program.

Stat. Auth.: ORS 413.042 & 443.450

Stats. Implemented: ORS 443.400 - 443.465 & 443.991

Hist.: MHD 9-1984(Temp), f. & ef. 12-10-84; MHD 9-1985, f. & ef. 6-7-85; MHD 4-1998, f. 5-21-98, cert. ef. 6-1-98; MHD 4-2005, f. & cert. ef. 4-1-05; MHS 4-2008, f. & cert. ef. 6-12-08; MHS 10-2011(Temp), f. & cert. ef. 12-5-11 thru 5-31-12; MHS 5-2012, f. 5-3-12, cert. ef. 5-4-12; MHS 13-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-035-0105

Definitions

As used in these rules, the following definitions apply:

(1) "Abuse" includes but is not limited to:

(a) Any death caused by other than accidental or natural means or occurring in unusual circumstances;

(b) Any physical injury caused by other than accidental means or that appears to be at variance with the explanation given of the injury;

(c) Willful infliction of physical pain or injury;

(d) Sexual harassment or exploitation including but not limited to any sexual contact between an employee of a community facility or community program, or provider, or other caregiver and the adult. For situations other than those involving an employee, provider, or other caregiver and an adult, sexual harassment or exploitation means unwelcome verbal or physical sexual contact including requests for sexual favors and other verbal or physical conduct directed toward the adult;

(e) Neglect that leads to physical harm through withholding of services necessary to maintain health and well-being;

(f) Abuse does not include spiritual treatments by a duly accredited practitioner of a recognized church or religious denomination when voluntarily consented to by the individual.

(2) "Program Administrator" means the individual designated by the provider as responsible for the daily operation and maintenance of the RTH or RTF or the program administrator's designee.

(3) "Adult" means an individual 18 years of age or older.

(4) "Aid to Physical Functioning" means any special equipment ordered for an individual by a Licensed Medical Professional (LMP) or other qualified health care professional that maintains or enhances the individual's physical functioning.

(5) "Applicant" means the individual or entity, including the Division, who owns, seeks to own or operate, or maintains and operates a program and is applying for a license.

(6) "Approved" means authorized or allowed by the Authority or designee.

(7) "Authority" means the Oregon Health Authority or designee.

(8) "Building Code" means the Oregon Structural Specialty Code adopted by the Building Codes Division of the Oregon Department of Consumer and Business Services.

(9) "Care" means services including but not limited to supervision; protection; assistance with activities of daily living such as bathing, dressing, grooming or eating; management of money; transportation; recreation; and the providing of room and board.

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(10) "CMS" means the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

(11) "Community Mental Health Program (CMHP)" means the organization of all or a portion of services for individuals with mental health disorders, operated by, or contractually affiliated with, a local mental health authority. CMHP's operate in a specific geographic area of the state under an intergovernmental agreement or direct contract with the Division.

(12) "Competitive Integrated Employment" means work in a competitive labor market that is performed on a full-time or part-time basis and includes self-employment. Competitive Integrated Employment also means individuals are compensated as rates set forth by federal, state or local minimum wage law and eligible for benefits and opportunities for advancement.

(13) "Contract" means a formal written agreement between the CMHP, CCO, Oregon Health Plan contractor, or the Division and a provider.

(14) "Coordinated Care Organization (CCO)" means a corporation, governmental agency, public corporation, or other legal entity that is certified as meeting the criteria adopted by the Authority under ORS 414.625 to be accountable for care management and to provide integrated and coordinated health care for each of the CCO's members.

(15) "Criminal Records Check" means the Oregon Criminal Records Check and the processes and procedures required by OAR 943-007-0001 through 943-007-0501.

(16) "Crisis-Respite Services" means providing services to individuals who are RTF residents for up to 30 days.

(17) "Controlled" means a provider requires an individual to receive services from the provider or requires the individual to receive a particular service as a condition of living or remaining in the HCB setting.

(18) "Designated Representative" means:

(a) Any adult who is not the individual's paid provider who the individual or the individual's representative has authorized to serve as the individual's representative;

(b) The power to act as a designated representative is valid until modified or rescinded. The individual or representative must notify the Division or provider of any change in designation. The notice shall include the individual's or the representative's signature as appropriate;

(c) An individual or the individual's legal representative is not required to appoint a designated representative.

(19) "DSM" means the "Diagnostic and Statistical Manual of Mental Disorders (DSM-V)" published by the American Psychiatric Association.

(20) "Deputy Director" means the deputy director of the Health Systems Division of the Oregon Health Authority or designee.

(21) "Division" means the Health Systems Division of the Oregon Health Authority or designee.

(22) "Division Staff" means individuals employed by the Division or individuals delegated by the Division to conduct licensing activities under these rules.

(23) "Direct Care Staff" means program staff responsible for providing services for an individual.

(24) "Emergency Admission" means an admission to a program made on an urgent basis due to the pressing service needs of the individual.

(25) "Employee" means an individual employed by a provider who receives wages, a salary, or is otherwise paid by the provider for providing the service.

(26) "Evacuation Capability" means the ability of occupants, including individuals and program staff as a group, to evacuate the building or relocate from a point of occupancy to a point of safety as defined in the Oregon Structural Specialty Code. The category of evacuation capability is determined by documented evacuation drill times or scores on National Fire Protective Association (NFPA) 101A 2000 edition worksheets. There are three categories of evacuation capability:

(a) Impractical (SR-2): A group, even with staff assistance, who cannot reliably move to a point of safety in a timely manner, determined by an evacuation capability score of five or greater or with evacuation drill times in excess of 13 minutes;

(b) Slow (SR-1): A group that can move to a point of safety in a timely manner, determined by an evacuation capability score greater than 1.5 and less than five or with evacuation drill times over three minutes but not in excess of 13 minutes;

(c) Prompt: A group with an evacuation capability score of 1.5 or less or equivalent to that of the general population or with evacuation drill times of three minutes or less. The Division shall determine evacuation capability for programs in accordance with the NFPA 101A 2000 edition. Programs

that are determined to be "Prompt" may be used in Group R occupancies classified by the building official in accordance with the building code.

(27) "Fire Code" means the Oregon Fire Code as adopted by the State of Oregon Fire Marshal.

(28) "HCB" means Home and Community-Based.

(29) "HCBS" means Home and Community-Based Services; services provided in the individual's home or community.

(30) "Home and Community-Based Settings" or "HCB Settings" means a physical location meeting the requirements of OAR 411-004-0020 where an individual receives Home and Community-Based Services.

(31) "Home-like" means an environment that promotes the dignity, security, and comfort of individuals through the provision of personalized care and services and encourages independence, choice, and decision-making by the individual.

(32) "Individual" means any individual being considered for placement or is currently residing in a licensed program receiving residential services regulated by these rules on a 24-hour basis, except as excluded under ORS 443.400.

(33) "Individual Service Record" means an individual's records maintained by the program pursuant to OAR 309-035-0130(4).

(34) "Individually-Based Limitation" means any limitation to the qualities outlined in OAR 309-035-0195, due to health and safety risks. An individually-based limitation is based on a specific assessed need and only implemented with the individual's or individual's representative's informed consent as described in OAR 309-035-0195.

(35) "Informed Consent" means:

(a) That options, risks, and benefits of the services outlined in these rules have been explained to an individual or the individual's legal representative in a manner that the individual comprehends; and

(b) That the individual or legal representative consents to a person-centered service plan of action including any individually-based limitations to the rules prior to implementation of the initial or updated person-centered service plan or any individually-based limitation.

(36) "Legal Representative" means an individual with the legal authority to act for an individual and only within the scope and limits to the authority designated by the court or other agreement. A legal representative may include:

(a) For an individual under the age of 18, the parent, unless a court appoints another individual or agency to act as the guardian; or

(b) For an individual 18 years of age or older, a guardian appointed by a court order or an agent legally designated as the health care representative.

(37) "Licensed Medical Professional (LMP)" means an individual who meets the following minimum qualifications as documented by the Local Mental Health Authority (LMHA) or designee:

(a) Holds at least one of the following educational degrees and valid licensures:

(A) Physician licensed to practice in the State of Oregon;

(B) Nurse Practitioner licensed to practice in the State of Oregon; or

(C) Physician's Assistant licensed to practice in the State of Oregon.

(b) Whose training, experience, and competence demonstrate the ability to conduct a comprehensive mental health assessment and provide medication management.

(38) "Local Mental Health Authority (LMHA)" means the county court or board of county commissioners of one or more counties operating a CMHP or MHO or, if the county declines to operate or contract for all or part of a CMHP or MHO, the board of directors of a public or private corporation that contracts with the Division to operate a CMHP or MHO for that county.

(39) "Medication" means any drug, chemical, compound, suspension, or preparation in suitable form for use as a curative or remedial substance either internally or externally by any individual.

(40) "Mental or Emotional Disorder" means a primary Axis I or Axis II DSM diagnosis, other than mental retardation or a substance abuse disorder that limits an individual's ability to perform activities of daily living.

(41) "Mental Health Assessment" means a determination by a Qualified Mental Health Professional (QMHP) of an individual's need for mental health services. It involves collection and assessment of data pertinent to the individual's mental health history and current mental health status obtained through interview, observation, testing, and review of previous treatment records. It concludes with determination of a DSM diagnosis or other justification of priority for mental health services or a written statement that the person is not in need of community mental health services.

(42) "Mistreatment" means the following behaviors displayed by program staff when directed toward an individual:

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(a) "Abandonment" means desertion or willful forsaking when the desertion or forsaking results in harm or places the individual at a risk of serious harm;

(b) "Financial Exploitation" means:

(A) Wrongfully taking the assets, funds, or property belonging to or intended for the use of an individual;

(B) Alarming an individual by conveying a threat to wrongfully take or appropriate money or property of the individual if the individual would reasonably believe that the threat conveyed would be carried out;

(C) Misappropriating, misusing, or transferring without authorization any money from any account held jointly or singly by an individual;

(D) Failing to use the individual's income or assets effectively for the support and maintenance of the individual. "Effectively" means use of income or assets for the benefit of the individual.

(c) "Involuntary Restriction" means the involuntary restriction of an individual for the convenience of a program staff or to discipline the individual. Involuntary restriction may include but is not limited to placing restrictions on an individual's freedom of movement by restriction to his or her room or a specific area or restriction from access to ordinarily accessible areas of the setting, residence, or program, unless agreed to by the service plan.

(d) "Neglect" means active or passive failure to provide the care, supervision, or services necessary to maintain the physical and mental health of an individual that creates a significant risk of harm to an individual or results in significant mental injury to an individual. Services include but are not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene, or any other services essential to the individual's well-being;

(e) "Verbal Mistreatment" means threatening significant physical harm or emotional harm to an individual through the use of:

(A) Derogatory statements, inappropriate names, insults, verbal assaults, profanity, or ridicule;

(B) Harassment, coercion, punishment, deprivation, threats, implied threats, intimidation, humiliation, mental cruelty, or inappropriate sexual comments;

(C) A threat to withhold services or supports, including an implied or direct threat of termination of services. "Services" include but are not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene, or any other service essential to the individual's well-being;

(D) For purposes of this definition, verbal conduct includes but is not limited to the use of oral, written, or gestured communication that is directed to an individual or within their hearing distance or sight, regardless of the individual's ability to comprehend. In this circumstance the assessment of the conduct is based on a reasonable person standard;

(E) The emotional harm that can result from verbal abuse may include but is not limited to anguish, distress, or fear.

(f) "Wrongful Restraint" means the use of physical or chemical restraint except for:

(A) An act of restraint prescribed by a licensed physician pursuant to OAR 309-033-0730; or

(B) A physical emergency restraint to prevent immediate injury to an individual who is in danger of physically harming himself or herself or others, provided that only the degree of force reasonably necessary for protection is used for the least amount of time necessary.

(43) "Nursing Care" means the practice of nursing by a licensed nurse, including tasks and functions that are delegated by a registered nurse to an individual other than a licensed nurse, which are governed by ORS Chapter 678 and rules adopted by the Oregon State Board of Nursing in OAR Chapter 851.

(44) "Person-Centered Service Plan" means written documentation that includes details of the supports, desired outcomes, activities, and resources required for an individual to achieve and maintain personal goals, health, and safety as described in OAR 411-004-0030.

(45) "Person-Centered Service Plan Coordinator" means the individual, which may be a case manager, service coordinator, personal agents or other individual, designated by the Division to provide case management services or person-centered service planning for and with an individual.

(46) "P.R.N. (pro re nata) Medications and Treatments" means those medications and treatments that have been ordered to be given as needed.

(47) "Program" means the Residential Treatment Facility or Residential Treatment Home licensed by the Division and may refer to the setting grounds, caregiver, staff, or services as applicable to the context.

(48) "Program Staff" means an employee, volunteer, direct care staff, or individual who, by contract with a program, provides a service to an individual.

(49) "Progress Notes" means the notations in the individual's record documenting significant information concerning the individual and summarizing progress made relevant to the objectives outlined in the residential service plan.

(50) "Protection" means the necessary actions taken by the program to prevent abuse, mistreatment, or exploitation of the individual to prevent self-destructive acts and to safeguard the individual's property and funds when used in the relevant context.

(51) "Provider" means the program administrator, individual, or organizational entity licensed by the Division which operates the program and provides services to individuals.

(52) "Representative" refers to both "Designated Representative" and "Legal Representative" as defined in these rules, unless otherwise stated.

(53) "Residency Agreement" means the written, legally enforceable agreement between a provider and an individual or the individual's representative when the individual receives services. The Residency Agreement identifies the rights and responsibilities of the individual and the provider. The Residency Agreement provides the individual protection from eviction substantially equivalent to landlord-tenant laws.

(54) "Residential Service Plan" means an individualized, written plan outlining the care and treatment to be provided to an individual in or through the program based upon an individual assessment of needs. The residential service plan may be a section or subcomponent of the individual's overall mental health treatment plan when the program is operated by a mental health service agency that provides other services to the individual.

(55) "Residential Treatment Facility (RTF)" means a program licensed by the Division to provide services on a 24-hour basis for six to 16 individuals as described in ORS 443.400(9). An RTF does not include the entities set out in ORS 443.405.

(56) "Residential Treatment Home (RTH)" means a program that is licensed by the Division and operated to provide services on a 24-hour basis for up to five individuals as defined in ORS 443.400(10). A RTH does not include the entities set out in ORS 443.405.

(57) "Restraints" means any chemical or physical methods or devices that are intended to restrict or inhibit the movement, functioning, or behavior of an individual.

(58) "Room and Board" means compensation for the provision of meals, a place to sleep, and tasks such as housekeeping and laundry.

(59) "Seclusion" means placing an individual in a locked room. A locked room includes a room with any type of door-locking device, such as a key lock, spring lock, bolt lock, foot pressure lock, or physically holding the door shut.

(60) "Secure Residential Treatment Facility (SRTF)" means any Residential Treatment Facility, or portion thereof, approved by the Division that restricts an individual's exit from the setting through the use of approved locking devices on individual exit doors, gates, or other closures.

(61) "Services and Supports" means those services defined as habilitation services and psychosocial rehabilitation services under OAR 410-172-0700(1), (2) & 410-172-0710(1), (2).

(62) "Setting" means one or more buildings and adjacent grounds on contiguous properties that are used in the operation of a program.

(63) "Supervision" means a program staff's observation and monitoring of an individual or oversight of a program staff by the program administrator applicable to the context.

(64) "Termination of Residency" means the time at which the individual ceases to reside in the program and includes the transfer of the individual to another program, but does not include absences from the setting for the purpose of taking a planned vacation, visiting family or friends, or receiving time-limited medical or psychiatric treatment.

(65) "Treatment" means a planned, individualized program of medical, psychological or rehabilitative procedures, experiences and activities designed to relieve or minimize mental, emotional, physical or other symptoms or social, educational or vocational disabilities resulting from or related to the mental or emotional disturbance, physical disability or alcohol or drug problem.

(66) "Unit" means the bedroom and other space of an individual receiving services from a program, as agreed to in the Residency Agreement. Unit includes private single occupancy spaces and shared units with roommates.

(67) "Volunteer" means an individual who provides a service or takes part in a service provided to an individual receiving supportive services in

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a program or other provider and who is not a paid employee of the program or other provider.

Stat. Auth.: ORS 413.042 & 443.450
Stats. Implemented: ORS 443.400 - 443.465 & 443.991
Hist.: MHD 9-1984(Temp), f. & ef. 12-10-84; MHD 9-1985, f. & ef. 6-7-85; MHD 4-1998, f. 5-21-98, cert. ef. 6-1-98; MHD 4-2005, f. & cert. ef. 4-1-05; MHS 6-2007(Temp), f. & cert. ef. 5-25-07 thru 11-21-07; MHS 13-2007, f. & cert. ef. 8-31-07; MHS 4-2008, f. & cert. ef. 6-12-08; MHS 10-2011(Temp), f. & cert. ef. 12-5-11 thru 5-31-12; MHS 5-2012, f. 5-3-12, cert. ef. 5-4-12; MHS 13-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-035-0110

Required Home-like Qualities

This rule becomes effective July 1, 2016, and enforceable pursuant to OAR 309-035-0115 (17).

(1) A program, except for a SRTF, must have all of the following qualities:

(a) The setting is integrated in and supports the individual's same degree of access to the greater community as individuals' not receiving HCBS including opportunities for an individual to:

(A) Seek employment and work in competitive integrated employment settings:

(i) For which an individual is compensated at a rate that:

(I) Is not less than the higher of the rate specified in federal, state, or local minimum wage law;

(II) Is not less than the customary rate paid by the employer for the same or similar work performed by other employees who are not persons with disabilities and who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills; or

(III) In the case of an individual who is self-employed, yields an income that is comparable to the income received by other individuals who are not individuals with disabilities and who are self-employed in similar occupations or on similar tasks and who have similar training, experience, and skills.

(ii) For which an individual is eligible for the level of benefits provided to other employees;

(iii) At a location where the individual interacts with other individuals who are not individuals with disabilities. This does not include supervisory personnel or individuals providing services to the individual to the same extent as individuals without disabilities and who are in comparable positions who interact with others; and

(iv) That present opportunities for advancement similar to those for other employees who are not individuals with disabilities and who have similar positions.

(B) Engage in greater community life;

(C) Control personal resources; and

(D) Receive services in the greater community.

(b) The program is selected by an individual or legal or designated representative from among available setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options shall be:

(A) Identified and documented in the individuals' person-centered service plan;

(B) Based on the individual's needs and preference; and

(C) Based on the individual's available resources for room and board.

(c) The program ensures individual rights of privacy, dignity, respect, and freedom from coercion and restraint;

(d) The program 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;

(e) The program facilitates individual choice regarding services and supports and individual choice as to who provides the services and supports.

(2) The individual or the individual's representative shall have the opportunity to select from among available setting options including non-disability specific settings and an option for a private unit in a setting. The setting options shall be:

(a) Identified and documented in the person-centered service plan for the individual;

(b) Based on the individual's needs and preferences; and

(c) Based on the individual's available resources for room and board.

(3) The provider shall take reasonable steps to ensure that the program maintains the qualities identified in sections (2) and (3) of this rule. Failure to take reasonable steps may include but is not limited to:

(a) Failure to maintain a copy of the person-centered service plan at the setting;

(b) Failure to cooperate or provide necessary information to the person-centered planning coordinator; or

(c) Failure to attend or schedule a person-centered planning meeting where applicable.

(4) A program shall maintain the following:

(a) The setting shall be physically accessible to an individual;

(b) The provider shall provide the individual a unit of specific physical place that the individual may own, rent, or occupy under a legally enforceable Residency Agreement;

(c) The provider shall provide and include in the Residency Agreement that the individual has, at a minimum, the same responsibilities and protections from an eviction that a tenant has under the landlord-tenant law of Oregon and other applicable laws or rules of the county, city, or other designated entity. For a setting in which landlord-tenant laws do not apply, the Residency Agreement shall provide substantially equivalent protections for the individual and address eviction and appeal processes. The eviction and appeal processes shall be substantially equivalent to the processes provided under landlord-tenant laws;

(d) The provider shall provide each individual with privacy in their own unit;

(e) The provider shall maintain units with entrance doors lockable by the individual. The program shall ensure that only the individual, the individual's roommate, where applicable, and only appropriate staff as described in the individual's person-centered plan have keys to access the unit;

(f) The provider shall ensure that individuals sharing units have a choice of roommates;

(g) The provider shall provide and include in the Residency Agreement that individuals have the freedom to decorate and furnish their own unit;

(h) The provider shall allow each individual to have visitors of their choosing at any time;

(i) The provider shall ensure each individual has the freedom and support to control their own schedule and activities;

(j) The provider shall ensure each individual has the freedom and support to have access to food at any time.

(5) A SRTF is not required to maintain the qualities or meet the obligations identified in section (4)(d)(e)(f)(h)(i) of this rule. The provider is not required to seek an individually-based limitation to comply with these rules.

(6) A provider is not required to maintain the qualities or meet the obligations identified in section (4) (b) or (c) of this rule when providing crisis-respite services to an individual. The provider is not required to seek an individually-based limitation for such an individual to comply with these rules.

(7) When a provider is unable to meet a qualities outlined under section (4)(e) through (4)(j) of this rule due to threats to the health and safety of the individual or others, the provider may seek an individually-based limitation with the consent of the individual or the individual's legal representative. The provider may not apply an individually-based limitation until the limitation is approved, consented and documented as outlined in OAR 309-035-0195.

Stat. Auth.: ORS 413.042&443.450

Stats. Implemented: ORS 413.032, 443.400 - 443.465 & 443.991

Hist.: MHD 9-1984(Temp), f. & ef. 12-10-84; MHD 9-1985, f. & ef. 6-7-85; MHD 4-1998, f. 5-21-98, cert. ef. 6-1-98; MHD 4-2005, f. & cert. ef. 4-1-05; MHS 4-2008, f. & cert. ef. 6-12-08; MHS 13-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-035-0113

Contracts and Rates

(1) Contracts. A provider receiving service payments must enter into a contract with the local CMHP, statewide coordinated care organizations, the Division or other Division-approved party. The contract does not guarantee that any number of individuals eligible for Division funded services will be referred to or maintained in the program.

(2) Rates. The provider must specify in a fee policy and procedure rates for all services and the procedures for collecting payments from individuals and/or payees. The fee policy and procedures must describe the schedule of rates, conditions under which rates may be changed, acceptable methods of payment, and the policy on refunds at the time of termination of residency.

(a) For individuals whose services are funded by the Division, reimbursement for services will be made according to the rate schedule outlined in the contract. Room and board payments for individuals receiving Social Security benefits or public assistance will be in accordance with rates determined by the Division.

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(b) For private paying individuals, the program will enter into a signed agreement with the individual, and/or if applicable individual's designated representative or legal representative. This agreement must include but not be limited to a description of the services to be provided; the schedule of rates; conditions under which the rates may be changed; and policy on refunds at the time of termination of residency.

(c) Before increasing rates or modifying payment procedures, the program will provide 30 days' advance notice of the change to all individuals, individuals, representatives, payees, guardians or conservators, as applicable.

Stat. Auth.: ORS 413.042 & 443.450
Stats. Implemented: ORS 443.400 - 443.465 & 443.991(2)
Hist.: MHD 4-1998, f. 5-21-98, cert. ef. 6-1-98; MHD 4-2005, f. & cert. ef. 4-1-05; MHS 4-2008, f. & cert. ef. 6-12-08; MHS 13-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; Suspended by MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-035-0115 Licensing

(1) The Division shall license a program that meets the definition of a RTF or RTH and demonstrates compliance with these and all applicable laws and rules. No person or governmental unit acting individually or jointly with any other person or governmental unit shall establish, maintain, manage, or operate a program without a license issued by the Division.

(2) Where a program serves or seeks to serve another category of individuals, in addition to adults with a mental health disorder, the directors of the Authority and the Department shall determine the department responsible for licensure.

(3) An application for a license must be accompanied by the required fee and submitted to the Division using the forms or format required by the Division. The following information must be included in the application:

(a) Full and complete information as to the identity and financial interest of each individual, including stockholders, having a direct or indirect ownership interest of five percent or more in the program and all officers and directors in the case of a program operated or owned by a corporation;

(b) Name and resume of the program administrator;

(c) Physical address of the setting and mailing address;

(d) Maximum number of individuals to be served at any one time, their age range and evacuation capability;

(e) Proposed annual budget identifying sources of revenue and expenses;

(f) Signed criminal record authorizations for all individuals involved in the operation of the program who will have contact with the individuals including but not limited to caregivers;

(g) A complete set of policies and procedures;

(h) Setting plans and specifications; and

(i) Such other information as the Division may reasonably require.

(4) A complete set of plans and specifications must be submitted to the Division at the time of initial application, whenever a new structure or addition to an existing structure is proposed, or when significant alterations to an existing facility are proposed. Plans shall meet the following criteria:

(a) Plans shall be prepared in accordance with the Building Code and as outlined in OAR 309-035-0140;

(b) Plans shall be to scale and sufficiently complete to allow full review for compliance with these rules; and

(c) Plans shall bear the stamp of an Oregon licensed architect or engineer when required by the Building Code.

(5) Prior to approval of a license for a new or renovated setting, the applicant shall submit the following to the Division:

(a) One copy of written approval to occupy the setting issued by the city or county building codes authority having jurisdiction;

(b) One copy of the fire inspection report from the State Fire Marshal or local jurisdiction indicating that the setting complies with the Fire Code;

(c) When the setting is not served by an approved municipal water system, one copy of the documentation indicating that the state or county health agency having jurisdiction has tested and certified safe the water supply in accordance with OAR chapter 333, Health Services rules to public water systems;

(d) When the setting is not connected to an approved municipal sewer system, one copy of the sewer or septic system approval from the Department of Environmental Quality or local jurisdiction.

(6) The following fees shall be submitted with an initial or renewal application:

(a) The RTF license application fee for initial or renewal licensing is \$60. No fee is required in the case of a governmentally operated RTF.

(b) The RTH license application fee for initial or renewal licensing is \$30. No fee is required in the case of a governmentally operated RTH.

(7) A license is renewable upon submission of a renewal application in the form or format required by the Division and a non-refundable fee as set out in section (6), except that no fee shall be required of a governmentally operated program:

(a) Filing of an application for renewal 60 days before the date of expiration extends the effective date of the current license until the Division takes action upon the renewal application;

(b) The Division shall deny renewal of a license if the program is not in substantial compliance with these rules or if the State Fire Marshal or authorized representative has given notice of noncompliance.

(8) Upon receipt of an application and fee, the Division shall conduct an application review. Initial action by the Division on the application shall begin within 30 days of receipt of all application materials. The review shall:

(a) Include a complete review of application materials;

(b) Determine whether the applicant meets the qualifications outlined in ORS 443.420 including:

(A) Demonstrates an understanding and acceptance of these rules;

(B) Is mentally and physically capable of providing services for individuals;

(C) Employs or utilizes only persons whose presence does not jeopardize the health, safety, or welfare of individuals; and

(D) Provides evidence satisfactory to the Division of financial ability to comply with these rules.

(c) Include a site inspection; and

(d) Conclude with a report stating findings and a decision on licensure of the program.

(9) Findings of Noncompliance. The provider shall submit and complete a plan of correction for each finding of noncompliance:

(a) If the findings of noncompliance substantially impact the welfare, health, and safety of individuals, the provider shall submit a plan of correction that shall be approved by the Division prior to issuance of a license. In the case of a currently operating program, the findings may result in suspension or revocation of a license;

(b) If it is determined that the findings of noncompliance do not threaten the welfare, health, or safety of individuals and the program meets other requirements of licensing, the Division may issue or renew a license with the plan of correction submitted and completed as a condition of licensing;

(c) The Division shall specify required documentation and set the time lines for the submission and completion of plans of correction in accordance with the severity of the findings;

(d) The Division shall review and evaluate each plan of correction. If the plan of correction does not adequately remedy the findings of noncompliance, the Division shall require a revised plan of correction and may apply civil penalties or deny, revoke, or suspend the license;

(e) The provider owner may appeal the finding of noncompliance or the disapproval of a plan of correction by submitting a request for reconsideration in writing to the Division. The Division shall make a decision on the appeal within 30 days of receipt of the appeal. The decision of the Division shall be final.

(10) The Division, in its discretion, may grant a variance to these rules based upon a demonstration by the applicant or provider that an alternative method or different approach provides equal or greater program effectiveness and does not adversely impact the welfare, health, or safety of individuals:

(a) The provider seeking a variance shall submit in writing an application to the Division that identifies the section of the rules from which the variance is sought, the reason for the proposed variance, the proposed alternative method or different approach, and signed documentation from the CMHP indicating approval of the proposed variance;

(b) The director or designee shall review and approve or deny the request for a variance;

(c) The Division shall notify the provider of the decision in writing within 30 days after receipt of the request. A variance may be implemented only after receipt of written approval from the Division;

(d) The provider may appeal the denial of a variance request by submitting a request for reconsideration in writing to the Division's Director. The Director shall make a decision within 30 days of receipt of the appeal. The decision of the Director shall be final; and

(e) A variance shall be reviewed by the Division at least every two years and may be revoked or suspended based upon a finding that the variance adversely impacts the welfare, health, or safety of the individuals.

(11) Upon finding that the applicant is in substantial compliance with these rules, the Division shall issue a license:

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(a) The license issued shall state the name of the provider, the name of the program administrator, the address of the setting to which the license applies, the maximum number of individuals to be served at any one time and their evacuation capability, the type of program, and such other information as the Division deems necessary;

(b) A program license shall be effective for two years from the date issued unless sooner revoked or suspended; and

(c) A program license is not transferable or applicable to any setting, location, or management other than that indicated on the application and license.

(12) The license shall be valid only under the following conditions:

(a) The provider may not operate or maintain the program in combination with a nursing facility, hospital, retirement facility, or other occupancy unless licensed, maintained, and operated as a separate and distinct part. Each program shall have sleeping, dining, and living areas for use only by its own individual's caregivers and invited guests;

(b) The provider shall maintain the license posted in the setting and available for inspection at all times; and

(c) A license becomes void immediately upon suspension or revocation of the license by the Division or if the operation is discontinued by voluntary action of the provider or if there is a change of ownership.

(13) Division staff shall visit and inspect every setting at least once every two years to determine whether it is maintained and operated in accordance with these rules. The provider or applicant shall allow Division staff entry and access to the setting and individuals for the purpose of conducting the inspections:

(a) Division staff shall review methods of individual care and treatment, records, the condition of the setting and equipment, and other areas of operation;

(b) All records, unless specifically excluded by law, shall be available to the Division for review; and

(c) The State Fire Marshal or authorized representatives shall, upon request, be permitted access to the setting, fire safety equipment within the setting, safety policies and procedures, maintenance records of fire protection equipment and systems, and records demonstrating the evacuation capability of setting occupants.

(14) Incidents of alleged abuse covered by ORS 430.735 through 430.765 and reported complaints shall be investigated in accordance with OAR 943-045-0250 through 0370. The Division may delegate the investigation to a CMHP or other appropriate entity.

(15) The Division may deny, suspend, or revoke a license when it finds there has been substantial failure to comply with these rules or when the State Fire Marshal or authorized representative certifies that there is failure to comply with the Fire Code:

(a) In cases where there exists an imminent danger to the health or safety of an individual or the public, a license may be suspended immediately; and

(b) The revocation, suspension, or denial shall be done in accordance with ORS 443.440

(16) The provider shall report promptly to the Division any significant changes to information supplied in the application or subsequent correspondence. Changes include but are not limited to changes in the setting or program name, provider, program administrator, telephone number, and mailing address. Changes also include but are not limited to changes in the physical nature of the setting, policies and procedures, or staffing pattern when the changes are significant or impact the individual's health, safety, or well-being.

(17) Enforcement of Home and Community-Based Services and Settings Requirements:

(a) All programs licensed on or after July 1, 2016, shall be in full compliance with all regulatory requirements under these rules at the time of initial licensure;

(b) All programs licensed prior to July 1, 2016, shall come into compliance with rules as follows:

(A) All programs shall be in full compliance with these rules no later than January 1, 2017; and

(B) For the rules designated by the Division to become effective July 1, 2016, the provider shall make measureable progress towards compliance with those rules. The Division may not issue sanctions and penalties for failure to meet the rules effective July 1, 2016, or the obligations imposed by OAR Chapter 411, division 4 until January 1, 2017, if the provider is making measureable progress towards compliance.

Stat. Auth.: ORS 443.450

Stats. Implemented: ORS 443.400 - 443.465 & 443.991(2)

Hist.: MHD 9-1984 (Temp), f. & ef. 12-10-84; MHD 9-1985, f. & ef. 6-7-85; MHD 4-1998, f. 5-21-98, cert. ef. 6-1-98; MHD 4-2005, f. & cert. ef. 4-1-05; MHS 13-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-035-0117

Records

(1) General Requirements. Records must be maintained to document the legal operation of the program, personnel practices and individual services. All records must be properly obtained, accurately prepared, safely stored and readily available within the facility. All entries in records required by these rules will be in ink, indelible pencil, or approved electronic equivalent prepared at the time, or immediately following, the occurrence of the event being recorded; be legible; and be dated and signed by the person making the entry. In the case of electronic records, signatures may be replaced by an approved, uniquely identifiable electronic equivalent.

(2) Program Records. Records documenting the legal operation of the program will include, but not be limited to:

(a) Written approval for occupancy of the setting by the county or city having jurisdiction, any building inspection reports, zoning verifications, fire inspection reports or other documentation pertaining to the safe and sanitary operation of the program issued during the development or operation of the program;

(b) Application for license, related correspondence and site inspection reports;

(c) Program operating budget and related financial records;

(d) Payroll records, program staff schedules and time sheets;

(e) Materials Safety and Data Sheets;

(f) Fire drill documentation;

(g) Fire alarm and sprinkler system maintenance and testing records;

(h) Incident reports; and

(i) Policy and procedure manual.

(3) Personnel Records. Records documenting personnel actions will include:

(a) Job descriptions for all positions; and

(b) Separate program staff records including, but not limited to, written documentation of program staff identifying information and qualifications, criminal record clearance, T.B. test results, Hepatitis B status, performance appraisals, and documentation of pre-service orientation and other training.

(4) Individual Service Record. An individual service record must be maintained for each individual and include:

(a) An easily accessible summary sheet which includes, but is not limited to the individual's name, previous address, date of admission to the program, sex, date of birth, marital status, legal status, religious preference, Social Security number, health provider information, evacuation capability, diagnosis(es), major health concerns, medication allergies, information indicating whether advance mental health and health directives and/or burial plan have been executed, and the name of person(s) to contact in case of emergency;

(b) The names, addresses and telephone numbers of the individual's representative, legal guardian or conservator, parent(s), next of kin, or other significant person(s); physician(s) or other medical practitioner(s); dentist; CMHP case manager or therapist; day program, school or employer; and any governmental or other agency representative(s) providing services to the individual;

(c) A mental health assessment and background information identifying the individual's residential service needs;

(d) Advance mental health and health directives, burial plans or location of these (as available);

(e) A Residential Service Plan and copy(ies) of plan(s) from other service provider(s);

(f) Effective July 1, 2016 and enforceable as described in OAR 309-035-0110(17), a Person-Centered Service Plan;

(g) Documentation of the individual's progress and any other significant information including, but not limited to, progress notes, progress summaries, any use of seclusion or restraints, and correspondence concerning the individual; and

(h) Health-related information and up-to-date information on medications in accordance with OAR 309-035-0175.

(5) Referral and Response Documentation: The program must retain all referral packets, screening materials, and screening responses/placement determinations for a minimum of three years from the date of the referral.

(6) Records for Crisis-respite Individuals. For an individual receiving crisis-respite services, the provider must obtain and maintain records as outlined in OAR 309-035-0117(4). Because it may not be possible to assemble complete records during the crisis-respite individual's short stay, the program will, at a minimum, maintain records in accordance with

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requirements outlined in OAR 309-035-0145, 309-035-0150, 309-035-0159, and 309-035-0175.

(7) Storage. All individual service records must be stored in a weatherproof and secure location. Access to records must be limited to the Program Administrator and direct care staff unless otherwise allowed in these rules.

(8) Confidentiality. All individual service records must be kept confidential as required by law. A signed release of information must be obtained for any disclosure from an individual service records in accordance with all applicable laws and rules.

(9) Individual Access to Own Record. An individual, or the individual's representative (as applicable), must be allowed to review and obtain a copy of his/her individual service record as required by ORS 179.505(9).

(10) Transfer of Records. Pertinent information from records of an individual who is being transferred to another facility will be transferred with the individual. A signed release of information must first be obtained in accordance with applicable laws and rules.

(11) Maintenance of Records. The program must keep all records, except those transferred with an individual, for a period of three years.

(12) Administrative Changes. If a program changes ownership or Program Administrator, all individual and personnel records will remain at the setting. Prior to the dissolution of any program, the Program Administrator must notify the Division in writing as to the location and storage of individual service records or those records will be transferred with the individuals.

(13) Individual Contributions to Record. If an individual or an individual's representative (as applicable) disagrees with the content of the individual service record, or otherwise desires to provide documentation for the record, the individual or representative (as applicable) may provide material in writing that then will become part of the individual service record.

(14) Record Preparation. The program must establish an individual service record upon the individual's admission. Prior to admission, within five days after an emergency admission, or within 24 hours of a crisis-respite admission, the program must determine with whom communication needs to occur and make good faith efforts to obtain the needed authorizations for release of information. The record established upon admission must include the materials reviewed in screening the individual, the summary sheet and any other available information. The program must make every effort to complete the individual service record consistent with OAR 309-035-0117(4) in a timely manner. The assessment and residential service plan must be completed in accordance with OAR 309-035-0159. Records on prescribed medications and health needs must be completed as specified in OAR 309-035-0175.

Stat. Auth.: ORS 413.042 & 443.450

Stats. Implemented: ORS 443.400 - 443.465 & 443.991(2)

Hist.: MHD 4-1998, f. 5-21-98, cert. ef. 6-1-98; MHD 4-2005, f. & cert. ef. 4-1-05; MHS 4-2008, f. & cert. ef. 6-12-08; MHS 13-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; Suspended by MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-035-0120

Contracts and Rates

(1) A provider receiving service payments shall enter into a contract with the local CMHP, statewide coordinated care organizations, the Division, or other Division-approved party. The contract does not guarantee that any number of individuals eligible for Division funded services shall be referred to or maintained in the program.

(2) The provider shall specify in a fee policy and procedure rates for all services and the procedures for collecting payments from individuals and payees. The fee policy and procedures shall describe the schedule of rates, conditions under which rates may be changed, acceptable methods of payment, and the policy on refunds at the time of termination of residency:

(a) For individuals whose services are funded by the Division, reimbursement for services shall be made according to the rate schedule outlined in the contract. Room and board payments for individuals receiving Social Security benefits or public assistance shall be in accordance with rates determined by the Division;

(b) For private paying individuals, the program shall enter into a signed agreement with the individual, and, if applicable, the individual's designated representative. This agreement shall include but is not limited to a description of the services to be provided, the schedule of rates, conditions under which the rates may be changed, and policy on refunds at the time of termination of residency; and

(c) Before increasing rates or modifying payment procedures, the program shall provide a 30-day advance notice of the change to all individuals, representatives, payees, guardians, or conservators.

Stat. Auth.: ORS 413.042 & 443.450

Stats. Implemented: ORS 413.032, 443.400 - 443.460 & 443.991(2)

Hist.: MHD 9-1984(Temp), f. & ef. 12-10-84; MHD 9-1985, f. & ef. 6-7-85; MHD 4-1998, f. 5-21-98, cert. ef. 6-1-98; MHD 4-2005, f. & cert. ef. 4-1-05; MHS 4-2008, f. & cert. ef. 6-12-08; MHS 13-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-035-0125

Administrative Management

(1) The provider shall ensure that the program and setting are maintained and operated in compliance with these rules and all other applicable federal, state, and local laws and regulations.

(2) The provider shall employ a program administrator who meets the following qualifications and complies with the following standards:

(a) Background including special training, experience, and other demonstrated ability in providing care and treatment appropriate to the individuals served in the program;

(b) Documented approved criminal record checks processed in compliance with the procedures required by OAR 943-007-0001 through 0501 and no history of abusive behavior;

(c) Ensure that the program operates in accordance with the standards outlined in these rules;

(d) Oversee the daily operation and maintenance of the program and shall be available to perform administrative duties at the setting at least 20 hours per week;

(e) Develop and administer written policies and procedures to direct the operation of the program and the provision of services to individuals;

(f) Ensure that qualified program staff are available in accordance with the staffing requirements specified in these rules;

(g) Supervise or provide for the supervision of program staff and others involved in the operation of the program;

(h) Maintain setting, personnel, and individual service records;

(i) Report regularly to the provider on the operation of the program; and

(j) Delegate authority and responsibility for the operation and maintenance of the program to a responsible staff person whenever the program administrator is absent from the setting. This authority and responsibility may not be delegated to an individual.

(3) The provider shall develop and update policies and procedures and maintain a copy in a location easily accessible for staff reference and made available to others upon reasonable request. They shall be consistent with requirements of these rules and shall address at a minimum the following:

(a) Personnel practices and staff training;

(b) Individual screening, admission, and termination;

(c) Fire drills, emergency procedures, individual safety and abuse reporting;

(d) Health and sanitation;

(e) Records maintenance and confidentiality;

(f) Residential service plan, services, and activities;

(g) Behavior management including the use of seclusion or restraints;

(h) Food Service;

(i) Medication administration and storage;

(j) Individual belongings, storage, and funds;

(k) Individual rights and advance directives;

(l) Complaints and grievances;

(m) Setting maintenance;

(n) Evacuation capability determination; and

(o) Fees and money management.

(4) The provider shall develop reasonable house rules outlining operating protocols concerning, but not limited to, meal times, night-time quiet hours, guest policies, smoking, and as follows:

(a) House rules shall be consistent with individual rights as set forth in OAR 309-035-0175;

(b) House rules shall be posted in an area readily accessible to individuals;

(c) House rules shall be reviewed and updated as necessary;

(d) Individuals shall be provided an opportunity to review and provide input into any proposed changes to house rules before the revisions become effective; and

(e) Effective July 1, 2016, house rules may not restrict or limit the program qualities identified in OAR 309-035-0110.

Stat. Auth.: ORS 413.042, 443.450

Stats. Implemented: ORS 413.032, 443.400 - 443.460 & 443.991(2)

Hist.: MHD 9-1984(Temp), f. & ef. 12-10-84; MHD 9-1985, f. & ef.; MHD 4-1998, f. 5-21-98, cert. ef. 6-1-98; MHD 4-2005, f. & cert. ef. 4-1-05; MHS 4-2008, f. & cert. ef. 6-12-08; MHS 13-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

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309-035-0130

Safety

(1) Records shall be maintained to document the legal operation of the program, personnel practices, and individual services and supports. All records shall be properly obtained, accurately prepared, safely stored, and readily available or electronically accessible within the setting. All entries in records required by these rules shall be in ink, indelible pencil, or approved electronic equivalent prepared at the time or immediately following the occurrence of the event being recorded; be legible; and be dated and signed by the person making the entry. In the case of electronic records, signatures may be replaced by an approved, uniquely identifiable electronic equivalent.

(2) Records documenting the legal operation of the program shall include but not limited to:

(a) Written approval for occupancy of the setting by the county or city having jurisdiction, any building inspection reports, zoning verifications, fire inspection reports, or other documentation pertaining to the safe and sanitary operation of the program issued during the development or operation of the program;

(b) Application for license, related correspondence, and site inspection reports;

(c) Program operating budget and related financial records;

(d) Payroll records, program staff schedules and time sheets;

(e) Materials safety and data sheets;

(f) Fire drill documentation;

(g) Fire alarm and sprinkler system maintenance and testing records;

(h) Incident reports; and

(i) Policy and procedure manual.

(3) Personnel records shall document and include:

(a) Job descriptions for all positions; and

(b) Separate program staff records including, but not limited to, written documentation of program staff identifying information and qualifications, criminal record clearance, T.B. test results, documentation that Hepatitis B inoculations have been given or made available, performance appraisals, and documentation of pre-service orientation and other training.

(4) Individual service records shall be maintained for each individual and include:

(a) An easily accessible summary sheet that includes, but is not limited to, the individual's name, previous address, date of admission to the program, gender, biological sex, date of birth, marital status, legal status, religious preference, health provider information, evacuation capability, DSM diagnosis, physical health diagnosis, medication allergies, food allergies, information indicating whether advance mental health and health directives and burial plan have been executed, and the name of individuals to contact in case of emergency;

(b) The names, addresses, and telephone numbers of the individual's representative, legal guardian or conservator, parents, next of kin, or other significant persons; physicians or other medical practitioners; dentist; case manager or therapist; day program, school, or employer; and any governmental or other agency representatives providing services to the individual;

(c) A mental health assessment and background information identifying the individual's residential service needs;

(d) Advance mental health and medical health directives, burial plans, or location of these;

(e) A residential service plan and copy of plans from other service providers;

(f) Effective July 1, 2016, and pursuant to OAR 309-035-0115(17), a person-centered service plan;

(g) Documentation of the individual's progress and any other significant information including, but not limited to, progress notes, progress summaries, any use of seclusion or restraints, and correspondence concerning the individual; and

(h) Health-related information and up-to-date information on medications.

(5) The program shall retain all referral packets, screening materials, and screening responses-placement determinations for a minimum of three years from the date of the referral.

(6) For an individual receiving crisis-respite services, the provider shall obtain and maintain records as outlined in these rules. Because it may not be possible to obtain and maintain complete records during a crisis-respite stay, the program shall, at a minimum, maintain records that are deemed reasonable to provide services in the program.

(7) All individual service records shall be stored in a weatherproof and secure location. Access to records shall be limited to the program administrator and direct care staff unless otherwise allowed in these rules.

(8) All individual service records shall be kept confidential as required by law. A signed release of information shall be obtained for any disclosure from an individual service record in accordance with all applicable laws and rules.

(9) An individual or the representative shall be allowed to review and obtain a copy of the individual service record as required by ORS 179.505(9).

(10) Pertinent information from records of an individual being transferred to another facility shall be transferred with the individual. A signed release of information shall first be obtained in accordance with applicable laws and rules.

(11) The program shall keep all records, except those transferred with an individual, for a period of three years.

(12) If a program changes ownership or program administrator, all individual and personnel records shall remain at the setting. Prior to the dissolution of any program, the program administrator shall notify the Division in writing as to the location and storage of individual service records or those records shall be transferred with the individual.

(13) If an individual or representative disagrees with the content of the individual service record, or otherwise desires to provide documentation for the record, the individual or representative may provide material in writing that then shall become part of the individual service record.

(14) The program shall establish an individual service record upon the individual's admission. Prior to admission, within five days after an emergency admission, or within 24 hours of a crisis-respite admission, the program shall determine with whom communication needs to occur and make good faith efforts to obtain the needed authorizations for release of information. The record established upon admission shall include the materials reviewed in screening the individual, the summary sheet, and any other available information. The program shall make every effort to complete the individual service record in a timely manner. The assessment and residential service plan shall be completed in accordance with OAR 309-035-0185. Records on prescribed medications and health needs shall be completed as outlined in OAR 309-035-0215.

Stat. Auth.: ORS 413.042, 443.450

Stats. Implemented: ORS 413.032, 443.400 - 443.465 & 443.991

Hist.: MHD 9-1984 (Temp), f. & ef. 12-10-84; MHD 9-1985, f. & ef. 6-7-85; MHD 4-1998, f. 5-21-98, cert. ef. 6-1-98; MHD 4-2005, f. & cert. ef. 4-1-05; MHS 13-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-035-0135

Staffing

(1) The provider shall maintain a written job description for each staff position that specifies the position's qualifications and job duties:

(a) A direct care staff person shall be at least 18 years of age, be capable of implementing the setting's emergency procedures and disaster plan, and be capable of performing other duties of the job as described in the job description;

(b) All program staff having contact with an individual must have a documented approved criminal record clearance in accordance with OAR 943-007-0001 through 943-007-0501. The provider must maintain documentation of approved criminal records clearance for each applicable staff person;

(c) Program staff who will have contact with individual's must be tested for tuberculosis within two weeks of first employment; additional testing shall take place as deemed necessary; and the employment of program staff who test positive for tuberculosis shall be restricted if necessary; and

(d) All program staff shall meet other qualifications when required by a contract or financing arrangement approved by the Division.

(2) Personnel policies shall be made available to all program staff and shall describe hiring, leave, promotion, and disciplinary practices.

(3) The program administrator shall provide or arrange a minimum of 16 hours pre-service orientation and eight hours in-service training annually for each program staff including:

(a) Pre-service training for direct care staff shall include but not limited to a comprehensive tour of the setting; a review of emergency procedures developed in accordance with OAR 309-035-0145; a review of setting house rules, policies, and procedures; background on mental and emotional disorders; an overview of individual rights; medication management procedures; food service arrangements; a summary of each individual's assessment and residential service plan; and other information relevant to the job description and scheduled shifts; and

(b) In-service training shall be provided on topics relevant to improving the care and treatment of individuals in the program and meeting the requirements in these administrative rules. In-service training topics include, but are not limited to, implementing the residential service plan,

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behavior management, daily living skills development, nutrition, first aid, understanding mental illness, sanitary food handling, individual rights, identifying health care needs, and psychotropic medications.

(4) The provider and program administrator shall ensure that an adequate number of program and direct care staff are available at all times to meet the treatment, health, and safety needs of individuals. Program staff must be scheduled to meet the changing needs and ensure safety of individuals. Minimum staffing requirements are as follows:

(a) In RTHs serving one to five individuals, there shall be at least one direct care staff on duty at all times;

(b) In RTFs serving six to 16 individuals, there shall be at least one direct care staff on duty at all times;

(c) In the case of a specialized program, staffing requirements outlined in the contractual agreement for specialized services shall be implemented;

(d) Class I and Class II SRTFs shall ensure staffing levels meet the requirements set forth in chapter 309, divisions 32 and 33; and

(e) Program and direct care staff on night duty shall be awake and dressed at all times. In settings where individuals are housed in two or more detached buildings, program staff shall monitor each building at least once an hour during the night shift. An approved method for alerting program staff to problems shall be in place and implemented. This method shall be accessible to and usable by the individuals.

Stat. Auth.: ORS 413.042 & 443.450

Stats. Implemented: ORS 413.032, 443.400 - 443.465 & 443.991

Hist.: MHD 9-1984(Temp), f. & ef. 12-10-84; MHD 9-1985, f. & ef. 6-7-85; MHD 4-1998, f. 5-21-98, cert. ef. 6-1-98; MHD 4-2005, f. & cert. ef. 4-1-05; MHS 13-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-035-0140

Setting Requirements

(1) The provider shall ensure that the setting meets the requirements for approved Group SR or I occupancies in the Building Code and the Fire Code in effect at the time of original licensure. When a change in setting use results in a new building occupancy classification, the program's setting shall meet the requirements for approved Group SR or I occupancies in the Building Code in effect at the time of such change. If occupants are capable of evacuation within three minutes, refer to Group R occupancies.

(2) Programs shall be accessible as follows:

(a) Those settings or portions of settings that are licensed, constructed, or renovated after January 26, 1992, and that are covered multi-family dwellings or public accommodations shall meet the physical accessibility requirements in chapter 11 of the Oregon Structural Specialty Codes. These codes specify requirements for public accommodations as defined in the Americans with Disabilities Act under Title III and for buildings qualifying as multi-family dwellings as defined in the Fair Housing Act as amended in 1988;

(b) In order to ensure program accessibility under Title II of the Americans with Disabilities Act, the Division may require additional accessibility improvements; and

(c) Any accessibility improvements made to accommodate an identified individual shall be in accordance with the specific needs of the individual.

(3) An accessible outdoor area is required and shall be made available to all individuals. For programs or portions thereof licensed on or after June 1, 1998, a portion of the accessible outdoor area shall be covered and have an all-weather surface such as a patio or deck.

(4) The setting shall have sufficient and safe storage areas that include but not limited to:

(a) Storage for a reasonable amount of individual belongings beyond that available in the individual's unit shall be provided appropriate to the size of the setting;

(b) All maintenance equipment including yard maintenance tools shall be maintained in adequate storage space. Equipment and tools that pose a danger to individuals shall be kept in locked storage; and

(c) Storage areas necessary to ensure a functional, safe, and sanitary environment consistent with OAR 309-035-0140 through 0155 and 309-035-0210 through 0215.

(5) For programs initially licensed on or after June 1, 1998, all individual use areas and individual units shall be accessible through temperature controlled common areas or hallways with a minimum width of 36 inches except that a minimum width of 48 inches shall be provided along the route to accessible bedrooms and bathrooms and between common areas and required exits.

(6) The setting shall have sufficient space for confidential storage of both individual service records and business records, for program staff use in completing record-keeping tasks, and for a telephone. Other equipment

including fire alarm panels and other annunciators shall be installed in an area readily accessible to staff in accordance with the Fire Code.

(7) The provider shall provide a unit for each individual, although the program may maintain units to be shared by more than one individual consistent with these rules. The unit shall include sleeping accommodations for the individual and be separated from other areas of the setting by an operable door with an approved latching device. The provider shall maintain units as follows:

(a) For programs licensed prior to June 1, 1998, units shall be a minimum of 60 square feet per resident and allow for a minimum of three feet between beds;

(b) For programs or portions thereof initially licensed on or after June 1, 1998, units shall be limited to one or two individuals. At least ten percent of units, but no less than one unit, shall be accessible for individuals with mobility disabilities. All units shall include a minimum of 70 square feet per individual exclusive of closets, vestibules, and bathroom facilities and allow a minimum of three feet between beds;

(c) The provider shall provide a lockable entrance door to each unit for the individual's privacy as follows:

(A) The locking device shall release with a single-action lever on the inside of the room and open to a hall or common-use room;

(B) The provider shall provide each individual with a personalized key that operates only the door to his or her unit from the corridor side;

(D) The provider shall maintain a master key to access all of the units that is easily and quickly available to the provider, program administrator, and appropriate program staff;

(E) The provider may not disable or remove a lock to a unit without obtaining consent from the individual or the individual's representative through the individually-based limitations process outlined in OAR 309-035-0195; and

(F) Section (7) of these rules are effective July 1, 2016 and enforceable as described in OAR 309-035-0115(17).

(d) A clothes closet with adequate clothes hanging rods shall be accessible within each unit for storage of each individual's clothing and personal belongings. For programs initially licensed on or after June 1, 1998, built-in closet space shall be provided totaling a minimum of 64 cubic feet for each individual. In an accessible unit, the clothes hanging rod height shall be adjustable or no more than 54 inches in height to ensure accessibility for an individual using a wheelchair; and

(e) Each unit shall have exterior windows with a combined area at least one-tenth of the floor area of the room. Unit windows shall be equipped with curtains or blinds for privacy and light control. For programs or portions of programs initially licensed on or after June 1, 1998, an escape window shall be provided consistent with building code requirements.

(8) Bathing and toilet facilities shall be conveniently located for individual use, provide permanently wired light fixtures that illuminate all parts of the room, provide individual privacy for individuals, provide a securely affixed mirror at eye level, be adequately ventilated, and include sufficient facilities specially equipped for use by individuals with a physical disability in buildings serving such individuals:

(a) In programs licensed prior to June 1, 1998, a minimum of one toilet and one lavatory shall be available for each eight individuals, and one bathtub or shower shall be available for each ten individuals; and

(b) In programs or portions of programs initially licensed on or after June 1, 1998, a minimum of one toilet and one lavatory shall be available for each six individuals, and a minimum of one bathtub or shower shall be available for each ten individuals, when these fixtures are not available in units. At least one centralized bathroom along an accessible route shall be designed for disabled access in accordance with Chapter 11 of the Oregon Structural Specialty Code.

(9) The setting shall include lounge and activity areas for social and recreational use by individuals, program staff and invited guests totaling no less than 15 square feet per individual.

(10) Laundry facilities shall be separate from food preparation and other individual use areas. When residential laundry equipment is installed, the laundry facilities may be located to allow for both individual and staff use. In programs initially licensed on or after June 1, 1998, separate residential laundry facilities shall be provided when the primary laundry facilities are located in another building, are of commercial type, or are otherwise not suitable for individual use. The following shall be included in the primary laundry facilities:

(a) Countertops or spaces for folding tables sufficient to handle laundry needs for the facility;

(b) Locked storage for chemicals and equipment;

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(c) Outlets, venting, and water hook-ups according to state building code requirements. Washers must have a minimum rinse temperature of 155 degrees Fahrenheit (160 degrees Fahrenheit recommended) unless a chemical disinfectant is used; and

(d) Sufficient storage and handling space to ensure that clean laundry is not contaminated by soiled laundry.

(11) Kitchen facilities and equipment in a setting may be of residential type except as required by the state building code and fire code or local agencies having jurisdiction. The setting's kitchen shall have the following:

(a) Dry storage space not subject to freezing in cabinets or a separate pantry for a minimum of one week's supply of staple foods;

(b) Sufficient refrigeration space for a minimum of two days' supply of perishable foods. The space shall be maintained at 45 degrees Fahrenheit or less and freezer space maintained at 0 degrees Fahrenheit or less;

(c) A dishwasher may be approved residential type with a minimum final rinse temperature of 155 degrees Fahrenheit (160 degrees recommended) unless chemical disinfectant is used;

(d) A separate food preparation sink and hand washing sink;

(e) Smooth, nonabsorbent and cleanable counters for food preparation and serving;

(f) Appropriate storage for dishes and cooking utensils designed to be free from potential contamination;

(g) Stove and oven equipment for cooking and baking needs; and

(h) Storage for a mop and other cleaning tools and supplies used for food preparation for dining and adjacent areas. Cleaning tools shall be maintained separately from those used to clean other parts of the setting.

(12) The setting shall have a separate dining room or an area where meals are served for use by individuals, employees, and guests:

(a) In programs licensed prior to June 1, 1998, the setting's dining area shall seat at least half of the individuals at one time with a minimum area of 15 square feet per individual; and

(b) In programs or portions of programs initially licensed on or after June 1, 1998, the setting's dining space shall seat all residents with a minimum area of 15 square feet per individual exclusive of serving facilities and required exit pathways.

(13) All details and finishes shall meet the finish requirements of applicable sections of the Building Code and the Fire Code as follows:

(a) Surfaces of all walls, ceilings, windows, and equipment shall be nonabsorbent and readily cleanable;

(b) The setting's, flooring, thresholds, and floor junctures shall be designed and installed to prevent a tripping hazard and to minimize resistance for passage of wheelchairs and other ambulation aids. In addition, hard surface floors and base shall be free from cracks and breaks, and bathing areas shall have non-slip surfaces;

(c) In programs or portions of programs initially licensed on or after June 1, 1998, all doors to units, bathrooms, and common use areas shall provide a minimum clear opening of 32 inches;

(d) In all programs:

(A) Lever type door hardware shall be provided on all doors used by individuals;

(B) Locks used on doors to individual units must be interactive to release with operation of the inside door handle and comply with the requirements established by OAR 309-035-0140(7)(c)(A)(B)(D)(E);

(C) Exit doors may not include locks that prevent evacuation except in accordance with building code and fire code requirements and with written approval of the Division; and

(D) An exterior door alarm or other acceptable system may be provided for security purposes and to alert staff when individuals or others enter or exit the setting.

(e) Handrails shall be provided on all stairways as specified in the Building Code.

(14) All areas of the setting shall be adequately ventilated and temperature controlled in accordance with the Mechanical and Building Code requirements:

(a) Each setting shall have and maintain heating equipment capable of maintaining a minimum temperature of 68 degrees Fahrenheit at a point three inches above the floor. During times of extreme summer heat, fans shall be made available when air conditioning is not provided;

(b) All toilet and shower rooms shall be adequately ventilated with a mechanical exhaust fan, window mounted exhaust fan, or central exhaust system that discharges to the outside;

(c) Where used, the design and installation of fireplaces, furnaces, wood stoves and boilers shall meet standards of the Oregon Mechanical Specialty Code and the Boiler Specialty Code, as applicable.

Documentation of annual inspection noting safe and proper operation shall be maintained at the setting; and

(d) In individual-use areas, hot water temperatures shall be maintained within a range of 110 to 120 degrees Fahrenheit. Hot water temperatures in laundry and kitchen areas shall be at least 155 degrees Fahrenheit.

(15) All wiring systems and electrical circuits shall meet the standards of Oregon Electrical Specialty Code in effect on the date of installation, and all electrical devices shall be properly wired and in good repair. The provider shall ensure the following:

(a) When not fully grounded, circuits in individual use areas shall be protected by GFCI type receptacles or circuit breakers as an acceptable alternative;

(b) A sufficient supply of electrical outlets shall be provided to meet individual and staff needs;

(c) No more than one power strip may be utilized for each electrical outlet;

(d) Connecting power strips to one another or use of other outlet expansion devices is prohibited;

(e) Extension cord use in units and common use rooms is prohibited;

(f) Lighting fixtures shall be provided in each individual unit and bathroom, switchable near the entry door and in other areas as required to meet task illumination; and

(g) Lighting fixtures that illuminate evacuation pathways shall be operable within ten seconds during a failure of the normal power supply and provide illumination for a period of at least two hours.

(16) All plumbing shall meet the Oregon Plumbing Specialty Code in effect on the date of installation, and all plumbing fixtures shall be properly installed and in good repair.

(17) The program shall provide adequate access to telephones for private use by individuals. The program shall not limit the hours of availability for phone use. A program may establish guidelines for fair and equal use of a shared telephone. Each individual or individual's representative shall be responsible for payment of long distance phone bills where the calls were initiated by the individual, unless other mutually agreed arrangements have been made.

(18) Smoking is not allowed within the setting including within buildings or on the grounds.

Stat. Auth.: ORS 413.042, 443.450

Stats. Implemented: ORS 413.032, 443.400 - 443.465 & 443.991

Hist.: MHD 9-1984(Temp), f. & ef. 12-10-84; MHD 9-1985, f. & ef. 6-7-85; MHD 4-1998, f. 5-21-98, cert. ef. 6-1-98; MHD 4-2005, f. & cert. ef. 4-1-05; MHS 13-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-035-0145

Safety

(1) The provider shall train all program staff in safety procedures prior to beginning their first regular shift. Every individual must be trained in individual safety procedures as soon as possible within the first 72 hours of residency.

(2) The program shall develop and implement a written procedure and disaster plan authorized by the State Fire Marshal or authorized representative. The plan shall cover such emergencies and disasters as fires, explosions, missing persons, accidents, earthquakes, and floods. The program shall post the plan by the phone and be immediately available to the program administrator and program staff. The plan shall include diagrams of evacuation routes, and these must be posted. The plan shall specify where staff and individuals will reside if the setting becomes uninhabitable. The program shall update the plan and shall include:

(a) Emergency instructions for employees;

(b) The telephone numbers of the local fire department, police department, the poison control center, the administrator, the administrator's designee, and other persons to be contacted in emergencies; and

(c) Instructions for the evacuation of individuals and employees.

(3) Noncombustible and nonhazardous materials shall be used whenever possible. When necessary to the operation of the facility, flammable and combustible liquids and other hazardous materials shall be safely and properly stored in clearly labeled, original containers in areas inaccessible to individuals in accordance with the Fire Code. Any quantities of combustible and hazardous materials maintained shall be the minimum necessary.

(4) Non-toxic cleaning supplies shall be used whenever available. Poisonous and other toxic materials shall be properly labeled and stored in locked areas distinct and apart from all food and medications.

(5) Evacuation capability categories are based upon the ability of the individuals and program staff as a group to evacuate the building or relocate from a point of occupancy to a point of safety. Buildings shall be constructed and equipped according to a designated evacuation capability for

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occupants. Categories of evacuation capability include “Impractical” (SR-2) or “Slow” (SR-1). The evacuation capability designated for the facility shall be documented and maintained in accordance with NFPA 101A:

(a) Only individuals assessed to be capable of evacuating in accordance with the designated facility evacuation capability shall be admitted to the program; and

(b) Individuals experiencing difficulty with evacuating in a timely manner shall be provided assistance from staff and offered environmental and other accommodations, as practical. Under such circumstances, the program shall consider increasing staff levels, changing staff assignments, offering to change the individual’s room assignment, arranging for special equipment, and taking other actions that may assist the individual. The program shall assist individuals who still cannot evacuate the building safely in the allowable period of time and shall assist with transferring to another facility with an evacuation capability designation consistent with the individual’s documented evacuation capability.

(6) The program shall ensure that every individual shall participate in an unannounced evacuation drill each month:

(a) At least once every three months, the program shall conduct a drill during individual sleeping hours between 10 p.m. and 6 a.m.;

(b) Drills shall be scheduled at different times of the day and on different days of the week with different locations designated as the origin of the fire for drill purposes;

(c) Any individual failing to evacuate within the established time limits shall be provided with special assistance and a notation made in the individual service record; and

(d) Written evacuation records shall be maintained for at least three years. They shall include documentation made at the time of the drill specifying the date and time of the drill, the location designated as the origin of the fire for drill purposes, the names of all individuals and staff present, the amount of time required to evacuate, notes of any difficulties experienced, and the signature of the staff person conducting the drill.

(7) All stairways, halls, doorways, passageways, and exits from rooms and from the building shall be unobstructed.

(8) The program shall provide and maintain one or more 2A10BC fire extinguishers on each floor in accordance with the Fire Code.

(9) Approved fire alarms and smoke detectors shall be installed according to Building Code and Fire Code requirements. These alarms shall be set off during each evacuation drill. The program shall provide appropriate signal devices for persons with disabilities who do not respond to the standard auditory alarms. All of these devices shall be inspected and maintained in accordance with the requirements of the State Fire Marshal or local agency having jurisdiction.

(10) The program shall install and maintain sprinkler systems compliant with the Building Code and maintained in accordance with rules adopted by the State Fire Marshal. The program shall maintain an automatic sprinkler system as follows:

(a) Programs initially licensed prior to July 1, 2016, are not required to install or maintain a sprinkler system if one were not present at the time of initial licensure;

(b) The Division recommends that all programs licensed prior to July 1, 2016, install and maintain sprinkler systems;

(c) Any program initially licensed on or after July 1, 2016, shall have and maintain a sprinkler system.

(11) The Division may not issue any variances addressing sprinkler systems in programs licensed on or after July 1, 2016.

(12) First aid supplies shall be readily accessible to staff. All supplies shall be properly labeled.

(13) Portable heaters are a recognized safety hazard and may not be used.

(14) The provider shall develop and implement a safety program to identify and prevent the occurrence of hazards at the facility. Such hazards may include, but are not limited to, dangerous substances, sharp objects, unprotected electrical outlets, use of extension cords or other special plug-in adapters, slippery floors or stairs, exposed heating devices, broken glass, inadequate water temperatures, overstuffed furniture in smoking areas, unsafe ashtrays and ash disposal, and other potential fire hazards.

Stat. Auth.: ORS 413.042, 443.450

Stats. Implemented: ORS 413.032, 443.400 - 443.465 & 443.991

Hist.: MHD 9-1984(Temp), f. & ef. 12-10-84; MHD 9-1985, f. & ef. 6-7-85; MHD 4-1998, f. 5-21-98, cert. ef. 6-1-98; MHD 4-2005, f. & cert. ef. 4-1-05; MHS 4-2008, f. & cert. ef. 6-12-08; MHS 13-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-035-0150

Sanitation

(1) The water supply in the facility shall meet the requirements of the current rules of Oregon Health Services governing domestic water supplies and:

(a) A municipal water supply shall be utilized if available; and

(b) When the facility is not served by an approved municipal water system and the facility qualifies as a public water system according to OAR 333-061-0020(127) Oregon Health Services rules for public water systems, then the provider shall comply with the OAR Chapter 333 rules of the Oregon Health Services pertaining to public water systems. These include requirements that the drinking water be tested for total coliform bacteria at least quarterly and nitrate at least annually and reported to Oregon Health Services. For adverse test results, these rules require that repeat samples and corrective action be taken to assure compliance with water quality standards, public notice be given whenever a violation of the water quality standards occurs, and records of water testing be retained according to the Oregon Health Services requirements.

(2) All floors, walls, ceilings, windows, furniture, and equipment shall be kept in good repair, clean, sanitary, neat, and orderly.

(3) Each bathtub, shower, lavatory, and toilet shall be kept clean, in good repair, and regularly sanitized.

(4) No kitchen sink, lavatory, bathtub, or shower shall be used for the disposal of cleaning waste water.

(5) Soiled linens and clothing shall be stored in an area or container separate from kitchens, dining areas, clean linens, clothing, and food.

(6) All necessary measures shall be taken to prevent rodents and insects from entering the setting. The provider shall take appropriate action to eliminate rodents or insects.

(7) The grounds of the setting shall be kept orderly and reasonably free of litter, unused articles, and refuse.

(8) Garbage and refuse receptacles shall be clean, durable, watertight, insect and rodent proof, and shall be kept covered with tight-fitting lids. All garbage and solid waste shall be disposed of at least weekly and in compliance with the current rules of the Department of Environmental Quality (DEQ).

(9) All sewage and liquid wastes shall be disposed of in a municipal sewage system where such facilities are available. If a municipal sewage system is not available, sewage and liquid wastes shall be collected, treated, and disposed of in compliance with the current rules of the DEQ. Sewage lines and septic tanks or other non-municipal sewage disposal systems shall be maintained in good working order.

(10) Biohazardous waste shall be disposed of in compliance with the rules of the DEQ.

(11) Precautions shall be taken to prevent the spread of infectious or communicable diseases as defined by the Centers for Disease Control and to minimize or eliminate exposure to known health hazards:

(a) Program staff shall employ universal precautions whereby all human blood and certain body fluids are treated if known to be infectious for HIV, HBV, and other blood borne pathogens.

(12) If pets or other household animals reside at the setting, sanitation practices shall be implemented to prevent health hazards:

(a) Animals shall be vaccinated in accordance with the recommendations of a licensed veterinarian. Documentation of vaccinations shall be maintained on the premises;

(b) Animals not confined in enclosures shall be under control and maintained in a manner that does not adversely impact individuals or others; and

(c) No live animal shall be kept or allowed in any portion of the setting where food is stored or prepared, except that aquariums and aviaries shall be allowed if enclosed so as not to create a public health problem.

Stat. Auth.: ORS 413.042 & 443.450

Stats. Implemented: ORS 443.400 - 443.465 & 443.991

Hist.: MHD 9-1984(Temp), f. & ef. 12-10-84; MHD 9-1985, f. & ef. 6-7-85; MHD 4-1998, f. 5-21-98, cert. ef. 6-1-98; MHD 4-2005, f. & cert. ef. 4-1-05; MHS 4-2008, f. & cert. ef. 6-12-08; MHS 13-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-035-0155

Individual Furnishings

(1) The program shall permit an individual to use the individual’s own furniture within space limitations of the individual’s unit. Otherwise, furniture shall be provided or arranged for each individual, maintained in good repair, and include the following:

(a) A bed including a frame and a clean mattress and pillow;

(b) A private dresser or similar storage area for personal belongings that is readily accessible to the individual; and

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(c) Locked storage for the individual's small, personal belongings. For programs initially licensed before June 1, 1998, this locked storage may be provided in a place other than the Individual's unit. The provider shall provide the individual with a key or other method to gain access to her locked storage space.

(2) The program shall provide linens for each individual and shall include the following:

(a) Sheets, pillowcase, other bedding appropriate to the season and the individual's comfort;

(b) Availability of a waterproof mattress or waterproof mattress cover; and

(c) Towels and washcloths.

(3) The provider shall assist each individual in obtaining personal hygiene items in accordance with individual needs. These shall be stored in a clean and sanitary manner and may be purchased with the individual's personal allowance. Personal hygiene items include, but are not limited to, a comb and hairbrush, a toothbrush, toothpaste, and menstrual supplies (if needed).

(4) The provider shall provide sufficient supplies of soap, shampoo, and toilet paper for all individuals.

(5) An adequate supply of furniture for individual use in living room, dining room, and other common areas shall be maintained in good condition.

Stat. Auth.: ORS 413.042 & 443.450
Stats. Implemented: ORS 443.400 - 443.465 & 443.991
Hist.: MHD 9-1984(Temp), f. & ef. 12-10-84; MHD 9-1985, f. & ef. 6-7-85; MHD 4-1998, f. 5-21-98, cert. ef. 6-1-98; MHD 4-2005, f. & cert. ef. 4-1-05; MHS 5-2009, f. & cert. ef. 12-17-09; MHS 13-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-035-0157

Individual Grievances and Appeals

(1) Procedures. The provider must develop and implement a written policy and procedures concerning the individual grievance and appeal process. A copy of the grievance and appeal process will be posted in a place readily accessible to individuals. A copy of the grievance and appeal process will be provided to each individual and guardian (as applicable) at the time of admission to the program.

(2) Grievances. A provider's process for grievances must, at a minimum, include the following:

(a) Individuals will be encouraged to informally resolve complaints through discussion with program staff.

(b) If the individual is not satisfied with the informal process or does not wish to use it, the individual may proceed as follows:

(A) The individual may submit a complaint in writing to the Program Administrator. The individual may receive assistance in submitting the complaint from any person whom the individual chooses. If requested by the individual, program staff will be available to assist the individual.

(B) The written complaint will go directly to the program administrator without being read by other program staff, unless the individual requests or permits other program staff to read the complaint.

(C) The complaint will include the reasons for the grievance and the proposed resolutions. No complaint will be disregarded because it is incomplete.

(D) Within five days of receipt of the complaint, the individual, the program administrator must meet with the individual to discuss the complaint. The individual may have an advocate or other person of his/her choosing present for this discussion.

(E) Within five days of meeting with the individual, the program administrator must provide a written decision to the individual. As part of the written decision, the program administrator will provide information about the appeal process.

(F) In circumstances where the matter of the complaint is likely to cause irreparable harm to a substantial right of the individual before the grievance procedures outlined in OAR 309-035-0157(2)(b)(D) and (E) are completed, the individual may request an expedited review. The program administrator will review and respond in writing to the grievance within 48 hours. The written decision will include information about the appeal process.

(3) Appeals. An individual, an individual's legal representative (as applicable) and a prospective individual (as applicable) will have the right to appeal admission, termination and grievance decisions as follows:

(a) If the individual is not satisfied with the decision, the individual may file an appeal in writing within ten days of the date of the program administrator's decision to the complaint or notification of admission denial or termination (as applicable).

(b) If program services are delivered by a person or entity other than the Division, the appeal will be submitted to the CMHP Director or designee in the county where the program is located.

(A) The individual may receive assistance in submitting the appeal. If requested by the individual, program staff will be available to assist the individual.

(B) The CMHP Director or designee will provide a written decision within ten days of receiving the appeal.

(C) If the individual is not satisfied with the CMHP Director's decision, the individual may file a second appeal in writing within ten days of the date of the CMHP Director's written decision to the Deputy Director of the Division or designee. The decision of the Deputy Director of the Division will be final.

(c) If program services are delivered by the Division, the appeal will be submitted to the Deputy Assistant Director or designee.

(A) The individual may receive assistance in submitting the appeal. If requested by the individual, program staff will be available to assist the individual.

(B) The Deputy Director or designee will review and approve or deny the appeal.

(C) The Division will notify the individual of the decision in writing within 10 days after receipt of the appeal.

(D) If the individual is not satisfied with the Deputy Assistant Director's or designee's decision, the individual may submit a second appeal in writing within ten days of the date of the written decision to the Assistant Director of the Division. The decision of the Assistant Director of the Division will be final.

Stat. Auth.: ORS 413.042, 443.450
Stats. Implemented: ORS 413.032, 443.400 - 443.460 & 443.991(2)
Hist.: MHD 4-1998, f. 5-21-98, cert. ef. 6-1-98; MHD 4-2005, f. & cert. ef. 4-1-05; MHS 4-2008, f. & cert. ef. 6-12-08; MHS 13-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; Suspended by MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-035-0159

Individual Assessment and Residential Service Plan

(1) Assessment. The program must complete an assessment for each individual within 14 days after admission to the program, unless admitted to the program for crisis-respite services.

(a) The assessment must be based upon an interview with the individual to identify strengths, preferences and service needs; observation of the individual's capabilities within the residential setting; a review of information in the individual service record; and contact with representatives of other involved agencies, family members and others, as appropriate. All contacts with others will be made with proper authorization for the release of information.

(b) Assessment findings must be summarized in writing and included in the individual service record. Assessment findings must include, but not be limited to, diagnostic and demographic data; identification of the individual's medical, physical, emotional, behavioral and social strengths, preferences and needs related to independent living and community functioning; and recommendations for residential service plan goals.

(c) The provider must provide assessment findings to the person centered service plan coordinator to assist in the development of the person centered service plan.

(2) Person centered service plan assessment. Within 30 days of the date of admission the person centered service plan coordinator, under contract with the Division, and assigned to the individual or program site will schedule and conduct an assessment of the individual for the purpose of developing a Person Centered Service Plan. The provider must support the person centered service plan coordinator efforts to develop the plan and provide information as necessary.

(3) Residential Service Plan. The provider must develop and implement an individualized plan, for the purpose of implementing and documenting the provision of services as well as any individualized limitations contained within the Person Centered Service Plan, identifying the goals to be accomplished through the services provided, will be prepared for each individual, unless admitted to the facility for crisis-respite services, within 30 days after admission.

(a) The residential service plan must be based upon the findings of the individual assessment, be developed with participation of individual and the individual's representative (as applicable), and be developed through collaboration with the individual's primary mental health treatment provider. With consent of the individual or the individual's representative (as applicable), family members, representatives from involved agencies, and others with an interest in the individual's circumstances must be invited to participate. All contacts with others will be made with proper, prior authorization from the individual.

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(b) The residential service plan must include the following:

(A) Set out necessary steps and actions of the provider for the implementation and provision of services consistent and as required by the Person Centered Service Plan;

(B) Identify the individual's service needs, desired outcomes and service strategies to address the following: physical and medical needs, medication regimen, self-care, social-emotional adjustment, behavioral concerns, independent living capability and community navigation, all areas identified in the Person Centered Service Plan, and any other areas.

(c) The residential service plan must be signed by the individual, the individual's representative (as applicable), the program administrator or other designated program staff person, and others, as appropriate, to indicate mutual agreement with the course of services outlined in the plan.

(d) The provider must attach the Residential Service Plan to the Person Centered Service Plan as an addendum.

(4) Crisis-respite Assessment and Residential Service Plan Requirements. For an individual admitted to a program for 30 days or less for the purpose of receiving crisis-respite services, an assessment and residential service plan must be developed within 48 hours of admission which identifies service needs, desired outcomes and the service strategies to be implemented to resolve the crisis or address other needs of the individual that resulted in the short term service arrangement.

(5) Progress Notes. The provider must maintain progress notes within each individual's service record and documenting significant information relating to all aspects of the individual's functioning and progress toward desired outcomes identified in the residential service plan. The provider must enter a progress note will be entered in the individual's record at least once each month.

(6) Re-assessments and Revisions to the Residential Service Plan. The provider must review and update the assessment and residential service plan will be reviewed and updated at least annually. On an ongoing basis, the provider must update the residential service plan will be updated, as necessary, based upon changing circumstances or upon the individual's request for reconsideration.

Stat. Auth.: ORS 413.042, 443.450

Stats. Implemented: ORS 413.032, 443.400 - 443.455 & 443.991(2)

Hist.: MHD 4-1998, f. 5-21-98, cert. ef. 6-1-98; MHD 4-2005, f. & cert. ef. 4-1-05; MHS 13-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; Suspended by MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-035-0163

Admission to Program

(1) The provider shall ensure the admission process includes the following:

(a) The provider shall specify in its admission policy and procedures the program staff responsible for each component of the admission information-gathering and decision-making process. The program shall allocate responsibilities to promote effective processing of referrals and admissions;

(b) The provider shall develop and implement admission policies and procedures that support a prospective individual's right to select and choose from available service settings;

(c) The provider shall support the individual's right to select a program by assisting the person-centered service plan coordinator in identifying and documenting program options in the person-centered service plan including providing information regarding program services and rates; and

(d) The provider may close admissions to the program when accepting an additional prospective individual may cause the program to exceed its reasonable waitlist. When admissions are closed, the provider is not required to accept referrals, conduct screenings, or evaluate admissions criteria as directed by these rules.

(2) Unless limited by contractual agreement with the Division or other Division-approved party, the program may accept referrals from a variety of sources.

(3) In accordance with ORS 179.505 and the 42 CFR, Part 2, the program shall obtain an authorization for the release of information for disclosure for any confidential information concerning a prospective individual.

(4) The provider shall consider an individual for admission without regard to race, color, sex or sexual orientation, except as may be limited by room arrangement, religion, creed, national origin, age, except under 18 years, familial status, marital status, source of income, or disability in addition to the mental health disorder.

(5) Prior to accepting an individual for admission to the program, the program administrator shall determine that the individual meets admission criteria including the following:

(a) The provider shall offer each individual referred for placement at the program an opportunity to participate in a screening interview prior to being accepted or denied placement at a program. The screening is intend-

ed to provide information about the program and the services available as well as to obtain information from the prospective individual, a relative, and agencies currently providing services to the individual sufficient to determine eligibility for admission and service needs; and

(b) The provider shall receive screening packets for each individual referred for placement. At a minimum, screening packets shall include:

(A) Written documentation that the prospective individual has or is suspected of having a mental health disorder;

(B) Background information including a mental health assessment, description of previous living arrangements, service history, behavioral issues, and service needs;

(C) Medical information including a brief history of any health conditions, documentation from a Licensed Medical Professional or other qualified health care professional of the individual's current physical condition, and a written record of any current or recommended medications, treatments, dietary specifications, and aids to physical functioning;

(D) Copies of documents or other documentation relating to guardianship, conservatorship, commitment status, advance directives, or any other legal restrictions;

(E) A copy of the prospective individual's most recent mental health treatment plan or in the case of an emergency or crisis-respite admission a summary of current mental health treatment involvement; and

(F) Documentation of the prospective individual's ability to evacuate the building consistent with the facility's designated evacuation capability and other concerns about potential safety risks.

(c) The provider shall ensure that screenings be conducted at the prospective program setting unless:

(A) Travel arrangements cannot be made due to inclement weather; or

(B) The individual or representative requests a phone screening or screening at the individual's current location.

(d) The provider shall make contact with the referring agency for the purpose of scheduling a screening appointment within 48 hours of receipt of the referral packet;

(e) The provider shall coordinate with the referring agency to schedule a screening appointment to occur within 14 calendar days from the date of receipt of the referral packet;

(f) The provider shall provide the following to each individual referred for placement:

(A) Materials explaining conditions of residency;

(B) Services available to individuals residing in the program; and

(C) An opportunity to meet with a prospective roommate if the program uses a shared room model.

(g) The screening meeting shall include the program administrator, the prospective individual, and the individual's representative. With the prospective individual's consent, the meeting may also include family members, other representatives as appropriate, representatives of relevant service-providing agencies, and others with an interest in the individual's admission.

(6) If an individual is referred for emergency or crisis-respite admission, an amended or abbreviated screening process may be used to more quickly meet the needs of individuals seeking placement. Screening and admission information obtained may be less comprehensive than for regular admissions but shall be sufficient to determine that the individual meets admission criteria and that the setting and program is appropriate considering the individual's needs. The program shall document the reasons for incomplete information.

(7) Prior to admission, the provider shall evaluate and determine whether a prospective individual is eligible for admission based on the following criteria. The individual shall:

(a) Be assessed to have a mental health disorder or a suspected mental health disorder;

(b) Be at least 18 years of age;

(c) Not require continuous nursing care unless a reasonable plan to provide the care exists, the need for residential treatment supersedes the need for nursing care, and the Division approves the placement;

(d) Have evacuation capability consistent with the setting's SR occupancy classification; and

(e) Meet additional criteria required or approved by the Division through contractual agreement or condition of licensing.

(8) The provider may deny an individual admission to its program for the following reasons:

(a) Failure to meet admission criteria established by these rules;

(b) Inability to pay for services due to lack of presumed Medicaid eligibility or other funds;

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(c) Documented instances of behaviors within the last 14 calendar days that would pose a reasonable and significant risk to the health, safety, and well-being of the individual or another individual, if the individual is admitted;

(d) Lack of availability of necessary services required to maintain the health and safety of the individual (no nursing, etc.) or lack of an opening at the setting; or

(e) Individual declines the offer for screening;

(9) The provider may not deny an individual admission to its program as follows:

(a) Prior to offering a face-to-face screening or other screening process as allowed by these rules; or

(b) Due to county of origin, responsibility, or residency.

(10) The provider's admission decision shall be made as follows:

(a) The program's decision shall be based on review of screening materials, information gathered during the face-to-face screening meeting, and evaluation of the admission criteria;

(b) The program shall inform the prospective individual and the individual's representative of the admission decisions within 72 hours of the screening meeting;

(c) When the program denies admission, the program shall inform the applicant, the individual's representative, and the referring entity in writing of the basis for the decision and the individual's right to appeal the decision;

(d) When the program approves admission, the program shall inform the applicant, the individual's representative, and the referring entity through an acceptance notification that shall include:

(A) When not waitlisted or first on the waitlist, an estimated date of admission;

(B) When waitlisted, the number on the waitlist.

(11) Management of waitlists includes the following:

(a) The program shall establish admissions waitlists of reasonable length;

(b) The program shall document actions taken in the management of the waitlist;

(c) The program shall contact a waitlisted individual, the individual's representative, and the referring entity monthly to determine if the individual has been placed elsewhere;

(d) The program shall prioritize admissions on a waitlist as follows:

(A) The program shall give first priority to those individuals under current civil commitment or under the jurisdiction of the Psychiatric Security Review Board and seeking to transition from the Oregon State Hospital or other hospital level of care into the community;

(B) The program shall give second priority for admission to individuals seeking admission to programs as an alternative to or to prevent civil commitment or placement at the Oregon State Hospital or for the purpose of transitioning from a program or a secure residential treatment facility;

(e) The program shall determine priority for admission based on the priorities described above and on a first-come first-served basis. The program may not take into account the individual's county of origin, responsibility, or residency;

(f) Within 72 hours of a provider learning of a pending opening, the program shall notify the first individual on the waitlist, the individual's representative, and the referring entity of the expected opening. The individual shall respond within three business days of the provider's notification. If any of the following occurs, the program may offer the opening to the next individual on the wait list:

(A) The program receives no response from the individual, the individual's representative, or the referring entity within three business days;

(B) The individual will not be ready to transition into the program within one week; or

(C) The individual no longer desires placement at the program.

(12) The program shall obtain informed consent for services from the individual or representative prior to admission to the program unless the individual's ability to consent is legally restricted.

(13) Upon admission, the program administrator shall provide and document an orientation to each new individual that includes, but is not limited to, the following:

(a) A complete tour of the setting;

(b) Introductions to other individuals and program staff;

(c) Discussion of house rules;

(d) Explanation of the laundry and food service schedule and policies;

(e) Review of the individual's rights;

(f) Review of grievance procedures;

(g) Completion of a residency agreement;

(h) Discussion of the conditions under which residency would be terminated;

(i) General description of available services and activities;

(j) Review and explanation of advance directives. If the individual does not already have any advance directives, the program shall provide an opportunity to complete advanced directives;

(k) Emergency procedures in accordance with OAR 309-035-0145(2);

(L) Review of the person-centered planning process; and

(m) Review of the process for imposing individually-based limitations on certain program obligations to the individual.

Stat. Auth.: ORS 413.042, 443.450

Stats. Implemented: ORS 413.032, 443.400 - 443.465 & 443.991

Hist.: MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-035-0165

Residency Agreement

This rule becomes effective July 1, 2016, and enforceable as described in OAR 309-035-0115(17).

(1) The provider shall enter into a written residency agreement with each individual or representative and be admitted to the program consistent with the following procedures:

(a) The written residency agreement shall be signed by the program administrator and the individual or representative prior to or at the time of admission;

(b) The provider shall provide a copy of the signed agreement to the individual or representative, and the provider shall retain the original signed agreement in the individual's service record;

(c) The provider shall give written notice to an individual or representative at least 30 calendar days prior to any general rate increases, additions, or other modifications of the rates; and

(d) The provider shall update residency agreements at least annually and also when social security rates change or an individual's finances change such that the amount paid for room and board changes.

(2) The residency agreement shall include, but is not limited to, the following:

(a) The room and board rate describing the estimated public and private pay portions of the rate:

(A) When an individual's social security or other funding is not active at the time of admission to the program, the program shall prepare the room and board agreement based upon the estimated benefit to be received by the individual; and

(B) If, when funding is later activated, actual income of the individual varies from the estimated income noted on the residency agreement, the agreement shall be updated and resigned by all the applicable parties.

(b) Services and supports provided in exchange for payment of the room and board rate;

(c) Conditions under which the program may change the rates;

(d) The provider's refund policy in instances of an individual's hospitalization, death, transfer to a nursing facility or other care facility, and voluntary or involuntary move from the program;

(e) A statement indicating that the individual is not liable for damages considered normal wear and tear;

(f) The program's policies on voluntary moves and whether written notification of a non-Medicaid individual's intent to not return is required;

(g) The potential reasons for involuntary termination of residency in compliance with this rule and individual's rights regarding the eviction and appeal process as described in OAR 309-035-0183(3);

(h) Any policies the program may have on the presence and use of alcohol, cannabis, and illegal drugs of abuse;

(i) Policy regarding tobacco smoking in compliance with the Tobacco Freedom Policy established by the Division;

(j) Policy addressing pet and service animals. The program may not restrict animals that provide assistance or perform tasks for the benefit of a person with a disability. These animals are often referred to as service animals, assistance animals, support animals, therapy animals, companion animals, or emotional support animals;

(k) Policy regarding the presence and use of legal medical and recreational marijuana at the setting;

(L) The provider may not schedule meals with more than a 14-hour span between the evening meal and the following morning's meal (see, OAR 411-050-0645);

(m) Policy regarding refunds for residents eligible for Medicaid services, including pro-rating partial months and if the room and board payment is refundable;

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(n) Any house rules or social covenants required by the program that may be included in the document or as an addendum;

(o) Statement informing the individual of the freedoms authorized by 42 CFR 441.301(c)(2)(xiii) & 42 CFR 441.530(a)(1)(vi)(F) that may not be limited without the informed, written consent of the individual or the legal representative and include the right to the following:

(A) Live under a legally enforceable agreement with protections substantially equivalent to landlord-tenant laws;

(B) The freedom and support to access food at any time;

(C) To have visitors of the individual's choosing at any time;

(D) Have a lockable door in the individual's unit that may be locked by the individual;

(E) Choose a roommate when sharing a unit;

(F) Furnish and decorate the individual's unit according to the Residency Agreement;

(G) The freedom and support to control the individual's schedule and activities; and

(H) Privacy in the individual's unit.

(3) The provider may not propose or enter into a residency agreement that:

(a) Charges or asks for application fees, refundable deposits, or non-refundable deposits;

(b) Includes any illegal or unenforceable provisions or ask or require an individual to waive any of the individual's rights or the provider's liability for negligence; or

(c) Conflicts with individual rights or these rules.

Stat. Auth.: ORS 413.042, 443.450

Stats. Implemented: ORS 413.032, 443.400 - 443.465 & 443.991

Hist.: MHD 9-1984(Temp), f. & ef. 12-10-84; MHD 9-1985, f. & ef. 6-7-85; MHD 4-1998, f. 5-21-98, cert. ef. 6-1-98; MHD 4-2005, f. & cert. ef. 4-1-05; MHS 4-2008, f. & cert. ef. 6-12-08; MHS 13-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-035-0167

Use of Seclusion or Restraints

(1) General Prohibition. The use of seclusion or restraints is prohibited, except in SRTFs with the Division's approval.

(2) Approval of Use in Secure Residential Treatment Facilities. A SRTF provider or applicant may submit an application to the Division for approval to use seclusion or restraints pursuant to OAR 309-033-0700 through 309-033-0740. Approval by the Division will be based upon the following:

(a) A determination that the individuals served, or proposed to be served, have a history of behavioral concerns involving threats to the safety and well-being of themselves or others;

(b) The applicant demonstrates that the availability of seclusion or restraints is necessary to safely accommodate individuals who would otherwise be unable to experience a community residential program; and

(c) The applicant demonstrates an ability to comply with OAR 309-033-0700 through 309-033-0740 and 309-033-0500 through 309-033-0560. These rules include special requirements for staffing, training, reporting, policies and procedures, and the setting's physical environment.

(3) Conditions of Use. Seclusion or restraints may only be used in an approved SRTF when an emergency occurs in accordance with OAR 309-033-0700 through 309-033-0740 and 309-033-0500 through 309-033-0560. In such emergency situations, seclusion and restraint will be used as a last resort behavior management option after less restrictive behavior management interventions have failed, or in the case of an unanticipated behavioral outburst, to ensure safety within the program. An approved SRTF must implement policies and procedures approved by the Division outlining the circumstances under which seclusion or restraints may be used and the preventive measures to be taken before such use. All incidents involving the use of seclusion or restraints will be reported to the Division. To use seclusion or restraints with an individual who is not in state custody under a civil commitment proceedings, the individual must be placed on a hold.

Stat. Auth.: ORS 413.042, 443.450

Stats. Implemented: ORS 413.032, 443.400 - 443.460 & 443.991(2)

Hist.: MHD 4-1998, f. 5-21-98, cert. ef. 6-1-98; MHD 4-2005, f. & cert. ef. 4-1-05; MHS 4-2008, f. & cert. ef. 6-12-08; MHS 13-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; Suspended by MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-035-0170

Food Services

(1) Each provider's termination policy and procedure shall designate the program staff responsible for each step of the process for terminating residency. The provider shall designate responsibilities organized and assigned to promote a fair and efficient termination process. Unless otherwise designated as a condition of licensing or in contract language

approved by the Division, the program administrator shall be responsible for initiating and coordinating termination proceedings. The provider shall make reasonable efforts to prevent unnecessary terminations by making reasonable accommodations within the program and setting.

(2) A resident or guardian may terminate residency in a facility upon providing at least 30-days' notice. Upon mutual agreement between the administrator and the resident or guardian, less than 30 days' notice may be provided.

(3) If an individual's behavior poses a serious and immediate threat to the health or safety of others in or near the program or setting, the program administrator after providing 24 hours written notice to the individual or representative specifying the causes may immediately terminate the residency. The notice shall specify the individual's right to appeal the emergency termination decision in accordance with OAR 309-035-0183(3).

(4) When other circumstances arise providing grounds for termination of residency under this section, the program administrator shall discuss these grounds with the individual, or representative, and with the individual's permission other individuals with an interest in the individual's circumstances. If a decision is made to terminate residency, the program administrator shall provide at least 30 days' written notice specifying the causes to the individual or representative. This notice shall also specify the individual's right to appeal the termination decision in accordance with OAR 309-035-0183(3). Upon mutual agreement between the program administrator and the individual's representative, termination may occur with less than 30 days' notice. The program shall make reasonable efforts to establish a reasonable termination date in consideration of both the program's needs and the individual's need to find alternative living arrangements. Grounds for termination include the following:

(a) The individual no longer needs or desires services provided by the program and expresses a desire to move to an alternative setting;

(b) The individual is assessed by a Licensed Medical Professional or other qualified health professional to require services such as continuous nursing care or extended hospitalization that are not available or cannot be reasonably arranged at the facility;

(c) The individual's behavior is continuously and significantly disruptive or poses a threat to the health or safety of self or others, and these behavioral concerns cannot be adequately addressed with services available at the setting or services that can be arranged outside of the program setting;

(d) The individual cannot safely evacuate the setting in accordance with the setting's SR Occupancy Classification after efforts described in OAR 309-035-0145(5)(b) have been taken;

(e) Nonpayment of fees in accordance with program's fee policy; and

(f) The individual continuously and knowingly violates house rules resulting in significant disturbance to others.

(5) Except in the case of emergency terminations or crisis-respite services, a pre-termination meeting shall be held with the individual, the individual's representative, and with the individual's permission, others interested in the individual's circumstances. The purpose of the meeting is to plan any arrangements necessitated by the termination decision. The meeting shall be scheduled to occur at least two weeks prior to the termination date. In the event a pre-termination meeting is not held, the reason shall be documented in the individual service record.

(6) Documentation of discussions and meetings held concerning termination of residency and copies of notices shall be maintained in the individual service record.

(7) At the time of termination of residency the individual shall be given a statement of account, any balance of funds held by the program, and all property held in trust or custody by the program as in the following:

(a) In the event of pending charges, the program may withhold the amount of funds anticipated to cover the pending charges. Within 30 days after residency is terminated or as soon as pending charges are confirmed, the program shall provide the individual with a final financial statement along with any funds due to the individual; and

(b) In the case of an individual's property being left at the setting for longer than seven days after termination of residency, the program shall make a reasonable attempt to contact the individual or representative. The program shall allow the individual or representative at least 15 days to make arrangements concerning the property. If the program determines that the individual has abandoned the property, the program may then dispose of the property. If the property is sold, proceeds of the sale minus the amount of any expenses incurred and any amounts owed the program by or on behalf of the individual shall be forwarded to the individual or representative.

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(8) Because crisis-respite services are time-limited, the planned end of services may not be considered a termination of residency and subject to requirements in OAR 309-035-0170(2)(4)(5). Upon admission to crisis-respite services the individual or individual's representative shall be informed of the planned date for discontinuation of services. This date may be extended through mutual agreement between the program administrator and the individual or representative. A program providing crisis-respite services shall implement policies and procedures that specify reasonable time frames and the grounds for discontinuing crisis-respite services earlier than the date planned.

(9) If an individual moves out of the setting without providing notice or is absent without notice for more than seven consecutive days, the provider may terminate residency in the manner provided in ORS 105.105 to 105.168 after seven consecutive days of the individual's absence. The provider shall make an attempt to contact the individual or representative and others interested in the individual's circumstances to confirm the individual's intent to discontinue residency.

Stat. Auth.: ORS 413.042, 443.450

Stats. Implemented: ORS 413.032, 443.400 - 443.465 & 443.991

Hist.: MHD 9-1984(Temp), f. & ef. 12-10-84; MHD 9-1985, f. & ef. 6-7-85; MHD 4-1998, f. 5-21-98, cert. ef. 6-1-98; MHD 4-2005, f. & cert. ef. 4-1-05; MHS 4-2008, f. & cert. ef. 6-12-08; MHS 13-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; Suspended by MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17; MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-035-0175

Individual Rights

(1) Each individual shall be assured the same civil and human rights accorded to other citizens. These rights shall be assured unless expressly limited by a court in the case of an individual who has been adjudicated incompetent and not restored to legal capacity. The rights described in paragraphs (2) and (3) of this section are in addition to and do not limit all other statutory and constitutional rights that are afforded to all citizens including, but not limited to, the right to vote, marry, have or not have children, own and dispose property, enter into contracts and execute documents.

(2) A provider shall actively work to support and ensure each individual's rights described in this rule are not limited or infringed upon by the provider except where expressly allowed under these rules.

(3) The provider shall ensure that individuals receiving mental health services have the rights set forth in ORS 430.210:

(4) An individual also has a right to the following:

(a) Adequate food, shelter, and clothing;

(b) A reasonable accommodation if, due to their disability, the housing and services are not sufficiently accessible;

(c) Confidential communication including receiving and opening personal mail, private visits with family members and other guests, and access to a telephone with privacy for making and receiving telephone calls;

(d) Express sexuality in a socially appropriate and consensual manner;

(e) Access to community resources including recreation, religious services, agency services, employment, and day programs unless such access is legally restricted;

(f) Be free from seclusion and restraint except as outlined in OAR 309-035-0205.

(g) To review the program's policies and procedures; and

(h) Not participate in research without informed voluntary written consent.

(5) An individual also has the following HCBS rights:

(a) Live under a legally enforceable residency agreement in compliance with protections substantially equivalent to landlord-tenant laws as described in this rule;

(b) Have visitors of the individual's choosing at any time and the freedom to visit with guests within the common areas of the setting and the individual's unit;

(c) The freedom and support to control the individual's own schedule and activities including but not limited to accessing the community without restriction;

(d) Have a lockable door in the individual's unit that may be locked by the individual, and only appropriate program staff have a key to access the unit;

(e) A choice of roommates when sharing a unit;

(f) Furnish and decorate the individual's unit according to the Residency Agreement;

(g) The freedom and support to have access to food at any time;

(h) Privacy in the individual's unit; and

(i) Section (5) of this rule are effective July 1, 2016, and OAR 309-035-0115(17).

(6) An SRTF is not required to maintain the qualities or obligations identified in section (5) (b), (c), (d), (e) and (h). The provider is not required to seek an individually-based limitation to comply with these rules.

(7) A provider is not required to comply with section (5) (a) of this rule when providing an individual with crisis-respite services. The provider is not required to seek an individually-based limitation for such an individual to comply with these rules.

(8) For the purpose of this section, these terms have the following meanings:

(a) "Fresh air" means the inflow of air from outside the facility where the individual is receiving services. "Fresh air" may be accessed through an open window or similar method as well as through access to the outdoors;

(b) "Outdoors" means an area with fresh air that is not completely enclosed overhead. "Outdoors" may include a courtyard or similar area;

(c) If an individual requests access to fresh air and the outdoors or the individual's treating health care provider determines that fresh air or the outdoors would be beneficial to the individual, the program in which the individual is receiving services shall provide daily access to fresh air and the outdoors unless this access would create a significant risk of harm to the individual or others;

(d) The determination whether a significant risk of harm to the individual or others exists shall be made by the individual's treating health care provider. The treating health care provider may find that a significant risk of harm to the individual or others exists if:

(A) The individual's circumstances and condition indicate an unreasonable risk of harm to the individual or others that cannot be reasonably accommodated within existing programming should the individual be allowed access to fresh air and the outdoors; or

(B) The program's existing physical setting or existing staffing prevent the provision of access to fresh air and the outdoors in a manner that maintains the safety of the individual or others.

(e) If a provider determines that its existing physical setting prevents the provision of access to fresh air and the outdoors in a safe manner, the provider shall make a good faith effort at the time of any significant renovation to the physical setting that involves renovation of the unit or relocation of where individuals are treated to include changes to the physical setting or location that allows access to fresh air and the outdoors, so long as such changes do not add an unreasonable amount to the cost of the renovation.

(9) The program shall have and implement written policies and procedures that protect individuals' rights and encourage and assist individuals to understand and exercise their rights. The program shall post a listing of individual rights under these rules in a place readily accessible to all individuals and visitors.

Stat. Auth.: ORS 413.042, 443.450

Stats. Implemented: ORS 413.032, 443.400 - 443.465 & 443.991

Hist.: MHD 9-1984(Temp), f. & ef. 12-10-84; MHD 9-1985, f. & ef. 6-7-85; MHD 4-1998, f. 5-21-98, cert. ef. 6-1-98; MHD 4-2005, f. & cert. ef. 4-1-05; MHS 13-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-035-0183

Individual Grievances and Appeals

(1) The provider shall develop and implement written policies and procedures concerning the grievance and appeal process. A copy of the grievance and appeal process shall be posted in a place readily accessible to individuals. A copy of the grievance and appeal process shall be provided to each individual at the time of admission to the program.

(2) A provider's process for grievances shall, at a minimum, include the following:

(a) Individuals shall be encouraged to informally resolve complaints through discussion with program staff; and

(b) If the individual is not satisfied with the informal process or does not wish to use it, the individual may proceed as follows:

(A) The individual may submit a complaint in writing to the program administrator. The individual may receive assistance in submitting the complaint from any person whom the individual chooses. If requested by the individual, program staff shall be available to assist the individual;

(B) The written complaint shall go directly to the program administrator without being read by other program staff unless the individual requests or permits other program staff to read the complaint;

(C) The complaint shall include the reasons for the grievance and the proposed resolutions. No complaint shall be disregarded because it is incomplete;

(D) Within five days of receipt of the complaint, the program administrator shall meet with the individual to discuss the complaint. The individual may have an advocate or other person of their choosing present for this discussion;

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(E) Within five days of meeting with the individual, the program administrator shall provide a written decision to the individual. As part of the written decision, the program administrator shall provide information about the appeal process; and

(F) In circumstances where the matter of the complaint is likely to cause irreparable harm to a substantial right of the individual before the grievance procedures outlined in OAR 309-035-0183 are completed, the individual may request an expedited review. The program administrator shall review and respond in writing to the grievance within 48 hours. The written decision shall include information about the appeal process.

(3) An individual, an individual's legal representative, the Division or other Division-approved party, and an applicant shall have the right to appeal admission, termination, and grievance decisions as follows:

(a) If the individual is not satisfied with the decision, the individual may file an appeal in writing within ten days of the date of the program administrator's decision to the complaint or notification of admission denial or termination; and

(b) If program services are delivered by a person or entity other than the Division, the appeal shall be submitted to the CMHP director or designee in the county where the program is located:

(A) The individual may receive assistance in submitting the appeal. If requested by the individual, program staff shall be available to assist the individual;

(B) The CMHP director or designee shall provide a written decision within ten days of receiving the appeal; and

(C) If the individual is not satisfied with the CMHP director's decision, the individual may file a second appeal in writing within ten days of the date of the CMHP director's written decision to the deputy director of the Division or designee. The decision of the deputy director of the Division shall be final.

(c) If program services are delivered by the Division, the appeal shall be submitted to the deputy assistant director or designee:

(A) The individual may receive assistance in submitting the appeal. If requested by the individual, program staff shall be available to assist the individual;

(B) The deputy director or designee shall review and approve or deny the appeal;

(C) The Division shall notify the individual of the decision in writing within ten days after receipt of the appeal; and

(D) If the individual is not satisfied with the deputy assistant director's or designee's decision, the individual may submit a second appeal in writing within ten days of the date of the written decision to the assistant director of the Division. The decision of the assistant director of the Division shall be final.

Stat. Auth.: ORS 413.042, 443.450

Stats. Implemented: ORS 413.032, 443.400 - 443.465 & 443.991

Hist.: MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-035-0185

Individual Assessment and Residential Service Plan

(1) The program shall complete an assessment for each individual within 14 days after admission to the program unless admitted for crisis-respite services:

(a) The assessment shall be based upon an interview with the individual to identify strengths, preferences, and service needs; observation of the individual's capabilities within the residential setting; a review of information in the individual service record; and contact with representatives of other involved agencies, family members, and others, as appropriate. All contacts with others shall be made with proper authorization for the release of information;

(b) Assessment findings shall be summarized in writing and included in the individual service record. Assessment findings shall include, but not be limited to, diagnostic and demographic data; identification of the individual's medical, physical, emotional, behavioral, and social strengths, preferences, and needs related to independent living and community functioning; and recommendations for residential service plan goals; and

(c) The provider shall provide assessment findings to the person-centered service plan coordinator to assist in the development of the person-centered service plan.

(2) Within 30 days of the date of admission, the person-centered service plan coordinator under contract with the Division and assigned to the individual or program site shall schedule and conduct an assessment of the individual for the purpose of developing a person-centered service plan. The provider shall support the person-centered service plan coordinator efforts to develop the plan and provide information as necessary.

(3) The provider shall develop and implement an individualized plan for the purpose of implementing and documenting the provision of services and supports as well as any individually-based limitations contained within the person-centered service plan. Identification of the goals to be accomplished through the services provided shall be prepared for each individual within 30 days after admission, unless admitted to the facility for crisis-respite services:

(a) If the person-centered service plan is unavailable for use in developing the residential service plan, providers shall still develop an initial residential service plan based on the information available within 30 days of admission. Upon the person-centered service plan becoming available, the providers shall amend the residential service plan as necessary to comply with this rule;

(b) The residential service plan shall be based upon the findings of the individual assessment, be developed with participation of the individual and representative, and be developed through collaboration with the individual's primary mental health treatment provider. With consent of the individual or representative, family members, representatives from involved agencies, and others with an interest in the individual's circumstances shall be invited to participate. All contacts with others shall be made with proper, prior authorization from the individual;

(c) The residential service plan shall include the following:

(A) The necessary steps and actions of the provider for the implementation and provision of services consistent and as required by the person-centered service plan;

(B) Identify the individual's service needs, desired outcomes, and service strategies to address the following: physical and medical needs, medication regimen, self-care, social-emotional adjustment, behavioral concerns, independent living capability, and community navigation, all areas identified in the person-centered service plan and any other areas.

(d) The residential service plan shall be signed by the individual, the individual's representative, the program administrator or other designated program staff person, and others, as appropriate, to indicate mutual agreement with the course of services outlined in the plan; and

(e) The provider shall attach the residential service plan to the person-centered service plan.

(4) For an individual admitted to a program for 30 days or less for the purpose of receiving crisis-respite services, an assessment and residential service plan shall be developed within 48 hours of admission that identifies service needs, desired outcomes, and the service strategies to be implemented to resolve the crisis or address other needs of the individual that resulted in the short-term service arrangement.

(5) The provider shall maintain progress notes within each individual's service record and document significant information relating to all aspects of the individual's functioning and progress toward desired outcomes identified in the residential service plan. The provider shall enter a progress note in the individual's record at least once each month.

(6) The provider shall review and update the assessment and residential service plan at least annually. On an ongoing basis, the provider shall update the residential service plan as necessary based upon changing circumstances or upon the individual's request for reconsideration.

Stat. Auth.: ORS 413.042, 443.450

Stats. Implemented: ORS 413.032, 443.400 - 443.465 & 443.991

Hist.: MHD 9-1984(Temp), f. & ef. 12-10-84; MHD 9-1985, f. & ef. 6-7-85; MHD 4-1998, f. 5-21-98, cert. ef. 6-1-98; MHD 4-2005, f. & cert. ef. 4-1-05; MHS 4-2008, f. & cert. ef. 6-12-08; MHS 13-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-035-0190

Person-Centered Service Plan

This rule becomes effective July 1, 2016, and enforceable as described in OAR 309-035-0115(17).

(1) When developed as described in sections (2) and (3), a person-centered service plan shall be developed through a person-centered service planning process. The person-centered service planning process:

(a) Is driven by the individual;

(b) Includes people chosen by the individual;

(c) Provides necessary information and supports to ensure the individual directs the process to the maximum extent possible and is enabled to make informed choices and decisions;

(d) Is timely, responsive to changing needs, occurs at times and locations convenient to the individual, and is reviewed at least annually;

(e) Reflects the cultural considerations of the individual;

(f) Uses language, format, and presentation methods appropriate for effective communication according to the needs and abilities of the individual and representative;

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(g) Includes strategies for resolving disagreement within the process including clear conflict of interest guidelines for all planning participants such as:

(A) Discussing the concerns of the individual and determining acceptable solutions;

(B) Supporting the individual in arranging and conducting a person-centered service planning meeting;

(C) Utilizing any available greater community conflict resolution resources;

(D) Referring concerns to the Office of the Long-Term Care Ombudsman; or

(E) For Medicaid recipients, following existing, program-specific grievance processes.

(h) Offers choices to the individual regarding the services and supports the individual receives and from whom and records the alternative HCB settings considered by the individual;

(i) Provides a method for the individual or representative to request updates to the person-centered service plan;

(j) Is conducted to reflect what is important to the individual to ensure delivery of services in a manner reflecting personal preferences and ensuring health and welfare;

(k) Identifies the strengths and preferences, service and support needs, goals, and desired outcomes of the individual;

(L) Includes any services that are self-directed, if applicable;

(m) Includes but is not limited to individually identified goals and preferences related to relationships, greater community participation, employment, income and savings, healthcare and wellness, and education;

(n) Includes risk factors and plans to minimize any identified risk factors; and

(o) Results in a person-centered service plan documented by the person-centered services plan coordinator, signed by the individual or the individual's representative, participants in the person-centered service planning process, and all persons responsible for the implementation of the person-centered service plan. The person-centered service plan is distributed to the individual and the individual's representative and other people involved in the person-centered service plan.

(2) Person-Centered Service Plans:

(a) To avoid conflict of interest, the person-centered service plan may not be developed by the provider for individuals receiving Medicaid. The Division may grant an exception when it has determined that the provider is the only willing and qualified entity to provide case management and develop the person-centered service plan;

(b) When the provider is responsible for developing the person-centered service plan, the provider shall ensure that the plan includes the following:

(A) HCBS and setting options based on the individual's needs and preferences, and for residential settings, the individual's available resources for room and board;

(B) The HCBS and settings are chosen by the individual and are integrated in and support full access to the greater community;

(C) Opportunities to seek employment and work in competitive integrated employment settings for those individuals who desire to work. If the individual wishes to pursue employment, a non-disability specific setting option shall be presented and documented in the person-centered service plan;

(D) Opportunities to engage in greater community life, control personal resources, and receive services in the greater community to the same degree of access as people not receiving HCBS;

(E) The strengths and preferences of the individual;

(F) The service and support needs of the individual;

(G) The goals and desired outcomes of the individual;

(H) The providers of services and supports including unpaid supports provided voluntarily;

(I) Risk factors and measures in place to minimize risk;

(J) Individualized backup plans and strategies, when needed;

(K) People who are important in supporting the individual;

(L) The person responsible for monitoring the person-centered service plan;

(M) Language, format, and presentation methods appropriate for effective communication according to the needs and abilities of the individual receiving services and the individual's representative;

(N) The written informed consent of the individual or the individual's representative;

(O) Signatures of the individual or the individual's representative, participants in the person-centered service planning process, and all per-

sons and entities responsible for the implementation of the person-centered service plan;

(P) Self-directed supports; and

(Q) Provisions to prevent unnecessary or inappropriate services and supports.

(c) When the provider is not responsible for developing the person-centered service plan but provides or shall provide services to the individual, the provider shall provide relevant information and provide necessary support for the person-centered service plan coordinator or other individuals developing the plan to fulfill the characteristics described in subsection (b) of this section;

(d) The individual or representative decides on the level of information in the person-centered service plan that is shared with providers. To effectively provide services, providers shall have access to the portion of the person-centered service plan that the provider is responsible for implementing;

(e) The person-centered service plan shall be distributed to the individual, individual's representatives and others involved in the person-centered service plan;

(f) The person-centered service plan shall justify and document any individually-based limitation to be applied as outlined in OAR 309-035-0195 when the qualities under 309-035-0195(1) create a threat to the health and safety of the individual or others; and

(g) The person-centered service plan shall be reviewed and revised:

(A) At the request of the individual or representative;

(B) When the circumstances or needs of the individual change; or

(C) Upon reassessment of functional needs as required every 12 months.

(3) Because it may not be possible to assemble complete records and develop a person-centered service plan during the crisis-respite individual's short stay, the provider is not required to develop a person-centered service plan under these rules, but shall, at a minimum, develop an assessment and residential service plan as deemed appropriate to identify service needs, desired outcomes, and service strategies to resolve the crisis or address the individual's other needs that caused the need for crisis-respite services. In addition, the provider shall provide relevant information and provide necessary support for the person-centered service plan coordinator as described in this rule.

Stat. Auth.: ORS 413.042, 443.450

Stats. Implemented: ORS 413.032, 443.400 - 443.465 & 443.991

Hist.: MHD 9-1984(Temp), f. & ef. 12-10-84; MHD 9-1985, f. & ef. 6-7-85; MHD 4-1998, f. 5-21-98, cert. ef. 6-1-98; MHD 4-2005, f. & cert. ef. 4-1-05; MHS 4-2008, f. & cert. ef. 6-12-08; MHS 13-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-035-0195

Individually-Based Limitations

This rule becomes effective on July 1, 2016, and enforceable as described in OAR 309-035-0115(17).

(1) When the program qualities described below create a threat to the health and safety of an individual or others, a provider may seek to apply an individually-based limitation through the process described in this rule. The program qualities subject to a potential individually-based limitation include the individual's right to:

(a) The freedom and support to access food at any time;

(b) Have visitors of the individual's choosing at any time;

(c) Have a unit entrance door that is lockable by the individual with only appropriate staff having access;

(d) Choose a roommate when sharing a unit;

(e) Furnish and decorate the individual's unit as agreed to in the Residency Agreement;

(f) The freedom and support to control the individual's schedule and activities; and

(g) Privacy in the individual's unit.

(2) A provider may apply an individually-based limitation only if:

(a) The program quality threatens the health or safety of the individual or others;

(b) The individually-based limitation is supported by a specific assessed need;

(c) The individual or representative consents;

(d) The limitation is directly proportionate to the specific assessed need; and

(e) The individually-based limitation will not cause harm to the individual.

(3) The provider shall demonstrate and document that the individually-based limitation meets the requirements of section (2) of this rule and the

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measures described below in the person-centered service plan. The provider shall submit and sign a program-created form that includes the following:

- (a) The specific and individualized assessed need justifying the individually-based limitation;
 - (b) The positive interventions and supports used prior to consideration of any individually-based limitation;
 - (c) Documentation that the provider or other entities have tried other less intrusive methods, but those methods did not work;
 - (d) A clear description of the limitation that is directly proportionate to the specific assessed need;
 - (e) Regular collection and review of data to measure the ongoing effectiveness of the individually-based limitation;
 - (f) Established time limits for periodic reviews of the individually-based limitation to determine if the limitation should be terminated or remains necessary;
 - (g) The informed consent of the individual or representative including any discrepancy between the wishes of the individual and the consent of the legal representative; and
 - (h) An assurance that the interventions and support do not cause harm to the individual.
- (4) The provider shall:
- (a) Maintain a copy of the completed and signed form documenting the consent to the individually-based limitation described in section (4) of this rule. The form shall be signed by the individual or representative;
 - (b) Regularly collect and review the ongoing effectiveness of and the continued need for the individually-based limitation; and
 - (c) Request review of the individually-based limitation by the person-centered service plan coordinator when a new individually-based limitation is indicated or change or removal of an individually-based limitation is needed but no less than annually.

(5) The qualities described in section (2)(b)-(g) do not apply to an individual receiving services at a SRTF, including but not limited to, an individual receiving crisis-respite services in a secure residential setting. A provider does not need to seek an individually-based limitation to comply with these rules.

(6) The qualities described in sections (2)(d) and (g) do not apply to an individual receiving crisis-respite services, and a provider does not need to seek an individually-based limitation to comply with these rules.

Stat. Auth.: ORS 413.042, 443.450
Stats. Implemented: ORS 413.032, 443.400 - 443.465 & 443.991
Hist.: MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-035-0200

Individual Services and Activities

(1) The provider shall make services and activities available at the program including care and treatment consistent with ORS 443.400 and those services individually specified for the individual in the residential service plan developed as outlined in OAR 309-035-0185. The provider shall encourage individuals to care for their own needs to the extent possible. The provider shall ensure all services and activities be provided in a manner that respects individuals' rights, promotes recovery, and protects personal dignity.

(2) Services and activities to be available shall include but not limited to:

- (a) Provision of adequate shelter;
- (b) Provision of at least three meals per day, seven days per week, provided pursuant to OAR 309-035-0210;
- (c) Assistance and support, as necessary, to enable individuals to meet personal hygiene and clothing needs;
- (d) Laundry services that may include access to washers and dryers so individuals can do their own personal laundry;
- (e) Housekeeping essential to the health and comfort of individuals;
- (f) Activities and opportunities for socialization and recreation both within the setting and in the larger community;
- (g) Health-related services provided in accordance with OAR 309-035-0215;
- (h) Assistance with community navigation and transportation arrangements;
- (i) Assistance with money management when requested by an individual to include accurate documentation of all funds deposited and withdrawn when funds are held in trust for the individual;
- (j) Assistance with acquiring skills to live as independently as possible;
- (k) Assistance with accessing other additional services, as needed; and
- (L) Any additional services required under contract to the Division.

Stat. Auth.: ORS 413.042, 443.450

Stats. Implemented: ORS 413.032, 443.400 - 443.465 & 443.991
Hist.: MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-035-0205

Use of Seclusion or Restraints

(1) The use of seclusion or restraints is prohibited except in SRTFs with the Division's approval.

(2) A SRTF provider or applicant may submit an application to the Division for approval to use seclusion or restraints pursuant to OAR 309-033-0700 through 309-033-0740. Approval by the Division shall be based upon the following:

(a) A determination that the individuals served or proposed to be served have a history of behavioral concerns involving threats to the safety and well-being of themselves or others;

(b) The applicant demonstrates that the availability of seclusion or restraints is necessary to safely accommodate individuals who would otherwise be unable to experience a community residential program; and

(c) The applicant demonstrates an ability to comply with OAR 309-033-0700 through 0740 and 309-033-0500 through 0560. These rules include special requirements for staffing, training, reporting, policies and procedures, and the setting's physical environment.

(3) Seclusion or restraints may only be used in an approved SRTF when an emergency occurs in accordance with OAR 309-033-0700 through 0740 and 309-033-0500 through 0560. In such emergency situations, seclusion and restraint shall be used as a last resort behavior management option after less restrictive behavior management interventions have failed, or in the case of an unanticipated behavioral outburst, to ensure safety within the program. An approved SRTF shall implement policies and procedures approved by the Division outlining the circumstances under which seclusion or restraints may be used and the preventive measures to be taken before such use. All incidents involving the use of seclusion or restraints shall be reported to the Division. To use seclusion or restraints with an individual who is not in state custody under civil commitment proceedings, the individual shall be placed on a hold.

Stat. Auth.: ORS 413.042, 443.450
Stats. Implemented: ORS 413.032, 443.400 - 443.465 & 443.991
Hist.: MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-035-0210

Food Services

(1) The provider shall plan and serve meals in accordance with the recommended dietary allowances found in the United States Department of Agriculture Food Guide Pyramid.

(2) The provider shall obtain an order from an LMP for each individual who, for health reasons, is on a modified or special diet. The provider shall plan such diets in consultation with the individual.

(3) The provider shall support the individual's right to access food at any time. The provider may only apply an individually-based limitation when the circumstances meet and the provider complies with the standards and requirements of OAR 309-035-0195. This section is effective July 1, 2016, and enforceable as described in OAR 309-035-0115(17).

(4) If an individual misses a meal at a scheduled time, the provider shall make an alternative meal available.

(5) The provider shall prepare menus at least one week in advance and shall provide a sufficient variety of foods served in adequate amounts for each individual at each meal and adjusted for seasonal changes. The provider shall file and maintain records of menus in the facility for at least 30 days. The provider shall consider individual preferences and requests in menu planning. The provider shall reasonably accommodate religious and vegetarian preferences.

(6) The provider shall maintain adequate supplies of staple foods for a minimum of one week and perishable foods for a minimum of two days at the setting. An emergency supply of potable water shall be available such that the provider maintains seven gallons of water per individual.

(7) The provider shall store, prepare, and serve food in accordance with Health Services Food Sanitation Rules.

Stat. Auth.: ORS 413.042, 443.450
Stats. Implemented: ORS 413.032, 443.400 - 443.465 & 443.991
Hist.: MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-035-0215

Health Services

(1) The program administrator shall ensure that all individuals are offered medical attention when needed. The provider shall arrange for health services with the informed consent of the individual or the individual's representative. The program shall arrange for physicians to be available in the event the individual's regular physician is unavailable. The

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provider shall identify a hospital emergency room that may be used in case of emergency.

(2) The provider shall ensure that each individual admitted to the program shall be screened by an LMP or other qualified health care professional to identify health problems and to screen for communicable disease. The provider shall maintain documentation of the initial health screening in the individual service record:

(a) The health screening shall include a brief history of health conditions, current physical condition, and a written record of current or recommended medications, treatments, dietary specifications, and aids to physical functioning;

(b) For regular admissions, the health screening shall be obtained prior to the individual's admission and include the results of testing for tuberculosis;

(c) For emergency admissions including crisis-respite admissions, the health screening shall be obtained as follows:

(A) For individuals experiencing psychiatric or medical distress, a health screening shall be completed by an LMP prior to the individual's admission or within 24 hours of the emergency placement. The health screening shall confirm that the individual does not have health conditions requiring continuous nursing care, a hospital level of care, or immediate medical assistance. For each crisis-respite individual who continues in the program for more than seven consecutive days, a complete health examination shall be arranged if any symptoms of a health concern exist;

(B) For other individuals who are admitted on an urgent basis due to a lack of alternative supportive housing, the health screening shall be obtained within 72 hours after the individual's admission;

(C) The health screening criteria may be waived for individuals admitted for crisis-respite services who are under the active care of an LMP if it is the opinion of the attending health care professional that the crisis-respite placement presents no health risk to the individual or other individuals in the program. Such a waiver shall be provided in writing and be signed and dated by the attending health care professional within 24 hours of the individual's admission.

(3) Except for crisis-respite individuals, the program shall ensure that each individual has a primary physician who is responsible for monitoring their health care. Regular health examinations shall be done in accordance with the recommendations of this primary health care professional but not less than once every three years. Newly admitted individuals shall have a health examination completed within one year prior to admission or within three months after admission. Documentation of findings from each examination shall be placed in the individual's service record.

(4) A written order signed by a physician is required for any medical treatment, special diet for health reasons, aid to physical functioning, or limitation of activity.

(5) A written order signed by a physician is required for all medications administered or supervised by program staff. This written order is required before any medication is provided to an individual. Medications may not be used for the convenience of staff or as a substitute for programming. Medications may not be withheld or used as reinforcement or punishment or in quantities that are excessive in relation to the amount needed to attain the client's best possible functioning:

(a) Medications shall be self-administered by the individual if the individual demonstrates the ability to self-administer medications in a safe and reliable manner. In the case of self-administration, both the written orders of the prescriber and the residential service plan shall document that medications shall be self-administered. The self-administration of medications may be supervised by program staff who may prompt the individual to administer the medication and observe the fact of administration and dosage taken. When supervision occurs, program staff shall enter information in the individual's record consistent with section (5) (h) below;

(b) Program staff who assist with administration of medication shall be trained by a Licensed Medical Professional on the use and effects of commonly used medications;

(c) Medications prescribed for one individual may not be administered to or self-administered by another individual;

(d) The program may not maintain stock supplies of prescription medications. The facility may maintain a stock supply of non-prescription medications;

(e) The program shall develop and implement a policy and procedure that ensures all orders for prescription drugs are reviewed by an LMP, as specified by a physician, at least every six months. When this review identifies a contra-indication or other concern, the individual's primary physician or LMP shall be immediately notified. Each individual receiving psychotropic medications shall be evaluated at least every three months by the

LMP prescribing the medication, who shall note for the individual's record the results of the evaluation and any changes in the type and dosage of medication, the condition for which it is prescribed, when and how the medication is to be administered, common side effects, including any signs of tardive dyskinesia, contraindications or possible allergic reactions, and what to do in case of a missed dose or other dosing error;

(f) The provider shall dispose of all unused, discontinued, outdated, or recalled medications and any medication containers with worn, illegible or missing labels. The provider shall dispose of medications in a safe method consistent with any applicable federal statutes and designed to prevent diversion of these substances to persons for whom they were not prescribed. The provider shall maintain a written record of all disposals specifying the date of disposal, a description of the medication, its dosage potency, amount disposed, the name of the individual for whom the medication was prescribed, the reason for disposal, the method of disposal, and the signature of the program staff disposing of the medication. For any medication classified as a controlled substance in schedules 1 through 5 of the Federal Controlled Substance Act, the disposal shall be witnessed by a second staff person who documents their observation by signing the disposal record;

(g) The provider shall properly and securely store all medications in a locked space for medications only in accordance with the instructions provided by the prescriber or pharmacy. Medications for all individuals shall be labeled. Medications requiring refrigeration shall be stored in an enclosed, locked container within the refrigerator. The provider shall ensure that individuals have access to a locked, secure storage space for their self-administered medications. The program shall note in its written policy and procedures which persons have access to this locked storage and under what conditions;

(h) For all individuals taking prescribed medication, the provider shall record in the medical record each type, date, time, and dose of medication provided. All effects, adverse reactions, and medication errors shall be documented in the individual's service record. All errors, adverse reactions, or refusals of medication shall be reported to the prescribing LMP within 48 hours;

(i) P.R.N. medications and treatments shall only be administered in accordance with administrative rules of the Board of Nursing, chapter 851, division 47.

(6) Nursing tasks may be delegated by a registered nurse to direct care staff within the limitations of their classification and only in accordance with administrative rules of the Board of Nursing, chapter 851, division 47.

Stat. Auth.: ORS 413.042, 443.450
Stats. Implemented: ORS 413.032, 443.400 - 443.465 & 443.991
Hist.: MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-035-0220

Civil Penalties

(1) For purposes of imposing civil penalties, programs licensed under ORS 443.400 to 443.455 are considered to be long-term care facilities subject to ORS 441.705 to 441.745.

(2) Violations of any requirement within any part of the following sections of the rule may result in a civil penalty:

- (a) 309-035-0115;
- (b) 309-035-0120;
- (c) 309-035-0125;
- (d) 309-035-0130;
- (e) 309-035-0135;
- (f) 309-035-0140;
- (g) 309-035-0145;
- (h) 309-035-0150;
- (i) 309-035-0155;
- (j) 309-035-0163;
- (k) 309-035-0170;
- (l) 309-035-0175;
- (m) 309-035-0183;
- (n) 309-035-0185;
- (o) 309-035-0200;
- (p) 309-035-0205;
- (q) 309-035-0210; and
- (r) 309-035-0215.

(3) Civil penalties shall be assessed in accordance with the following guidelines:

(a) Civil penalties not to exceed \$250 per violation to a maximum of \$1,000 may be assessed for general violations of these rules. Such penalties shall be assessed after the procedures outlined in OAR 309-035-0110(8) have been implemented;

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Suspended by MHS 13-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; Suspended by MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

(b) A mandatory penalty up to \$500 shall be assessed for falsifying individual service records or program records or causing another to do so;

(c) A mandatory penalty of \$250 per occurrence shall be imposed for failure to have direct care staff on duty 24 hours per day;

(d) Civil penalties up to \$1,000 per occurrence may be assessed for substantiated abuse;

(e) In addition to any other liability or penalty provided by the law, the Division may impose a penalty for any of the following:

(A) Operating the program without a license;

(B) Operating with more individuals than the licensed capacity; and

(C) Retaliating or discriminating against an individual, family member, employee, or other person for making a complaint against the program.

(f) In imposing a civil penalty, the following factors shall be taken into consideration:

(A) The past history of the provider incurring the penalty in taking all feasible steps or procedures to correct the violation;

(B) Any prior violations of statutes, rules, or orders pertaining to the program;

(C) The economic and financial conditions of the provider incurring the penalty;

(D) The immediacy and extent to which the violation threatens or threatens the health, safety, or welfare of one or more residents; and

(E) The degree of harm caused to individuals.

(4) Any civil penalty imposed under this section shall become due and payable ten days after notice is received unless a request for a hearing is filed. The notice shall be delivered in person or sent by registered or certified mail and shall include a reference to the particular section of the statute or rule involved, a brief summary of the violation, the amount of the penalty or penalties imposed, and a statement of the right to request a hearing.

(5) The person to whom the notice is addressed shall have 20 days from the date of receipt of the notice to request a hearing. This request shall be in writing and submitted to the Division. If the written request for a hearing is not received, the Division shall issue a final order.

(6) All hearings shall be conducted pursuant to the applicable provisions of ORS Chapter 183.

(7) Unless the penalty is paid within ten days after the order becomes final, the order constitutes a judgment and may be recorded by the County Clerk that becomes a lien upon the title to any interest in real property owned by the person. The Division may also take action to revoke the license upon failure to comply with a final order.

(8) Civil penalties are subject to judicial review under ORS 183.480.

(9) All penalties recovered under ORS 443.790 to 443.815 shall be paid into the State Treasury and credited to the General Fund.

Stat. Auth.: ORS 413.042, 443.450

Stats. Implemented: ORS 413.032, 443.400 - 443.465 & 443.991

Hist.: MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-035-0225

Criminal Penalties

(1) Violation of any provision of ORS 443.400 through 443.455 is a Class B misdemeanor.

(2) In addition, the Division may commence an action to enjoin operation of a program:

(a) When a program is operated without a valid license; or

(b) When a program continues to operate after notice of revocation has been received and a reasonable time has been allowed for placement of individuals in other programs.

Stat. Auth.: ORS 413.042, 443.450

Stats. Implemented: ORS 413.032, 443.400 - 443.465 & 443.991

Hist.: MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-035-0250

Purpose, Scope and Statutory Authority

(1) Purpose. These rules prescribe standards by which the Addictions and Mental Health Division of the Oregon Health Authority approves residential treatment homes for adults with mental or emotional disorders. The standards promote the well-being, health and recovery of adults with mental or emotional disorders through the availability of a wide range of residential service options. They prescribe how services will be provided in safe, secure and homelike environments that recognize the dignity, individuality and right to self-determination of each resident.

(2) Scope. These rules apply to residential treatment homes for five or fewer residents.

Stat. Auth.: ORS 413.042 & 443.450

Stats. Implemented: ORS 443.400 - 443.465 & 443.991

Hist.: MHD 7-1999, f. 11-15-99, cert. ef. 12-1-99; MHD 5-2005, f. & cert. ef. 4-1-05; MHS 10-2011(Temp), f. & cert. ef. 12-5-11 thru 5-31-12; MHS 5-2012, f. 5-3-12, cert. ef. 5-4-12;

309-035-0260

Definitions

As used in these rules the following definitions apply:

(1) "Abuse" includes but is not limited to:

(a) Any death caused by other than accidental or natural means or occurring in unusual circumstances;

(b) Any physical injury caused by other than accidental means, or that appears to be at variance with the explanation given of the injury;

(c) Willful infliction of physical pain or injury;

(d) Sexual harassment or exploitation including, but not limited to, any sexual contact between an employee of a community facility or community program, or provider, or other caregiver and the adult. For situations other than those involving an employee, provider, or other caregiver and an adult, sexual harassment or exploitation means unwelcome verbal or physical sexual contact including requests for sexual favors and other verbal or physical conduct directed toward the adult;

(e) Neglect that leads to physical harm through withholding of services necessary to maintain health and well being;

(f) Abuse does not include spiritual treatments by a duly accredited practitioner of a recognized church or religious denomination when voluntarily consented to by the individual. (2) "Administrator" means the person designated by the licensee as responsible for the daily operation and maintenance of the Residential Treatment Home (RTH).

(3) "Adult" means an individual 18 years of age or older.

(4) "Aid to Physical Functioning" means any special equipment ordered for a resident by a Licensed Medical Professional or other qualified health care professional which maintains or enhances the resident's physical functioning.

(5) "Applicant" means the person(s) or entity that owns the business and is applying for the license.

(6) "Approved" means authorized or allowed by the Department.

(7) "Authority" means the Oregon Health Authority.

(8) "Building Code" means the state building code as defined in ORS 455.010 and includes the Oregon Structural Specialty Code, One and Two Family Dwelling Code and other specialty codes adopted by the Building Codes Division of the Oregon Department of Consumer and Business Services.

(9) "Care" means services such as supervision; protection; assistance with activities of daily living such as bathing, dressing, grooming, or eating; management of money; transportation; recreation; and the providing of room and board.

(10) "Caregiver" means an employee, program staff, provider or volunteer of a licensed Residential Treatment Facility (RTF), Residential Treatment Home (RTH) or Adult Foster Home (AFH).

(11) "Community Mental Health Program (CMHP)" means the organization of all or a portion of services for persons with mental or emotional disorders, and operated by, or contractually affiliated with, a local mental health authority, operated in a specific geographic area of the state under an intergovernmental agreement or direct contract with the Division.

(12) "Contract" means a formal written agreement between the community mental health program, Mental Health Organization or the Addictions and Mental Health Division and a Residential Treatment Home (RTH) owner.

(13) "Crisis-Respite Services" means the provision of services to individuals for up to 30 days. Individuals receiving crisis-respite services are RTH residents.

(14) "DSM" means the "Diagnostic and Statistical Manual of Mental Disorders (DSM-IV)" published by the American Psychiatric Association.

(15) "Direct Care Staff Person" means an employee responsible for providing services to residents.

(16) "Division" means the Addictions and Mental Health Division of the Oregon Health Authority.

(17) "Electrical Code" means the Uniform Building and Fire Codes adopted on October 1, 2004 by the Building Codes Division of the Oregon Department of Consumer and Business Services.

(18) "Emergency Admission" means an admission to an RTH made on an urgent basis due to the pressing service needs of the individual.

(19) "Employee" means a person who is employed by a licensed Residential Treatment Home (RTH) who receives wages, a salary, or is otherwise paid by the RTH for providing the service. The term also includes employees of other providers delivering direct services to clients of RTHs.

(20) "Evacuation Capability" means the ability of occupants, including residents and staff as a group, to either evacuate the building or relocate

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from a point of occupancy to a point of safety as defined in the Oregon Structural Specialty Code. The category of evacuation capability is determined by documented evacuation drill times or scores on National Fire Protective Association (NFPA) 101A 2000 edition worksheets. There are three categories of evacuation capability:

(a) Impractical (SR- 2): A group, even with staff assistance, that cannot reliably move to a point of safety in a timely manner, determined by an evacuation capability score of five or greater or with evacuation drill times in excess of 13 minutes.

(b) Slow (SR- 1) for more than 16 residents) and (SR-4 for 6 to 16 residents): A group that can move to a point of safety in a timely manner, determined by an evacuation capability score greater than 1.5 and less than five or with evacuation drill times over three minutes but not in excess of 13 minutes. SR-3 occupancies are those homes with five or fewer occupants having evacuation capabilities of impractical or slow with assistance.

(c) Prompt: A group with an evacuation capability score of 1.5 or less or equivalent to that of the general population or with evacuation drill times of three minutes or less. The Division shall determine evacuation capability for RTH's in accordance with the National Fire Protection Association (NFPA) 101A 2000 edition. Facilities that are determined to be "Prompt" may be used in Group R occupancies classified by the building official, in accordance with the building code.

(21) "Fire Code" means the Oregon Fire Code as adopted by the Office of State Fire Marshal and as amended by local jurisdictions.

(22) "Home" means the building and grounds where the Residential Treatment Home program is operated.

(23) "Individual" means any person being considered for or receiving residential and other services regulated by these rules.

(24) "Licensed Medical Professional (LMP)" means a person who meets the following minimum qualifications as documented by the Local Mental Health Authority (LMHA) or designee:

(a) Holds at least one of the following educational degrees and valid licenses:

(A) Physician licensed to practice in the State of Oregon;

(B) Nurse Practitioner licensed to practice in the State of Oregon; or

(C) Physician's Assistant licensed to practice in the State of Oregon;

and

(b) Whose training, experience, and competence demonstrate the ability to conduct a Comprehensive Mental Health Assessment and provide medication management.

(25) "Licensee" means the person or entity legally responsible for the operation of the RTH to which the Division has issued a license.

(26) "Local Mental Health Authority (LMHA)" means the county court or board of county commissioners of one or more counties who choose to operate a CMHP or MHO; or, if the county declines to operate or contract for all or part of a CMHP or MHO, the board of directors of a public or private corporation which contracts with the Division to operate a CMHP or MHO for that county.

(27) "Mechanical Code" means the Oregon Mechanical Specialty Code adopted by the Building Codes Division of the Oregon Department of Consumer and Business Services.

(28) "Medication" means any drug, chemical, compound, suspension, or preparation in suitable form for use as a curative or remedial substance either internally or externally by any person.

(29) "Mental or Emotional Disorder" means a primary Axis I or Axis II DSM diagnosis, other than mental retardation or a substance abuse disorder that limits an individual's ability to perform activities of daily living.

(30) "Mental Health Assessment" means a determination by a Qualified Mental Health Professional of the client's need for mental health services. It involves collection and assessment of data pertinent to the client's mental health history and current mental health status obtained through interview, observation, testing, and review of previous treatment records. It concludes with determination of a DSM diagnosis or other justification of priority for mental health services, or a written statement that the person is not in need of community mental health services.

(31) "Mental Health Organization (MHO)" means an approved organization that provides most mental health services through a capitated payment mechanism under the Oregon Health Plan. MHOs may be fully capitated health plans, community mental health programs, private mental health organizations or combinations thereof.

(32) "Mistreatment" means the following behaviors, displayed by an employee, program staff, provider or volunteer of an RTH when directed toward an individual:

(a) "Abandonment" means desertion or willful forsaking when the desertion or forsaking results in harm or places the individual at a risk of serious harm.

(b) "Financial exploitation" means:

(A) Wrongfully taking the assets, funds, or property belonging to or intended for the use of an individual.

(B) Alarming an individual by conveying a threat to wrongfully take or appropriate money or property of the individual if the individual would reasonably believe that the threat conveyed would be carried out.

(C) Misappropriating, misusing, or transferring without authorization any money from any account held jointly or singly by an individual.

(D) Failing to use the income or assets of an individual effectively for the support and maintenance of the individual. "Effectively" means use of income or assets for the benefit of the individual.

(c) "Involuntary Restriction" means the involuntary restriction of an individual for the convenience of a caregiver or to discipline the individual. Involuntary restriction may include but is not limited to placing restrictions on an individual's freedom of movement by restriction to his or her room or a specific area, or restriction from access to ordinarily accessible areas of the facility, residence or program, unless agreed to by the treatment plan. Restriction may be permitted on an emergency or short term basis when an individual's presence would pose a risk to health or safety to the individual or others.

(d) "Neglect" means active or passive failure to provide the care, supervision, or services necessary to maintain the physical and mental health of an individual that creates a significant risk of harm to an individual or results in significant mental injury to an individual. Services include but are not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene, or any other services essential to the well-being of the individual.

(e) "Verbal Mistreatment" means threatening significant physical harm or emotional harm to an individual through the use of:

(A) Derogatory or inappropriate names, insults, verbal assaults, profanity, or ridicule.

(B) Harassment, coercion, punishment, deprivation, threats, implied threats, intimidation, humiliation, mental cruelty, or inappropriate sexual comments.

(C) A threat to withhold services or supports, including an implied or direct threat of termination of services. "Services" include but are not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene, or any other services essential to the well-being of an individual.

(D) For purposes of this definition, verbal conduct includes but is not limited to the use of oral, written, or gestured communication that is directed to an individual or within their hearing distance or sight, regardless of their ability to comprehend. In this circumstance the assessment of the conduct is based on a reasonable person standard.

(E) The emotional harm that can result from verbal abuse may include but is not limited to anguish, distress, or fear.

(f) "Wrongful Restraint" means:

(A) A wrongful use of a physical or chemical restraint excluding an act of restraint prescribed by a licensed physician pursuant to OAR 309-033-0730.

(B) Wrongful restraint does not include physical emergency restraint to prevent immediate injury to an individual who is in danger of physically harming himself or herself or others, provided that only the degree of force reasonably necessary for protection is used for the least amount of time necessary.

(33) "Nursing Care" means the practice of nursing by a licensed nurse, including tasks and functions that are delegated by a registered nurse to a person other than a licensed nurse, which are governed by ORS Chapter 678 and rules adopted by the Oregon Board of Nursing in OAR chapter 851.

(34) "Owner" means the person or entity including the Division that is legally responsible for the operation of the facility.

(35) "Plumbing Code" means the Oregon Plumbing Specialty Code adopted by the Building Codes Division of the Oregon Department of Consumer and Business Services.

(36) "P.R Nn. (pro re nata) Medications and Treatments" means those medications and treatments that have been ordered to be given as needed.

(37) "Program" means the Residential Treatment Home and may refer to the owner, staff, or services as applicable to the context.

(38) "Program staff" means an employee or person who, by contract with an RTH, provides a service and who has the applicable competencies, qualifications, and certification, required by the Integrated Services and

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Supports Rule (ISSR) (OAR 309-032-1500 to 309-032-1565) to provide the service.

(39) "Progress Notes" means the notations in the resident record documenting significant information concerning the resident and summarizing progress made relevant to the objectives outlined in the residential service plan.

(40) "Protection" means the necessary actions taken by the program to prevent abuse, mistreatment, or exploitation of the residents, to prevent self-destructive acts, and to safeguard residents, property, and funds.

(41) "Provider" means a qualified individual or an organizational entity operated by or contractually affiliated with a community mental health program, or contracted directly with the Division for the direct delivery of mental health services and supports to adults receiving residential and supportive services in an RTH.

(42) "Qualified Health Care Professional" means a health care professional licensed to practice in the state of Oregon who is approved to perform certain health care tasks referenced in the relevant section of these rules consistent with the scope of practice specified by the licensing board for the profession. In accordance with the referenced health care task, the qualified health care professional may include a physician, a physician's assistant, a nurse practitioner, a registered nurse, or a pharmacist.

(43) "Qualified Mental Health Professional (QMHP)" means a Licensed Medical Practitioner (LMP) or any other person meeting the following minimum qualifications as documented by the LMHA or designee:

- (a) Graduate degree in psychology;
- (b) Bachelor's degree in nursing and licensed by the State of Oregon;
- (c) Graduate degree in social work;
- (d) Graduate degree in behavioral science field;
- (e) Graduate degree in recreational, art, or music therapy; or
- (f) Bachelor's degree in occupational therapy and licensed by the State of Oregon; and

(g) Whose education and experience demonstrates the competencies to identify precipitating events; gather histories of mental and physical disabilities, alcohol and drug use, past mental health services and criminal justice contacts; assess family, social and work relationships; conduct a mental status examination; document a multiaxial DSM diagnosis; write and supervise a Treatment Plan; conduct a Comprehensive Mental Health Assessment; and provide individual, family, and group therapy within the scope of his or her practice.

(44) "Resident" means any adult residing in the RTH who receives services on a 24-hour basis, except as excluded under ORS 443.400(3).

(45) "Residential Service Plan" means an individualized, written plan outlining the care and treatment to be provided to a resident in or through the RTH based upon an individual assessment of care and treatment needs. The residential service plan may be a section or subcomponent of the individual's overall mental health treatment plan when the RTH is operated by a mental health service agency that provides other services to the resident.

(46) "Residential Treatment Home (RTH)" means a home that is operated to provide services on a 24-hour basis for five or fewer residents.

(47) "Restraints" means any chemical or physical methods or devices that are intended to restrict or inhibit the movement, functioning, or behavior of a resident.

(48) "Seclusion" means placing an individual in a locked room. A locked room includes a room with any type of door locking device, such as a key lock, spring lock, bolt lock, foot pressure lock, or physically holding the door shut.

(49) "Secure Residential Treatment Facility" means any residential treatment facility, or portion thereof, that restricts a resident's exit from the facility or its grounds through the use of approved locking devices on resident exit doors, gates or other closures.

(50) "Services" means the care and treatment provided to residents as part of the RTH program.

(51) "Supervision" means the daily observation, and monitoring of residents by direct care staff or oversight of staff by the administrator or administrator's designee, as applicable to the context.

(52) "Termination of Residency" means the time at which the resident ceases to live in the RTH and includes the transfer of the resident to another facility, but does not include absences from the RTH for the purpose of taking a planned vacation, visiting family or friends, or receiving time-limited medical or psychiatric treatment.

(53) "Treatment" means a planned, individualized program of medical, psychological or rehabilitative procedures, experiences and activities consistent with ORS 443.400(12).

(54) "Volunteer" means a person who provides a service or who takes part in a service provided to individuals receiving supportive services in an

RTH or other provider, and who is not a paid employee of the RTH or other provider. The services must be non-clinical unless the person has the required credentials to provide a clinical service.

Stat. Auth.: ORS 413.042 & 443.450

Stats. Implemented: ORS 443.400 - 443.455, 443.875, 443.991

Hist.: MHD 7-1999, f. 11-15-99, cert. ef. 12-1-99; MHD 5-2005, f. & cert. ef. 4-1-05; MHS 6-2007(Temp), f. & cert. ef. 5-25-07 thru 11-21-07; MHS 13-2007, f. & cert. ef. 8-31-07; MHS 10-2011(Temp), f. & cert. ef. 12-5-11 thru 5-31-12; MHS 5-2012, f. 5-3-12, cert. ef. 5-4-12; Suspended by MHS 13-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; Suspended by MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-035-0270

Licensing

(1) License Required. The Division will license any home that meets the definition of a residential treatment home and serves adults with a mental or emotional disorder. In the case of a home serving another category of residents in addition to adults with a mental or emotional disorder, the Division responsible for licensure will be determined by the Director of the Oregon Health Authority. No person or governmental unit acting individually or jointly with any other person or governmental unit will establish, maintain, manage, or operate a residential treatment home without a license issued by the Division.

(2) Initial Application. An application for a license will be accompanied by the required fee and submitted to the Division using the forms or format required by the Division. The following information will be required in the application:

(a) Full and complete information as to the identity and financial interest of each person, including stockholders, having a direct or indirect ownership interest of five percent or more in the RTH and all officers and directors in the case of RTHs operated or owned by a corporation.

(b) Location (street address) of the home and mailing address;

(c) Maximum number of residents to be served at any one time, their age range and evacuation capability;

(d) Proposed annual budget identifying sources of revenue and expenses;

(e) Signed criminal record authorizations for all persons involved in the operation of the RTH who will have contact with the residents;

(f) A complete set of policies and procedures;

(g) Facility plans and specifications; and

(h) Such other information as the Division may reasonably require.

(3) Plans and Design Approval. A complete set of plans and specifications will be submitted to the Division at the time of initial application, whenever a new structure or addition to an existing structure is proposed, or when significant alterations to an existing facility are proposed. Plans will meet the following criteria:

(a) Plans will be prepared in accordance with the Building Code and requirements of OAR 309-035-0320;

(b) Plans will be to scale and sufficiently complete to allow full review for compliance with these rules; and

(c) Plans will be to scale and carry the stamp of an Oregon licensed architect or engineer when required by the Building Code and ORS Chapters 671 and 672 (laws relating to the practice of architecture and engineering).

(4) Necessary Approvals. Prior to approval of a license for a new or renovated home, the applicant will submit the following to the Division:

(a) One copy of written approval to occupy the home issued by the city, county or state building codes authority having jurisdiction;

(b) One copy of the fire inspection report from the State Fire Marshal or local jurisdiction indicating that the home complies with the Fire Code;

(c) When the home is not served by an approved municipal water system, one copy of the documentation indicating that the state or county health agency having jurisdiction has approved the water supply in accordance with OAR chapter 333, Public Health Division rules for public water systems.

(d) When the home is not connected to an approved municipal sewer system, one copy of the sewer or septic system approval from the Department of Environmental Quality or local jurisdiction.

(5) Required Fees. The fee for each residential treatment home license application is \$30. No fee is required in the case of a governmentally operated residential treatment home.

(6) Renewal Application. A license is renewable upon submission of a renewal application in the form or format required by the Division and a non-refundable fee of \$30, except that no fee will be required of a governmentally operated RTH. Filing of an application for renewal before the date of expiration extends the effective date of the current license until the Division takes action upon the renewal application.

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(7) Review Process. Upon receipt of an application and fee, the Division will conduct an application review. Initial action by the Division on the application will begin within 30 days of receipt of all application materials. The review will:

- (a) Include a complete review of application materials;
- (b) Determine whether the applicant meets the qualifications outlined in ORS 443.420 including:
 - (A) Demonstrates an understanding and acceptance of these rules;
 - (B) Is mentally and physically capable of providing services for residents;
 - (C) Employs or utilizes only individuals whose presence does not jeopardize the health, safety, or welfare of residents; and
 - (D) Provides evidence satisfactory to the Division of financial ability to comply with these rules.
- (c) Include a site inspection; and
- (d) Conclude with a report stating findings and a decision on licensing of the RTH.

(8) Findings of Noncompliance. The Division will require an owner to submit and complete a plan of correction for each finding of noncompliance with these rules.

(a) If the finding(s) of noncompliance substantially impacts the welfare, health and/or safety of residents, the plan of correction will be submitted and completed prior to issuance of a license. In the case of a currently operating RTH, such findings may result in suspension or revocation of a license.

(b) If it is determined that the finding(s) of noncompliance do not threaten the welfare, health or safety of residents and the facility meets other requirements of licensing, a license may be issued or renewed, and the plan of correction will be submitted and completed as a condition of licensing.

(c) The Division will specify required documentation and set the time lines for the submission and completion of plans of correction in accordance with the severity of the finding(s).

(d) The Division will review and approve each plan of correction. If the plan of correction does not adequately remedy the finding of noncompliance, the Division may require a revised plan of correction.

(e) The RTH owner may appeal the finding of noncompliance or the disapproval of a plan of correction by submitting a request for reconsideration in writing to the Administrator of the Division. The Administrator of the Division or designee will make a decision on the appeal within 30 days of receipt of the appeal.

(9) Variance. The Authority may grant a variance to these rules based upon a demonstration by the applicant that an alternative method or different approach provides equal or greater program effectiveness and does not adversely impact the welfare, health or safety of residents.

(a) Variance Application. The RTH owner requesting a variance will submit, in writing, an application to the Division which identifies the section of the rules from which the variance is sought, the reason for the proposed variance, the proposed alternative method or different approach, and signed documentation from the CMHP indicating approval of the proposed variance.

(b) Addictions and Health Division Review. The Assistant Administrator for the Division's Office of Mental Health Division, or designee, will review and approve or deny the request for a variance.

(c) Notification of Decision. The Division will notify the RTH owner of the decision in writing within 30 days after receipt of the application. A variance may be implemented only after receipt of written approval from the Division.

(d) Appeal of Decision. The RTH owner may appeal the denial of a variance request by submitting a request for reconsideration in writing to the Administrator of the Division. The Administrator of the Division will make a decision on the appeal within 30 days of receipt of the appeal. The decision of the Administrator of the Division will be final.

(e) Duration of the Variance. A variance will be reviewed by the Division at least every two years and may be revoked or suspended based upon a finding that the variance adversely impacts the welfare, health or safety of the RTH residents.

(10) Issuance of License. Upon finding that the applicant is in substantial compliance with these rules, the Division will issue a license.

(a) The license issued will state the name of the owner of the RTH, the name of the administrator, the address of the home to which the license applies, the maximum number of residents to be served at any one time and their evacuation capability, the type of home, and such other information as the Division deems necessary.

(b) A residential treatment home license will be effective for two years from the date issued unless sooner revoked or suspended.

(c) The residential treatment home license is not transferable or applicable to any location, facility, or management other than that indicated on the application and license.

(11) Conditions of License. The license will be valid under the following conditions:

(a) The residential treatment home will not be operated or maintained in combination with a nursing facility, hospital, retirement facility, or other occupancy unless licensed, maintained, and operated as a separate and distinct part. Each residential treatment home will have sleeping, dining and living areas for use only by its own residents, employees and invited guests.

(b) The license will be retained in the home and available for inspection at all times.

(c) Each license will be considered void immediately upon suspension or revocation of the license by the Division, or if the operation is discontinued by voluntary action of the licensee, or if there is a change of ownership.

(12) Site Inspections. Division staff will visit and inspect every residential treatment home at least, but not limited to, once every two years to determine whether it is maintained and operated in accordance with these rules. The RTH owner/applicant will allow Division staff entry and access to the home and residents for the purpose of conducting the inspections.

(a) Division staff will review methods of resident care and treatment, records, the condition of the facility and equipment, and other areas of operation.

(b) All records, unless specifically excluded by law, will be available to the Division for review.

(c) The State Fire Marshal or authorized representative(s) will, upon request, be permitted access to the home, fire safety equipment within the home, safety policies and procedures, maintenance records of fire protection equipment and systems, and records demonstrating the evacuation capability of RTH occupants.

(13) Investigation of Complaints and Alleged Abuse. Incidents of alleged abuse covered by ORS 430.731 through 430.768 will be reported and investigated in accordance with OAR 407-045. Division staff will investigate complaints and other alleged abuse made regarding residential treatment homes, will cause a report to be filed, and will take appropriate action under these rules. The Division may delegate the investigation to a CMHP or other appropriate entity.

(14) Denial, Suspension or Revocation of License. The Division will deny, suspend or revoke a license when it finds there has been substantial failure to comply with these rules; or when the State Fire Marshal or authorized representative certifies that there is a failure to comply with the Fire Code or Building Code.

(a) The Division may immediately suspend a license where there exists an imminent danger to the health or safety of residents.

(A) The Division will provide written notice of the suspension to the licensee citing the violation and stating the corrective action necessary in order for the license to be re-instated.

(B) The licensee may request a review of the decision to immediately suspend a license by submitting a request, in writing, within 10 days of the suspension notice. Within 10 days of receipt of the licensee's request for a review, the Division administrator or designee will review all material relating to the suspension and determine whether to sustain the decision. If the administrator does not sustain the decision, the suspension will be rescinded immediately. The decision of the administrator can be appealed within 90 days as a contested case under ORS 183.310 and 183.400 to 183.502.

(b) The Division will take action to deny or revoke a license in accordance with the following procedures:

(A) The Division will provide written notice of the denial or revocation citing the violation(s), and specifying the effective date (in the case of a currently operating RTH).

(B) The licensee will be entitled to a contested case hearing under ORS 183.310 and 183.400 to 183.502 prior to the effective date of revocation or denial if the licensee requests a hearing in writing, within 21 days after receipt of the written notice. If no such request is received, the decision will be sustained.

(C) A license subject to revocation or denial based upon review of a renewal application, will remain valid during an administrative hearings process, unless suspended, even if the hearing and final order are not issued until after the expiration date of the license.

(D) If an initial license is denied, the applicant will be entitled to a contested case hearing under ORS 183.310 and 183.400 to 183.502 if the

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applicant requests a hearing in writing within 60 days of receipt of the denial notice. If no such request is received, the decision to deny the license application will be sustained.

(i) In cases where there exists an imminent danger to the health or safety of residents, a license may be suspended immediately.

(ii) Such revocation, suspension, or denial will be done in accordance with rules of the Division under ORS Chapter 183.

(15) Reporting Changes. Each licensee will report promptly to the Division any significant changes to information supplied in the application or subsequent correspondence. Such changes include, but are not limited to, changes in the RTH name, owner entity, administrator, telephone number and mailing address. Such changes also include, but are not limited to, changes in the RTHs physical plant, policies and procedures or staffing pattern when such changes are significant or impact the health, safety or well-being of residents.

Stat. Auth.: ORS 443.450

Stats. Implemented: ORS 443.400 - 443.465 & 443.991(2)

Hist.: MHD 7-1999, f. 11-15-99, cert. ef. 12-1-99; MHD 5-2005, f. & cert. ef. 4-1-05; Suspended by MHS 13-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; Suspended by MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-035-0280

Contracts and Rates

(1) Contracts. Residential treatment home operators providing services funded by the Division will enter into a contract with the local community mental health program, the Division or other Division-approved entity. The contract does not guarantee that any number of persons eligible for Division funded services will be referred to or maintained in the home.

(2) Rates. Rates for all services and the procedures for collecting payments from residents and/or payees will be specified in a fee policy and procedures. The fee policy and procedures will describe the schedule of rates, conditions under which rates may be changed, acceptable methods of payment, and the policy on refunds at the time of termination of residency.

(a) For residents whose services are funded by the Division, reimbursement for services will be made according to the rate schedule outlined in the contract. Room and board payments for residents receiving Social Security benefits or public assistance will be in accordance with and not more than rates determined by the Division.

(b) For private paying residents, the program will enter into a signed agreement with the resident, and/or if applicable, resident's guardian, payee or conservator. This agreement will include but not be limited to a description of the services to be provided; the schedule of rates; conditions under which the rates may be changed; and policy on refunds at the time of termination of residency.

(c) Before an RTH increases rates or modifies payment procedures, the program will provide 30 days advance notice of the change to all residents, and their payees, guardians or conservators, as applicable.

Stat. Auth.: ORS 443.450

Stats. Implemented: ORS 443.400 - 443.455 & 443.991(2)

Hist.: MHD 7-1999, f. 11-15-99, cert. ef. 12-1-99; MHD 5-2005, f. & cert. ef. 4-1-05; Suspended by MHS 13-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; Suspended by MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-035-0290

Administrative Management

(1) Licensee. The licensee will be responsible for insuring that the RTH is operated in compliance with these rules and all other applicable federal, state and local laws and regulations.

(2) Administrator. The licensee will employ an administrator who:

(a) Has background including special training, experience, and other demonstrated ability in providing care and treatment appropriate to the residents served in the facility;

(b) Has a documented criminal record clearance and no history of abusive behavior;

(c) Will ensure that the RTH operates in accordance with the standards outlined in these rules;

(d) Will oversee the daily operation and maintenance of the RTH and will be available to perform administrative duties at the RTH at least 20 hours per week at the RTH or provide an administrative plan which documents an equivalent level of available supervision.

(e) Will develop and administer written policies and procedures to direct the operation of the RTH and the provision of services to residents;

(f) Will ensure that qualified staff are available, in accordance with the staffing requirements specified in these rules;

(g) Will supervise or provide for the supervision of staff and others involved in the operation of the program;

(h) Will maintain program, personnel and resident records;

(i) Will report regularly to the licensee on the operation of the RTH; and

(j) Will delegate authority and responsibility for the operation and maintenance of the facility to a responsible staff person whenever the Administrator is absent from the RTF. This authority and responsibility will not be delegated to a resident.

(3) Policies and Procedures. Policies and procedures will be developed, updated as necessary, maintained in a location easily accessible for staff reference, and made available to others upon reasonable request. They will be consistent with requirements of these rules, and address, but not be limited to:

(a) Personnel practices and staff training;

(b) Resident selection, admission and termination;

(c) Fire drills, emergency procedures, resident safety and abuse reporting;

(d) Health and sanitation;

(e) Records;

(f) Residential service plan, services and activities;

(g) Behavior management, including prohibition of the use of seclusion or restraints;

(h) Food Service;

(i) Medication administration and storage;

(j) Resident belongings, storage and funds;

(k) Resident rights and advance directives;

(l) Complaints and grievances;

(m) Facility maintenance;

(n) Evacuation capability determination; and

(o) Fees and money management.

(4) House Rules. The RTH will develop reasonable house rules outlining operating protocols concerning, but not limited to, meal times, nighttime quiet hours, guest policies, smoking and phone use. The house rules will be consistent with resident rights as delineated in OAR 309-035-0380 and are subject to approval by the Division. House rules will be posted in an area readily accessible to residents. House rules will be reviewed and updated, as necessary. Residents will be provided an opportunity to review and provide input into any proposed changes to house rules before the revisions become effective.

Stat. Auth.: ORS 443.450

Stats. Implemented: ORS 443.400 - 443.465 & 443.991(2)

Hist.: MHD 7-1999, f. 11-15-99, cert. ef. 12-1-99; MHD 5-2005, f. & cert. ef. 4-1-05; Suspended by MHS 13-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; Suspended by MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

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Records

(1) General Requirements. Records will be maintained to document the legal operation of the program, personnel practices and resident services. All records will be properly obtained, accurately prepared, safely stored and readily available within the RTH. All entries in records required by these rules will be in ink, indelible pencil, or approved electronic equivalent and prepared at the time, or immediately following, the occurrence of the event being recorded; be legible; and be dated and signed by the person making the entry. In the case of electronic records, signatures may be replaced by an approved, uniquely identifiable electronic equivalent.

(2) Program Records. Records documenting the legal operation of the RTH will include, but not be limited to:

(a) Written approval for occupancy of the building by the county or city having jurisdiction, any building inspection reports, zoning verifications, fire inspection reports or other documentation pertaining to the safe and sanitary operation of the RTH;

(b) Application for license, related correspondence and site inspection reports;

(c) Program operating budget and related financial records;

(d) Payroll records, employee schedules and time sheets;

(e) Materials Safety and Data Sheets;

(f) Fire drill documentation;

(g) Fire alarm and sprinkler system maintenance and testing records;

(h) Incident reports; and

(i) Policy and procedure manual.

(3) Personnel Records. Records documenting personnel actions will include:

(a) Job descriptions for all positions; and

(b) Individual employee records including, but not limited to, written documentation of employee identifying information and qualifications, criminal record clearance, tuberculosis test results, Hepatitis B vaccinations in accordance with the Oregon Occupational Safety and Health Code, per-

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formance appraisals, and documentation of pre-service orientation and other training.

(4) Resident Records. Except as indicated in OAR 309-035-0300, an individual resident record will be maintained for each resident and include:

(a) An easily accessible summary sheet which includes, but is not limited to the resident's name, previous address, date of admission to the facility, sex, date of birth, marital status, legal status, religious preference, Social Security number, health provider information, evacuation capability, diagnosis(es), major health concerns, medication allergies, information indicating whether advance mental health and health directives and/or burial plan have been executed, and the name of person(s) to contact in case of emergency;

(b) The names, addresses and telephone numbers of the resident's legal guardian or conservator, parent(s), next of kin, or other significant person(s); physician(s) or other medical practitioner(s); dentist; CMHP case manager or therapist; day program, school or employer; and any governmental or other agency representative(s) providing services to the resident;

(c) A mental health assessment and background information identifying the resident's residential service needs;

(d) Advance mental health and health directives, burial plans or location of these (as available);

(e) Residential service plan and copy(ies) of plan(s) from other relevant service provider(s).

(f) Documentation of the resident's progress and any other significant information including, but not limited to, progress notes, progress summaries, any use of seclusion or restraints, and correspondence concerning the resident;

(g) Health-related information and up-to-date information on medications in accordance with OAR 309-035-0440;

(h) Any authorizations obtained for the release of confidential information.

(5) Records for Crisis-respite Residents. For residents receiving crisis-respite services, an individual resident record will be maintained for each resident and include:

(a) A referral form or forms which include the resident's name; previous address; date of admission; sex; date of birth; marital status; social security number; health care provider names and phone numbers (including primary care physician, psychiatrist, prescriber (if different), and any other known health care providers); health insurance information; entitlements and/or eligibility; source and amount of income; diagnosis(es); major health concerns; current medications; medication or other allergies; name(s) of person(s) to contact in case of emergency; name, address and phone number of guardian or conservator (as applicable); and other information pertinent to the resident's crisis-respite stay;

(b) A mental health assessment and plan which include the reason for placement in crisis-respite care, the nature of crisis necessitating placement, an evaluation of risk for harm to self or others, the residential treatment plan for the crisis-respite stay, the expected duration of the crisis-respite placement, and the discharge plan;

(c) Current written orders by a qualified health care professional for all medications and a plan for obtaining any prescribed medications which are not in the resident's possession in original labeled containers;

(d) A signed resident agreement indicating informed consent for treatment; and

(e) Any authorizations obtained for the release of confidential information.

(6) Storage. All resident records will be stored in a weatherproof and secure location. Access to records will be limited to the Administrator and direct care staff unless otherwise allowed in these rules.

(7) Confidentiality. All resident records will be kept confidential. A signed release of information will be obtained for any disclosure from resident records in accordance with all applicable laws and rules.

(8) Resident Access to His/Her Record. A resident, or guardian (as applicable), will be allowed to review and obtain a copy of his/her resident record as allowed in ORS 179.505.

(9) Transfer of Records. Pertinent information from records of residents who are being transferred to another program will be transferred with the resident. A signed release of information will be obtained in accordance with applicable laws and rules.

(10) Maintenance of Records. The RTH will keep all records, except those transferred with a resident, for a period of three years.

(11) Administrative Changes. If an RTH changes ownership or Administrator, all resident and personnel records will remain in the home. Prior to the dissolution of any RTH, the Administrator will notify the

Division in writing as to the location and storage of resident records or those records will be transferred with the residents.

(12) Resident Contributions to Record. If a resident or guardian (as applicable) disagrees with the content of the resident record, or otherwise desires to provide documentation for the record, the resident or guardian (as applicable) may provide material in writing that then will become part of the resident record.

Stat. Auth.: ORS 443.450

Stats. Implemented: ORS 443.400 - 443.465 & 443.991(2)

Hist.: MHD 7-1999, f. 11-15-99, cert. ef. 12-1-99; MHD 5-2005, f. & cert. ef. 4-1-05; Suspended by MHS 13-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; Suspended by MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-035-0310

Staffing

(1) Staff Qualifications. A job description will be available for each staff position and specify qualifications and job duties.

(a) Any staff person hired to provide direct care to residents will be at least 18 years of age, be capable of implementing the RTHs emergency procedures and disaster plan, and be capable of performing other duties of the job as described in the job description.

(b) In accordance with OAR 943-007-0001 through 943-007-0501, all RTH staff who will have contact with residents will provide evidence of a criminal record clearance prior to starting employment.

(c) In accordance with OAR 333-071-0057 and 437-002-0368 through 437-002-2226, all RTH staff who will have contact with residents will be tested for tuberculosis and Hepatitis B within two weeks of first employment; additional testing will take place as deemed necessary; and the employment of staff who test positive for tuberculosis will be restricted if necessary.

(d) In accordance with the Oregon Occupational Safety and Health Code, chapter 437-002-0368 through 437-002-2226, Hepatitis B vaccinations will be offered within ten working days of initial employment to RTH staff who will have contact with residents. Training about bloodborne pathogens and related safety practices will be completed prior to offering the vaccination.

(e) All staff will meet other qualifications when required by a contract or financing arrangement approved by the Division.

(2) Personnel Policies. Personnel policies will be made available to all staff and will describe hiring, leave, promotion and disciplinary practices.

(3) Staff Training. The administrator will provide or arrange a minimum of 16 hours pre-service orientation and eight hours in-service training annually for each employee.

(a) Pre-service training for direct care staff will include, but not be limited to, a comprehensive tour of the home; a review of emergency procedures developed in accordance with OAR 309-035-0330; a review of RTH house rules, policies and procedures; background on mental and emotional disorders; an overview of resident rights; assessment of resident risk factors; medication management procedures; food service arrangements; a summary of each resident's assessment and residential service plan; and other information relevant to the job description and scheduled shift(s).

(b) In-service training will be provided on topics relevant to improving the care and treatment of residents in the RTH and meeting the requirements in these administrative rules. In-service training topics include, but are not limited to, implementing the residential service plan, behavior management, daily living skills development, nutrition, first aid, understanding mental illness, sanitary food handling, resident rights, identifying health care needs, and psychotropic medications.

(4) General Staffing Requirements. The licensee and administrator are responsible for assuring that an adequate number of staff are available at all times to meet the treatment, health and safety needs of residents. Regardless of the minimum staffing requirements, staff will be scheduled to ensure safety and to correspond to the changing needs of residents. At a minimum, there will be at least one direct care staff person on duty at all times.

(a) In the case of a specialized RTH, staffing requirements outlined in the contractual agreement for specialized services will be implemented.

(b) Direct care staff on night duty will be awake and dressed at all times. In homes where residents are housed in two or more detached buildings, direct care staff will monitor each building at least once an hour during the night shift. An approved method for alerting staff to problems will be in place. This method must be accessible to and usable by the residents.

Stat. Auth.: ORS 413.042 & 443.450

Stats. Implemented: ORS 443.400 - 443.465 & 443.991(2)

Hist.: MHD 7-1999, f. 11-15-99, cert. ef. 12-1-99; MHD 5-2005, f. & cert. ef. 4-1-05; Suspended by MHS 13-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; Suspended by MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

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Physical Environment Requirements

(1) Compliance with Building and Fire Codes. Each residential treatment home established on or after December 1, 1999, will meet the requirements for approved Group SR occupancies in the Building Code and the Fire Code in effect at the time of licensure. RTHs licensed as adult foster homes by the Division before the effective date of these rules will demonstrate that the home was in compliance with the Building Code and Fire Code in effect at the time of the original Division licensure. When renovation or a change in the home's use results in a new building occupancy classification, the home will meet the requirements for approved Group SR occupancies in the Building Code in effect at the time of such change.

(2) Accessibility for Persons with Disabilities. RTHs will be accessible as follows:

(a) Those homes that are licensed, constructed or renovated after January 26, 1992, and that are covered multi-family dwellings or public accommodations, will meet the physical accessibility requirements in Chapter 11 of the Oregon Structural Specialty Code. This code specifies requirements for public accommodations as defined in the Americans with Disabilities Act under Title III and for buildings qualifying as multi-family dwellings as defined in the Fair Housing Act, as amended in 1988.

(b) In order to ensure program accessibility under Title II of the Americans with Disabilities Act, the Division may require additional accessibility improvements.

(c) Any accessibility improvements made to accommodate an identified resident will be in accordance with the specific needs of the resident and will comply with the Building Code.

(3) Outdoor Areas. An accessible outdoor area is required and will be made available to all residents. For RTHs licensed on or after December 1, 1999, a portion of the accessible outdoor area will be covered and have an all weather surface, such as a patio or deck.

(4) General Storage. The home will include sufficient and safe storage areas. These will include but not be limited to:

(a) Storage for a reasonable amount of resident belongings beyond that available in resident sleeping rooms will be provided. For homes licensed on or after December 1, 1999, this storage will include 24 cubic feet per resident.

(b) All maintenance equipment stored on site, including yard maintenance tools, will be maintained in adequate storage space. Equipment and tools which pose a danger to RTH residents will be kept in locked storage.

(c) Storage areas necessary to ensure a functional, safe and sanitary environment consistent with OAR 309-035-0320, 309-035-0330, 309-035-0340, 309-035-0350, 309-035-0430, and 309-035-0440.

(5) Hallways. For RTHs initially licensed on or after December 1, 1999, all resident use areas and resident units will be accessible through temperature controlled common areas or hallways with a minimum width of 36 inches.

(6) Administrative Areas. Sufficient space will be provided for confidential storage of both resident and business records, for staff use in completing record-keeping tasks, and for a telephone. Other equipment including fire alarm panels and other annunciators will be installed in an area readily accessible to staff in accordance with the Fire Code.

(7) Resident Sleeping Rooms. Resident sleeping quarters will be provided in rooms separated from other areas of the facility by an operable door with an approved latching device.

(a) For homes licensed prior to December 1, 1999, resident sleeping rooms will include a minimum of 60 square feet per resident and allow for a minimum of three feet between beds.

(b) For homes initially licensed on or after December 1, 1999, each resident sleeping room will be limited to one or two residents. At least ten per cent, but no less than one, of the resident sleeping rooms will be accessible for persons with mobility disabilities. All resident sleeping rooms will include a minimum of 70 square feet per resident exclusive of closets, vestibules and bathroom facilities and allow a minimum of three feet between beds.

(c) A clothes closet, with adequate clothes hanging rods will be accessible within each sleeping room for storage of each resident's clothing and personal belongings. For homes initially licensed on or after December 1, 1999, built-in closet space will be provided totaling a minimum of 64 cubic feet for each resident. In accessible sleeping rooms, the clothes hanging rod height will be adjustable or no more than 54 inches in height to ensure accessibility for persons in wheelchairs.

(d) Each resident sleeping room will have exterior window(s) with a combined area at least one-tenth of the floor area of the room. Sleeping room windows will be equipped with curtains or blinds for privacy and

control of light. For homes initially licensed on or after December 1, 1999, an operable, opening window for emergency egress will be provided consistent with Building Code requirements.

(e) When locking devices are used on resident sleeping room doors, they will meet the requirements of the Building Code.

(8) Bathrooms.

(a) Bathing and toilet facilities will be conveniently located for resident use, provide permanently wired light fixtures that illuminate all parts of the room, provide individual privacy for residents, provide a securely affixed mirror at eye level, be adequately ventilated by a mechanical exhaust system or operable windows, and include sufficient facilities specially equipped for use by persons with a physical disability in buildings serving such persons.

(b) A minimum of one toilet, one lavatory and one bathtub or shower will be available for residents.

(9) Common Use Rooms. The home will include lounge and activity area(s), such as a living room or parlor, as required in the Building Code or totaling 25 square feet per resident, whichever is greater, for social and recreational use exclusively by residents, staff and invited guests.

(10) Laundry and Related Space. Laundry facilities will be separate from food preparation and other resident use areas. When residential laundry equipment is installed, the laundry facilities may be located to allow for both resident and staff use. The following will be included in the laundry facilities:

(a) Countertops or folding table(s) sufficient to handle laundry needs for the facility;

(b) Locked storage for chemicals and equipment;

(c) Outlets, venting and water hook-ups according to state building code requirements. Washers will have a minimum rinse temperature of 140 degrees Fahrenheit; and

(d) Sufficient, separate storage and handling space to ensure that clean laundry is not contaminated by soiled laundry.

(11) Kitchen. Kitchen facilities and equipment will be of residential type except as otherwise approved by the Division. For all kitchens, the following will be included:

(a) Dry storage space, not subject to freezing, in cabinets or a separate pantry for a minimum of one week's supply of staple foods;

(b) Sufficient refrigeration space maintained at 45 degrees Fahrenheit or less and freezer space for a minimum of two days' supply of perishable foods;

(c) A dishwasher (may be approved residential type) with a minimum final rinse temperature of 140 degrees Fahrenheit;

(d) Smooth, nonabsorbent and cleanable counters for food preparation and serving;

(e) Appropriate storage for dishes and cooking utensils designed to be free from potential contamination;

(f) Stove and oven equipment for cooking and baking needs; and

(g) Storage for a mop and other cleaning tools and supplies used for food preparation, dining and adjacent areas. Such cleaning tools will be maintained separately from those used to clean other parts of the facility.

(12) Dining Area.

(a) A separate dining room or area where meals are served will be provided for the exclusive use of residents, employees, and invited guests.

(b) Dining space will be provided to seat all residents with a minimum area of 20 square feet per resident, exclusive of serving facilities and required exit pathways.

(13) Details and Finishes. All details and finishes will meet the finish requirements of applicable sections of the Building Code and the Fire Code.

(a) Surfaces. Surfaces of all walls, ceilings, windows and equipment will be readily cleanable. The walls, floors and ceilings in the kitchen, laundry and bathing areas will be nonabsorbent, and readily cleanable.

(b) Flooring. In homes initially licensed on or after December 1, 1999, flooring, thresholds and floor junctures will be designed and installed to prevent a tripping hazard. In addition, hard surface floors and base will be free from cracks and breaks, and bathing areas will have non-slip surfaces.

(c) Doors. In homes initially licensed on or after December 1, 1999, all doors to accessible resident sleeping rooms, bathrooms and common use areas will provide a minimum clear opening of 32 inches. Lever type door hardware will be provided on all doors used by residents in accessible areas. If locks are used on doors to resident sleeping rooms, they will be interactive to release with operation of the inside door handle and be master-keyed from the corridor side. Exit doors will not include locks which prevent evacuation. An exterior door alarm or other acceptable system may

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be provided for security purposes and to alert staff when resident(s) or others enter or exit the home.

(d) Handrails. Handrails will be provided on all stairways as specified in the Building Code.

(14) Heating and Ventilating. All areas of the home will be adequately ventilated and temperature controlled consistent with Mechanical and Building Code requirements in effect at the time of installation.

(a) Temperature Control. All habitable rooms will include heating equipment capable of maintaining a minimum temperature of 68 degrees Fahrenheit at a point three feet above the floor. During times of extreme summer heat, fans will be made available when air conditioning is not provided.

(b) Exhaust Systems. All toilet and shower rooms will be ventilated by a mechanical exhaust system or operable windows.

(c) Fireplaces, Furnaces, Wood Stoves and Boilers. Where used, design and installation will meet standards of the Mechanical Code and the Boiler and Pressure Vessel Law in effect at the time of their installation, as applicable.

(d) Water Temperature. In resident areas, hot water temperatures will be maintained within a range of 110 to 120 degrees Fahrenheit. Hot water temperatures for washing machines and dishwashers will be at least 140 degrees Fahrenheit.

(15) Electrical. All electrical systems will meet the standards of the Electrical Code in effect on the date of installation, and all electrical devices will be properly wired and in good repair.

(a) When not fully grounded, circuits in resident areas may be protected by GFCI type receptacles or circuit breakers as an acceptable alternative.

(b) All electrical circuits will be protected by circuit breakers or non-interchangeable circuit-breaker-type fuses in fuse boxes.

(c) A sufficient supply of electrical outlets will be provided to meet resident and staff needs without the use of extension cords or outlet expander devices. (See Office of State Fire Marshal and Department of Health Services policy for extension cords.)

(d) Lighting fixtures will be provided in each resident bedroom and bathroom, switchable near the entry door, and in other areas as required to meet task illumination needs.

(16) Plumbing. All plumbing will meet the Plumbing Code in effect on the date of installation, and all plumbing fixtures will be properly installed and in good repair.

(17) Telephones. The home will provide adequate access to telephones for private use by residents. In homes initially licensed on or after December 1, 1999, a phone for resident use will be provided in addition to the phone used by staff. The RTH may establish reasonable house rules governing phone use to ensure equal access by all residents. Each resident or guardian (as applicable) will be responsible for payment of long distance phone bills where the calls were initiated by the resident, unless other mutually agreed arrangements have been made.

(18) Smoking. Smoking is not allowed in sleeping areas. If there is a designated smoking area, it will be separated from other common areas. Indoor smoking areas will be equipped with a mechanical exhaust fan or central exhaust system which discharges to the outside. Furniture used in designated smoking areas will be non-flammable and without crevasses. In homes initially licensed on or after December 1, 1999, indoor smoking areas will be separated from other parts of the home by a self-closing door, contain sprinkler protection or heat detectors, and contain only non-combustible furnishings and materials.

Stat. Auth.: ORS 443.450

Stats. Implemented: ORS 443.400 - 443.465 & 443.991(2)

Hist.: MHD 7-1999, f. 11-15-99, cert. ef. 12-1-99; MHD 5-2005, f. & cert. ef. 4-1-05; Suspended by MHS 13-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; Suspended by MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

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Safety

(1) Training on Safety Procedures. All staff will be trained in staff safety procedures prior to beginning their first regular shift. All residents will be trained in resident safety procedures as soon as possible during their first 72 hours of residency.

(2) Emergency Procedure and Disaster Plan. A written procedure and disaster plan will be developed to cover such emergencies and disasters as fires, explosions, missing persons, accidents, earthquakes and floods. The plan will be posted by the phone and immediately available to the administrator and employees. The plan will specify where staff and residents will go if the home becomes uninhabitable. The plan will be kept up to date and will include:

(a) Emergency instructions for employees;

(b) The telephone numbers of the local fire department, police department, the poison control center, the administrator, the administrator's designee, and other persons to be contacted in emergencies; and

(c) Instructions for the evacuation of residents and employees.

(3) Combustible and Hazardous Materials. Noncombustible and non-hazardous materials will be used whenever possible. When necessary to the operation of the home, flammable and combustible liquids and other hazardous materials will be safely and properly stored in clearly labeled, original containers in areas inaccessible to residents in accordance with the Fire Code. Any quantities of combustible and hazardous materials maintained will be the minimum necessary.

(4) Poisonous and Other Toxic Materials. Non-toxic cleaning supplies will be used whenever available. Poisonous and other toxic materials will be properly labeled and stored in locked areas distinct and apart from all food and medications.

(5) Evacuation Capability. Evacuation capability categories are based upon the ability of the residents and staff as a group to evacuate the home or relocate from a point of occupancy to a point of safety. Homes will be constructed and equipped according to the Building Code occupancy classification for the designated evacuation capability for occupants. Occupancy classification categories of evacuation capability include "Impractical" and "Slow" (SR-3). "Prompt" homes are regulated by the building and fire codes as R-3 occupancies. The evacuation capability designated for the facility will be documented and maintained in accordance with requirements for Group SR Occupancies in the Building Code.

(a) Only persons assessed to be capable of evacuating in accordance with the designated facility evacuation capability will be admitted to the RTH.

(b) Persons experiencing difficulty with evacuating in a timely manner will be provided assistance from staff and offered environmental and other accommodations, as practical. Under such circumstances, the RTH will consider increasing staff levels, changing staff assignments, offering to change the resident's room assignment, arranging for special equipment, and taking other actions that may assist the resident. Residents who still cannot evacuate the home safely in the allowable period of time will be assisted with transferring to another program with an evacuation capability designation consistent with the individual's documented evacuation capability.

(6) Evacuation Drills. Every resident will participate in an unannounced evacuation drill each month. (See Section 408.12.5 of the Fire Code.)

(a) At least once every three months, the drill will be conducted during resident sleeping hours.

(b) Drills will be scheduled at different times of the day and on different days of the week with different locations designated as the origin of the fire for drill purposes.

(c) Any resident failing to evacuate within the established time limits will be provided with special assistance and a notation made in the resident record.

(d) Written evacuation records will be retained for at least three years. They will include documentation, made at the time of the drill, specifying the date and time of the drill, the location designated as the origin of the fire for drill purposes, the names of all individuals and staff present, the amount of time required to evacuate, notes of any difficulties experienced, and the signature of the staff person conducting the drill.

(7) Unobstructed Egress. All stairways, halls, doorways, passageways, and exits from rooms and from the home will be unobstructed.

(8) Fire Extinguishers. The program will install and maintain one or more 2A:10B:C fire extinguishers on each floor in accordance with the Fire Code.

(9) Fire and Smoke Alarms and Detectors. Approved fire and smoke alarms and detectors will be installed according to Building Code and Fire Code requirements. These alarms will be tested during each evacuation drill. The RTH will provide appropriate signal devices for persons with disabilities who do not respond to the standard auditory alarms. All of these devices will be inspected and maintained in accordance with the requirements of the State Fire Marshal or local agency having jurisdiction.

(10) Sprinkler Systems. Sprinkler systems, if used, will be installed in compliance with the Building Code and maintained in accordance with rules adopted by the State Fire Marshal.

(11) First Aid Supplies. First aid supplies will be readily accessible to staff. All supplies will be properly labeled.

(12) Portable Heaters. Portable heaters are a recognized safety hazard and will not be used, except as approved by the State Fire Marshal or authorized representative.

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(13) Safety Program. A safety program will be developed and implemented to identify and prevent the occurrence of hazards. Such hazards may include, but are not limited to, dangerous substances, sharp objects, unprotected electrical outlets, use of extension cords or other special plug-in adapters, slippery floors or stairs, exposed heating devices, broken glass, inadequate water temperatures, overstuffed furniture in smoking areas, unsafe ashtrays and ash disposal, and other potential fire hazards.

Stat. Auth.: ORS 443.450
Stats. Implemented: ORS 443.400 - 443.465 & 443.991(2)
Hist.: MHD 7-1999, f. 11-15-99, cert. ef. 12-1-99; MHD 5-2005, f. & cert. ef. 4-1-05; Suspended by MHS 13-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; Suspended by MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-035-0340 Sanitation

(1) Water Supply. The water supply in the home will meet the requirements of the current rules of the Health Division governing domestic water supplies.

(a) A municipal water supply will be utilized if available.

(b) When the home is not served by an approved municipal water system, and the home qualifies as a public water system according to OAR 333-061-0020(127), Public Health Division rules for public water systems, then the home will comply with the OAR chapter 333 rules of the Public Health Division pertaining to public water systems. These include requirements that the drinking water be tested for total coliform bacteria at least quarterly, and nitrate at least annually, and reported to Public Health Division. For adverse test results, these rules require that repeat samples and corrective action be taken to assure compliance with water quality standards, that public notice be given whenever a violation of the water quality standards occurs, and that records of water testing be retained according to the Public Health Division requirements.

(2) Surfaces. All floors, walls, ceilings, windows, furniture, and equipment will be kept in good repair, clean, neat and orderly.

(3) Plumbing Fixtures. Each bathtub, shower, lavatory, and toilet will be kept clean, in good repair and regularly sanitized.

(4) Disposal of Cleaning Waste Water. No kitchen sink, lavatory, bathtub, or shower will be used for the disposal of cleaning waste water.

(5) Soiled Laundry. Soiled linens and clothing will be stored in an area or container separate from kitchens, dining areas, clean linens, clothing, and food.

(6) Pest Control. All necessary measures will be taken to prevent rodents and insects from entering the home. Should pests be found in the home, appropriate action will be taken to eliminate them.

(7) Grounds Maintenance. The grounds of the home will be kept orderly and reasonably free of litter, unused articles, and refuse.

(8) Garbage Storage and Removal. Garbage and refuse receptacles will be clean, durable, watertight, insect and rodent proof, and will be kept covered with tight-fitting lids. All garbage and solid waste will be disposed of at least weekly and in compliance with the current rules of the Department of Environmental Quality.

(9) Sewage Disposal. All sewage and liquid wastes will be disposed of in accordance with the Plumbing Code to a municipal sewage system where such facilities are available. If a municipal sewage system is not available, sewage and liquid wastes will be collected, treated, and disposed of in compliance with the current rules of the Department of Environmental Quality. Sewage lines, and septic tanks or other non-municipal sewage disposal systems where applicable, will be maintained in good working order.

(10) Biohazardous Waste. Biohazardous waste will be disposed of in compliance with the rules of the Department of Environmental Quality.

(11) Infection Control. Precautions will be taken to prevent the spread of infectious and/or communicable diseases as defined by the Centers for Disease Control and to minimize or eliminate exposure to known health hazards.

(a) In accordance with OAR 437-002-0368 through 437-002-2226 of the Oregon Occupational Safety and Health Code, staff will employ universal precautions whereby all human blood and certain body fluids are treated as if known to be infectious for HIV, HBV and other blood borne pathogens.

(b) Bathroom facilities will be equipped with an adequate supply of toilet paper, soap and towels.

(12) Infection Control for Pets and Other Household Animals. If pets or other household animals exist at the home, sanitation practices will be implemented to prevent health hazards.

(a) Such animals will be vaccinated in accordance with the recommendations of a licensed veterinarian. Proof of such vaccinations will be maintained on the premises.

(b) Animals not confined in enclosures will be under control and maintained in a manner that does not adversely impact residents or others.

Stat. Auth.: ORS 443.450
Stats. Implemented: ORS 443.400 - 443.465 & 443.991(2)
Hist.: MHD 7-1999, f. 11-15-99, cert. ef. 12-1-99; MHD 5-2005, f. & cert. ef. 4-1-05; Suspended by MHS 13-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; Suspended by MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-035-0350

Resident Furnishings

(1) Bedroom Furniture. Residents will be allowed to use their own furniture within space limitations of the resident sleeping room. Otherwise, furniture will be provided or arranged for each resident, maintained in good repair and include:

(a) A bed, including a frame and a clean mattress and pillow;

(b) A private dresser or similar storage area for personal belongings which is readily accessible to the resident; and

(c) Locked storage for the resident's small, personal belongings. In homes initially licensed before December 1, 1999, this locked storage may be provided in a place other than the resident's bedroom. The resident will be provided with a key or other method to gain access to his/her locked storage space.

(2) Linens. Linens will be provided for each resident and will include:

(a) Sheets, pillowcase, other bedding appropriate to the season and individual resident's comfort;

(b) Availability of a waterproof mattress or waterproof mattress cover; and

(c) Towels and wash cloths.

(3) Personal Hygiene Items. Each resident will be assisted in obtaining personal hygiene items in accordance with individual needs. These will be stored in a clean and sanitary manner, and may be purchased with the resident's personal allowance. Personal hygiene items include, but are not limited to, a comb and/or hairbrush, a toothbrush, toothpaste, and menstrual supplies (if needed).

(4) Supplies Provided by RTH. Sufficient supplies of soap, shampoo and toilet paper for all residents will be provided.

(5) Common Area Furniture. An adequate supply of furniture for resident use in living room, dining room and other common areas will be maintained in good condition.

Stat. Auth.: ORS 443.450
Stats. Implemented: ORS 443.400 - 443.465 & 443.991(2)
Hist.: MHD 7-1999, f. 11-15-99, cert. ef. 12-1-99; MHD 5-2005, f. & cert. ef. 4-1-05; Suspended by MHS 13-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; Suspended by MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-035-0360

Admission to Home

(1) Responsibility for Admission Process. Each RTH's admission policy and procedures will specify who is responsible for each component of the admission information-gathering and decision-making process. Responsibilities will be organized and assigned to promote effective processing of referrals and admissions.

(2) Referrals. Unless limited by contractual agreement with the Division or other Division-approved party, referrals may be accepted from a variety of sources. Residents whose services will be funded by the Division must be approved for placement by the CMHP or other local entity given responsibility for this function by contract with the Division.

(3) Release of Information. In accordance with ORS 179.505 and the 45 Code of Federal Registry, Part 164, an authorization for the release of information will be obtained for any confidential information concerning a prospective resident.

(4) Nondiscrimination. Persons will be considered for admission without regard to race, color, sex or sexual orientation (except as may be limited by room arrangement), religion, creed, national origin, age (except under 18 years), familial status, marital status, source of income, or disability in addition to the mental or emotional disorder.

(5) Screening. Prior to accepting a resident for admission to the RTH, the administrator or his/her designee will determine that the resident meets admission criteria. The prospective resident will receive an explanation of the program, be given a copy of materials explaining conditions of residency, and be offered the opportunity to visit the home. Sufficient information will be obtained from the prospective resident, a relative and/or agencies providing services to determine eligibility for admission and service needs. In the case of individuals referred for emergency or crisis-respite admission, the information obtained may be less extensive than for regular admissions but must be sufficient to determine that the resident meets admission criteria and that the RTH is appropriate considering the individual.

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ual's needs. Screening information will include, but not be limited to, the following:

(a) Written documentation that the prospective resident has, or is suspected of having, a mental or emotional disorder;

(b) Background information including a mental health assessment and describing previous living arrangements, service history, behavioral issues and service needs;

(c) Medical information including a brief history of any health conditions, documentation from a Licensed Medical Professional or other qualified health care professional of the individual's current physical condition, and a written record of any current or recommended medications, treatments, dietary specifications, and aids to physical functioning;

(d) Copies of documents, or other documentation, relating to guardianship, conservatorship, commitment status, advance directives, or any other legal restrictions (as applicable);

(e) A copy of the prospective resident's most recent mental health treatment plan, or in the case of an emergency or crisis-respite admission, a summary of current mental health treatment involvement; and

(f) Documentation of the prospective resident's ability to evacuate the building consistent with the RTHs designated evacuation capability and other concerns about potential safety risks.

(6) Admission Criteria. Persons considered for admission will:

(a) Be assessed to have a mental or emotional disorder, or a suspected mental or emotional disorder;

(b) Be in need of care, treatment and supervision;

(c) Be at least 18 years of age;

(d) Not require continuous nursing care, unless a reasonable plan to provide such care exists, the need for residential treatment supersedes the need for nursing care, and the Division approves the placement;

(e) Have an evacuation capability consistent with the RTHs SR Occupancy classification; and

(f) Meet additional criteria required or approved by the Division through contractual agreement or condition of licensing.

(7) Admission Decisions. A decision to admit a resident to the RTH will be made as follows:

(a) For regular admissions, the decision will be made based upon a review of screening materials at a pre-admission meeting and a determination that the resident meets the admission criteria. A pre-admission meeting will be scheduled to include the RTH administrator or designee, the potential resident and his/her legal guardian (as applicable). With the prospective resident's consent, the pre-admission meeting may also include family member(s) or other representative(s) as appropriate, representative(s) of relevant service providing agency(ies), and others with an interest in the resident's admission. The potential resident, legal guardian (as applicable) and authorized representative will be informed of the admission decision within 72 hours. If a decision is deferred or postponed, the potential resident, legal guardian (as applicable) and authorized representative will be informed of the potential resident's application status within one week of the pre-admission meeting, and weekly thereafter (as necessary). When admission is denied, the prospective resident, their legal guardian (as applicable) and authorized representative will be informed in writing of the basis for the decision and their right to appeal the decision in accordance with OAR 309-035-0390.

(b) For crisis-respite admissions, the decision will be made based upon a review of the referral materials by the RTH administrator or designee and a determination that the resident meets the admission criteria. Due to the urgent nature of crisis-respite admissions, decisions will be made on an immediate basis. The prospective resident, their legal guardian (as applicable) and authorized representative will be directly informed of the decision and their right to appeal in accordance with OAR 309-035-0390.

(8) Informed Consent for Services. The RTH will obtain informed consent for services upon admission to the RTH from each resident, or his/her guardian (as applicable), unless the resident's ability to do so is legally restricted. If such consent is not obtained, the reason will be documented and further attempts to obtain informed consent will be made as appropriate.

(9) Orientation. Upon admission, the administrator or his/her designee will provide an orientation to each new resident that includes, but is not limited to, a complete tour of the home, introductions to other residents and staff, discussion of house rules, explanation of the laundry and food service schedule and policies, review of resident rights and grievance procedures, explanation of the fee policy, discussion of the conditions under which residency would be terminated, and a general description of available services and activities. During the orientation, advance directives

will be explained. If the resident does not already have any advance directive(s), she/he will be given an opportunity to complete them. Orientation will also include a description of the RTHs emergency procedures in accordance with OAR 309-035-0330.

(10) Record Preparation. A resident record will be established concurrent with the resident's admission. Prior to a regular admission, within five days after an emergency admission, or within 24 hours of a crisis-respite admission, the program will determine with whom communication needs to occur and will attempt to obtain the needed authorizations for release of information. The record established upon admission will include the materials reviewed in screening the resident, the summary sheet and any other available information. Every effort will be made to complete the resident record consistent with OAR 309-035-0300 in a timely manner. The assessment and residential service plan will be completed in accordance with 309-035-0400. Records on prescribed medications and health needs will be completed as specified in 309-035-0440.

Stat. Auth.: ORS 443.450

Stats. Implemented: ORS 443.400 - 443.465 & 443.991(2)

Hist.: MHD 7-1999, f. 11-15-99, cert. ef. 12-1-99; MHD 5-2005, f. & cert. ef. 4-1-05; Suspended by MHS 13-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; Suspended by MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-035-0370

Termination of Residency

(1) Responsibility for Termination Process. Each RTHs termination policy and procedures will specify who is responsible for each step of the process for terminating residency. Responsibilities will be organized and assigned to promote a fair and efficient termination process. Unless otherwise designated as a condition of licensing or in contract language approved by the Division, the Administrator will be responsible for initiating and coordinating termination proceedings. An effort will be made to prevent unnecessary terminations by making reasonable accommodations within the RTH.

(2) Crisis-respite Services. Because crisis-respite services are time-limited, the planned end of services will not be considered a termination of residency and will not be subject to requirements in OAR 309-035-0370. Upon admission to crisis-respite services, the resident or guardian (as applicable) will be informed of the planned date for discontinuation of services. This date may be extended through mutual agreement between the administrator and the resident or guardian (as applicable). RTHs providing crisis-respite services will implement policies and procedures that specify reasonable time frames and the grounds for discontinuing crisis-respite services earlier than the date planned.

(3) Voluntary Termination of Residency. A resident or guardian (as applicable) may terminate residency in the RTH upon providing at least 30 days notice. Upon mutual agreement between the administrator and the resident or guardian (as applicable), less than 30 days notice may be provided.

(4) Emergency Termination of Residency. If a resident's behavior poses a serious and immediate threat to the health or safety of others in or near the RTH, the administrator, after providing 24 hours written notice specifying the causes to the resident or guardian (as applicable), may immediately terminate the residency. The notice will specify the resident's right to appeal the emergency termination decision in accordance with OAR 309-035-0390.

(5) Other Terminations of Residency. When other circumstances arise providing grounds for termination of residency, the administrator will discuss these grounds with the resident, the resident's guardian (as applicable), and with the resident's permission, other persons with an interest in the resident's circumstances. If a decision is made to terminate residency, the administrator will provide at least 30 days written notice specifying the causes to the resident or guardian (as applicable). This notice will also specify the resident's right to appeal the termination decision in accordance with OAR 309-035-0390. Upon mutual agreement between the administrator and the resident or guardian (as applicable), less than 30 days notice may be provided. An effort will be made to establish a reasonable termination date in consideration of both program needs and the needs of the terminated resident to find alternative living arrangements. Criteria establishing grounds for termination include:

(a) Resident no longer needs or desires services provided at the RTH and/or expresses a desire to move to an alternative setting;

(b) Resident is assessed by a Licensed Medical Professional or other qualified health professional to require services, such as continuous nursing care or extended hospitalization, that are not available, or can not be reasonably arranged, at the RTH;

(c) Resident's behavior is continuously and significantly disruptive or poses a threat to the health or safety of self or others and these behavioral

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concerns cannot be adequately addressed with services available at the RTH or services that can be arranged outside of the RTH;

(d) Resident cannot safely evacuate the home in accordance with the RTHs SR Occupancy Classification after efforts described in OAR 309-035-0330 have been taken;

(e) Nonpayment of fees in accordance with program's fee policy; and

(f) Resident continuously and knowingly violates house rules resulting in significant disturbance to others.

(6) Pre-termination Meeting. Except in the case of emergency terminations or crisis-respite services, a pre-termination meeting will be held with the resident, guardian (as applicable), and with the resident's permission, others interested in the resident's circumstances. The purpose of the meeting is to plan any arrangements necessitated by the termination decision. The meeting will be scheduled to occur at least two weeks prior to the termination date. In the event a pre-termination meeting is not held, the reason will be documented in the resident's record.

(7) Documentation. Documentation of discussions and meetings held concerning termination of residency and copies of notices will be maintained in the resident's record.

(8) Disposition of Personal Property. At the time of termination of residency, the resident will be given a statement of account, any balance of funds held by the RTH and all property held in trust or custody by the RTH.

(a) In the event of pending charges (such as long distance phone charges or damage assessments), the program may hold back the amount of funds anticipated to cover the pending charges. Within 30 days after residency is terminated or as soon as pending charges are confirmed, the resident will be provided a final financial statement along with any funds due to the resident.

(b) In the case of resident belongings left at the RTH for longer than seven days after termination of residency, the RTH will make a reasonable attempt to contact the resident, guardian (as applicable) and/or other representative of the resident. The RTH must allow the resident, guardian (as applicable) or other representative at least 15 days to make arrangements concerning the property. If it is determined that the resident has abandoned the property, the RTH may then dispose of the property. If the property is sold, proceeds of the sale, minus the amount of any expenses incurred and any amounts owed the program by or on behalf of the resident, will be forwarded to the resident or guardian (as applicable).

(9) Absences without Notice. If a resident moves out of the RTH without providing notice, or is absent without notice for more than seven consecutive days, the administrator may terminate residency in the manner provided in ORS 105.105 to 105.168 after seven consecutive days of the resident's absence. An attempt will be made to contact the resident, guardian (as applicable) and/or other person interested in the resident's circumstances to confirm the resident's intent to discontinue residency.

Stat. Auth.: ORS 443.450

Stats. Implemented: ORS 443.400 - 443.465 & 443.991(2)

Hist.: MHD 7-1999, f. 11-15-99, cert. ef. 12-1-99; MHD 5-2005, f. & cert. ef. 4-1-05; Suspended by MHS 13-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; Suspended by MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-035-0380

Resident Rights

(1) Statutory and Constitutional Rights. Each resident will be assured the same civil and human rights accorded to other citizens. These rights will be assured unless expressly limited by a court in the case of a resident who has been adjudicated incompetent and not restored to legal capacity. The rights described in paragraphs (2) and (3) of this section are in addition to, and do not limit, all other statutory and constitutional rights which are afforded to all citizens including, but not limited to, the right to vote, marry, have or not have children, own and dispose property, enter into contracts and execute documents.

(2) Rights of Service Recipients. In accordance with ORS 430.210, residents will have the right to:

(a) Choose from available services those which are appropriate, consistent with the plan developed in accordance with paragraphs (b) and (c) of this subsection, and provided in a setting and under conditions that are least restrictive to the person's liberty, that are least intrusive to the person and that provide for the greatest degree of independence;

(b) An individualized written service plan, services based upon that plan and periodic review and reassessment of service needs;

(c) Ongoing participation in planning services in a manner appropriate to the person's capabilities, including the right to participate in the development and periodic revision of the plan described in paragraph (b) of this subsection, and the right to be provided with a reasonable explanation of all service considerations;

(d) Not receive services without informed consent except in a medical emergency or as otherwise permitted by law;

(e) Not participate in experimentation without informed voluntary written consent;

(f) Receive medication only for the person's individual clinical needs;

(g) Not be involuntarily terminated or transferred from services without prior notice, notification of available sources of necessary continued services and exercise of a grievance procedure;

(h) A humane service environment that affords reasonable protection from harm and affords reasonable privacy;

(i) Be free from abuse or neglect and to report any incident of abuse without being subject to retaliation;

(j) Religious freedom;

(k) Not be required to perform labor, except personal housekeeping duties, without reasonable and lawful compensation;

(l) Visit with family members, friends, advocates and legal and medical professionals;

(m) Exercise all rights set forth in ORS 426.385 and 427.031 if the individual is committed to the Division;

(n) Be informed at the start of services and periodically thereafter of the rights guaranteed by this section and the procedure for reporting abuse, and to have these rights and procedures prominently posted in a location readily accessible to the person and made available to the person's guardian and any representative designated by the person;

(o) Assert grievances with respect to infringement of the rights described in this section, including the right to have such grievances considered in a fair, timely and impartial grievance procedure;

(p) Have access to and communicate privately with any public or private rights protection program or rights advocate; and

(q) Exercise all rights described in this section without any form of reprisal or punishment.

(3) Additional Rights in RTHs. Residents will also have a right to:

(a) Adequate food, shelter and clothing, consistent with OAR 309-035-0410;

(b) A reasonable accommodation if, due to their disability, the housing and services are not sufficiently accessible;

(c) Confidential communication, including receiving and opening personal mail, private visits with family members and other guests, and access to a telephone with privacy for making and receiving telephone calls;

(d) Express sexuality in a socially appropriate and consensual manner;

(e) Access to community resources including recreation, religious services, agency services, employment and day programs, unless such access is legally restricted;

(f) Be free from seclusion and restraint;

(g) To review the RTHs policies and procedures; and

(h) Not participate in research without informed voluntary written consent.

(4) The Resident's Right to Fresh Air. For the purpose of this rule, these terms have the following meanings:

(a) "Fresh air" means the inflow of air from outside the facility where the resident is receiving services. "Fresh air" may be accessed through an open window or similar method as well as through access to the outdoors.

(b) "Outdoors" means an area with fresh air that is not completely enclosed overhead. "Outdoors" may include a courtyard or similar area.

(c) If a resident requests access to fresh air and the outdoors or the resident's treating health care provider determines that fresh air and the outdoors would be beneficial to the resident, the facility in which the resident is receiving services shall provide daily access to fresh air or the outdoors unless this access would create a significant risk of harm to the resident or others.

(d) The determination whether a significant risk of harm to the resident or others exists shall be made by the resident's treating health care provider. The treating health care provider may find that a significant risk of harm to the resident or others exists if:

(A) The resident's individual circumstances and condition indicate an unreasonable risk of harm to the resident or others which cannot be reasonably accommodated within existing programming should the resident be allowed access to fresh air and the outdoors; or

(B) The facility's existing physical plant or existing staffing prevent the provision of access to fresh air and the outdoors in a manner that maintains the safety of the resident or others.

(e) If a facility determines that its existing physical plant prevents the provision of access to fresh air or the outdoors in a safe manner, the facili-

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ty shall make a good faith effort at the time of any significant renovation to the physical plant that involves renovation of the unit or relocation of where residents are treated to include changes to the physical plan or location that allow access to fresh air and the outdoors, so long as such changes do not add an unreasonable amount to the cost of the renovation.

(5) Program Requirements. The program will have and implement written policies and procedures which protect residents' rights, and encourage and assist residents to understand and exercise their rights. The program will post a listing of resident rights under these rules in a place readily accessible to all residents and visitors.

Stat. Auth.: ORS 443.450

Stats. Implemented: ORS 443.400 - 443.465 & 443.991(2)

Hist.: MHD 7-1999, f. 11-15-99, cert. ef. 12-1-99; MHD 5-2005, f. & cert. ef. 4-1-05; MHS 5-2009, f. & cert. ef. 12-17-09; Suspended by MHS 13-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; Suspended by MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-035-0390

Grievances and Appeals

(1) Procedures. The RTH will have a written policy and procedures concerning the resident grievance and appeal process. A copy of the grievance and appeal process will be posted in a place readily accessible to residents. A copy of the grievance and appeal process will be provided to each resident and guardian (as applicable) at the time of admission to the RTH.

(2) Grievances. A RTH's process for grievances must, at a minimum, include the following:

(a) Residents will be encouraged to informally resolve complaints through discussion with RTH staff.

(b) If the resident is not satisfied with the informal process or does not wish to use it, the resident may proceed as follows:

(A) The resident may submit a complaint in writing to the RTH administrator. The resident may receive assistance in submitting the complaint from any person whom the resident chooses. If requested by the resident, RTH staff will be available to assist the resident.

(B) The written complaint will go directly to the RTH administrator without being read by other staff, unless the resident requests or permits other staff to read the complaint.

(C) The complaint will include the reasons for the grievance and the proposed resolutions. No complaint will be disregarded because it is incomplete.

(D) Within five days of receipt of the complaint, the RTH administrator will meet with the resident to discuss the complaint. The resident may have an advocate or other person of his/her choosing present for this discussion.

(E) Within five days of meeting with the resident, the RTH administrator will provide a written response to the resident. As part of the written response, the Administrator will provide information about the appeal process.

(F) In circumstances where the matter of the complaint is likely to cause irreparable harm to a substantial right of the resident before the grievance procedures outlined in OAR 309-035-0390 are completed, the resident may request an expedited review. The RTH administrator will review and respond in writing to the grievance within 48 hours. The written response will include information about the appeal process.

(3) Appeals. Residents, their legal guardians (as applicable) and prospective residents (as applicable) will have the right to appeal admission, termination and grievance decisions as follows:

(a) If the resident is not satisfied with the decision, the resident may file an appeal in writing within ten days of the date of the RTH administrator's response to the complaint or notification of admission denial or termination (as applicable). The appeal will be submitted to the CMHP director or designee in the county where the RTH is located.

(b) The resident may receive assistance in submitting the appeal. If requested by the resident, RTH staff will be available to assist the resident.

(c) The CMHP director or designee will provide a written response within ten days of receiving the appeal.

(d) If the resident is not satisfied with the CMHP director's decision, the resident may file a second appeal in writing within ten days of the date of the CMHP director's written response to the Administrator of the Division or designee. The decision of the Administrator of the Division will be final.

Stat. Auth.: ORS 443.450

Stats. Implemented: ORS 443.400 - 443.465 & 443.991(2)

Hist.: MHD 7-1999, f. 11-15-99, cert. ef. 12-1-99; MHD 5-2005, f. & cert. ef. 4-1-05; Suspended by MHS 13-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; Suspended by MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-035-0400

Resident Assessment and Residential Service Plan

(1) Assessment. An assessment will be completed for each resident within 30 days after admission to the RTH, unless admitted to the RTH for crisis-respite services.

(a) The assessment will be based upon an interview with the resident to identify strengths, preferences and service needs; observation of the resident's capabilities within the residential setting; a review of information in the resident record; and contact with representatives of other involved agencies, family members and others, as appropriate. All contacts with others will be made with proper authorization for the release of information.

(b) Assessment findings will be summarized in writing and included in the resident's record. Assessment findings will include, but not be limited to, diagnostic and demographic data; identification of the resident's medical, physical, emotional, behavioral and social strengths, preferences and needs related to independent living and community functioning; and recommendations for residential service plan goals.

(2) Residential Service Plan. An individualized plan, identifying the goals to be accomplished through the services provided, will be prepared for each resident, unless admitted to the RTH for crisis-respite services, within 30 days after admission.

(a) The residential service plan will be based upon the findings of the resident assessment, be developed with participation of the resident and his/her guardian (as applicable), and be developed through collaboration with the resident's primary mental health treatment provider. With consent of the resident or guardian (as applicable), family members, representatives from involved agencies, and others with an interest in the resident's circumstances will be invited to participate. All contacts with others will be made with proper, prior authorization from the resident.

(b) The residential service plan will identify service needs, desired outcomes and service strategies to address, but not be limited to, the following areas: physical and medical needs, medication regimen, self-care, social-emotional adjustment, behavioral concerns, independent living capability and community navigation.

(c) The residential service plan will be signed by the resident, the administrator or other designated RTH staff person, and others, as appropriate, to indicate mutual agreement with the course of services outlined in the plan.

(3) Crisis-respite Requirements. For residents admitted to RTHs for 30 days or less, an assessment and residential service plan must be developed within 48 hours of admission which identifies service needs, desired outcomes and the service strategies to be implemented to resolve the crisis or address other needs of the individual that resulted in the short term service arrangement.

(4) Progress Notes. Progress notes will be maintained within each resident's record and document significant information relating to all aspects of the resident's functioning and progress toward desired outcomes identified in the residential service plan. A progress note will be entered in the resident's record at least once each month for regular residents and at least daily for crisis-respite residents.

(5) Re-assessments and Revisions to the Residential Service Plan. The assessment and residential service plan will be reviewed and updated at least annually. On an ongoing basis, the residential service plan will be updated, as necessary, based upon changing circumstances or upon the resident's request for reconsideration.

Stat. Auth.: ORS 443.450

Stats. Implemented: ORS 443.400 - 443.465 & 443.991(2)

Hist.: MHD 7-1999, f. 11-15-99, cert. ef. 12-1-99; MHD 5-2005, f. & cert. ef. 4-1-05; Suspended by MHS 13-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; Suspended by MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-035-0410

Resident Services and Activities

(1) General Requirements. The services and activities available at the RTH will include care and treatment consistent with ORS 443.400 and those services individually specified for the resident in the residential service plan developed as outlined in OAR 309-035-0400. Residents will be encouraged to care for their own needs to the extent possible. All services and activities will be provided in a manner that respects residents' rights, promotes recovery and affords personal dignity.

(2) Services and Activities to Be Available. Services and activities to be available will include but not be limited to:

(a) Provision of adequate shelter consistent with OAR 309-035-0320 through 309-035-0350;

(b) At least three meals per day, seven days per week, provided in accordance with OAR 309-035-0430;

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(c) Assistance and support, as necessary, to enable residents to meet personal hygiene and clothing needs;

(d) Laundry services, which may include access to washer(s) and dryer(s) so residents can do their own personal laundry;

(e) Housekeeping essential to the health and comfort of residents;

(f) Activities and opportunities for socialization and recreation both within the facility and in the larger community;

(g) Health-related services provided in accordance with OAR 309-035-0440;

(h) Assistance with community navigation and transportation arrangements;

(i) Assistance with money management, where requested by a resident, to include accurate documentation of all funds deposited and withdrawn when funds are held in trust for the resident;

(j) Assistance with acquiring skills to live as independently as possible;

(k) Assistance with accessing other additional services, as needed; and

(l) Any additional services required under contract with the Division.

Stat. Auth.: ORS 443.450

Stats. Implemented: ORS 443.400 - 443.465 & 443.991(2)

Hist.: MHD 7-1999, f. 11-15-99, cert. ef. 12-1-99; MHD 5-2005, f. & cert. ef. 4-1-05; Suspended by MHS 13-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; Suspended by MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-035-0420

Prohibition of Seclusion and Restraints

General Prohibition. The use of seclusion or restraints is prohibited in Residential Treatment Homes. Only Secure Residential Treatment Facilities approved by the Division in accordance with OAR 309-035-0100 through 309-035-0190 will be allowed to use seclusion and restraints.

Stat. Auth.: ORS 443.450

Stats. Implemented: ORS 443.400 - 443.465 & 443.991(2)

Hist.: MHD 7-1999, f. 11-15-99, cert. ef. 12-1-99; MHD 5-2005, f. & cert. ef. 4-1-05; Suspended by MHS 13-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; Suspended by MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-035-0430

Food Services

(1) Well-balanced Diet. Meals will be planned and served in accordance with the recommended dietary allowances found in the United States Department of Agriculture Food Guide Pyramid.

(2) Modified or Special Diets. An order from a Licensed Medical Professional will be obtained for each resident who, for health reasons, is on a modified or special diet. Such diets will be planned in consultation with the resident.

(3) Menus. Menus will be prepared at least one week in advance and will provide a sufficient variety of foods served in adequate amounts for each resident at each meal and adjusted for seasonal changes. Records of menus, as served, will be filed and maintained in the RTH for at least 30 days. Resident preferences and requests will be considered in menu planning. Religious and vegetarian preferences will be reasonably accommodated.

(4) Supply of Food. Adequate supplies of staple foods for a minimum of one week and perishable foods for a minimum of two days will be maintained on the premises.

(5) Sanitation. Food will be stored, prepared and served in accordance with the Public Health Division's Food Sanitation Rules.

Stat. Auth.: ORS 443.450

Stats. Implemented: ORS 443.400 - 443.465 & 443.991(2)

Hist.: MHD 7-1999, f. 11-15-99, cert. ef. 12-1-99; MHD 5-2005, f. & cert. ef. 4-1-05; Suspended by MHS 13-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; Suspended by MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-035-0440

Health Services

(1) General. The administrator will be responsible for assuring that all residents are offered medical attention when needed. Arrangements for health services will be made with the informed consent of the resident and/or guardian (as applicable). The RTH will arrange for physicians or other qualified health care professionals to be available in the event the resident's regular physician or other health care professional is unavailable. A hospital emergency room will be identified and may be used in case of emergency.

(2) Initial Health Screening. Each resident admitted to the RTH will be screened by a qualified health care professional to identify health problems and to screen for communicable disease. Documentation of the initial health screening will be placed in the resident record.

(a) The health screening will include a brief history of health conditions, current physical condition and a written record of current or recommended medications, treatments, dietary specifications, and aids to physical functioning.

(b) For regular admissions, the health screening will be obtained prior to the resident's admission and include the results of testing for tuberculosis and Hepatitis B.

(c) For emergency admissions, including crisis-respite admissions, the health screening will be obtained as follows:

(A) For individuals experiencing psychiatric or medical distress, a health screening will be completed by a qualified health care professional prior to the resident's admission or within 24 hours of the emergency placement. The health screening will confirm that the individual does not have health conditions requiring continuous nursing care, a hospital level of care, or immediate medical assistance. For each crisis-respite resident who continues in the RTH for more than seven consecutive days, a complete health examination will be arranged if any symptoms of a health concern exist.

(B) For other individuals who are admitted on an urgent basis due to a lack of alternative supportive housing, the health screening will be obtained within 72 hours after the resident's admission.

(C) The health screening criteria may be waived for individuals admitted for crisis-respite services who are under the active care of an LMP or other qualified health care professional if it is the opinion of the attending health care professional that the crisis-respite placement presents no health risk to the individual or other residents in the RTH. Such a waiver must be provided in writing and be signed and dated by the attending health care professional within 24 hours of the resident's admission.

(3) Regular Health Examinations. Except for crisis-respite residents, the program will ensure that each resident has a primary physician or other qualified health care professional who is responsible for monitoring his/her health care. Regular health examinations will be done in accordance with the recommendations of this primary health care professional, but not less than once every three years. New residents will have a health examination completed within one year prior to admission or within three months after admission. Documentation of findings from each examination will be placed in the resident's record.

(4) Written Orders for Special Needs. A written order, signed by a physician or other qualified health care professional, is required for any medical treatment, special diet for health reasons, aid to physical functioning or limitation of activity.

(5) Medications. A written order signed by a physician or other qualified health care professional is required for all medications administered or supervised by RTH staff. This written order is required before any medication is provided to a resident. All medication maintained in the RTH will be provided to residents in accordance with the applicable written orders.

(a) Medications will be self-administered by the resident if the resident demonstrates the ability to self-administer medications in a safe and reliable manner. In the case of self-administration, both the written orders of the prescriber and the residential service plan will document that medications will be self-administered. The self-administration of medications may be supervised by RTH staff who may prompt the resident to administer the medication and observe the fact of administration and dosage taken. When supervision occurs, staff will enter information in the resident's record consistent with section OAR 309-035-0440 below.

(b) Staff who assist with administration of medication will be trained by a Licensed Medical Professional or other qualified health care professional on the use and effects of commonly used medications.

(c) Medications prescribed for one resident will not be administered to, or self-administered by, another resident. Medication will not be used for the convenience of staff or as a substitute for programming. Medications will not be withheld or used as reinforcement or punishment.

(d) Stock supplies of prescription medications will not be maintained. The RTH may maintain a stock supply of non-prescription medications.

(e) The RTH will provide and implement a policy and procedure which assures that all orders for prescription drugs are reviewed by a qualified health care professional, as specified by a physician or other qualified health care professional, but not less often than every six months. Where this review identifies a contra-indication or other concern, the resident's primary physician, LMP or other primary health care professional will be immediately notified.

(f) Each resident receiving psychotropic medications will be evaluated at least every three months by the LMP prescribing the medication. The RTH will obtain from the LMP the results of this evaluation and any changes in the type and dosage of medication, the condition for which it is prescribed, when and how the medication is to be administered, common

ADMINISTRATIVE RULES

side effects (including any signs of tardive dyskinesia, contra-indications or possible allergic reactions), and what to do in case of a missed dose or other dosing error.

(g) All unused, discontinued, outdated or recalled medications, and any medication containers with worn, illegible or missing labels will be disposed. The method of disposal will be safe, consistent with any applicable federal statutes, and designed to prevent diversion of these substances to persons for whom they were not prescribed. A written record of all disposals will be maintained and specify the date of disposal, a description of the medication, its dosage potency, amount disposed, the name of the individual for whom the medication was prescribed, the reason for disposal, the method of disposal, and the signature of the staff person disposing the medication. For any medication classified as a controlled substance in schedules 1 through 5 of the Federal Controlled Substance Act, the disposal must be witnessed by a second staff person who documents their observation by signing the disposal record.

(h) All medications will be properly and securely stored in a locked space for medications only in accordance with the instructions provided by the prescriber or pharmacy. Medications for all residents will be labeled. Medications requiring refrigeration must be stored in an enclosed locked container within the refrigerator. The RTH will assure that residents have access to a locked, secure storage space for their self-administered medications. The RTH will note in its written policy and procedures which persons have access to this locked storage and under what conditions.

(i) For all residents taking prescribed medication, staff will record in the medical record each type, date, time and dose of medication provided. All side effects, adverse reactions and medication errors will be documented in the resident's record. All serious adverse reactions or errors will be reported immediately to the prescribing health care professional. All other errors, adverse reactions or refusals of medication will be reported to the prescribing professional within 48 hours.

(j) P.r.n. medications and treatments will only be administered in accordance with the parameters specified by the prescribing health care professional, or in cases where a nurse assigns or delegates p.r.n. medication or treatment administration, in accordance with administrative rules of the Board of Nursing, chapter 851, division 47.

(6) Delegation of Nursing Tasks. Where a nurse is involved in the care of an RTH resident, nursing tasks may be assigned or delegated by a Registered Nurse to direct care staff in accordance with administrative rules of the Board of Nursing, chapter 851, division 47.

Stat. Auth.: ORS 443.450

Stats. Implemented: ORS 443.400 - 443.465 & 443.991(2)

Hist.: MHD 7-1999, f. 11-15-99, cert. ef. 12-1-99; MHD 5-2005, f. & cert. ef. 4-1-05;

Suspended by MHS 13-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; Suspended by MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-035-0450 Civil Penalties

(1) Applicability of Long Term Care Statute. For purposes of imposing civil penalties, RTHs licensed under ORS 443.400 to 443.465 and 443.991 are considered to be long-term care facilities subject to 441.705 to 441.745.

(2) Sections of Rule Subject to Civil Penalties. Violations of any requirement within any part of the following sections of the rule may result in a civil penalty:

- (a) 309-035-0270 Licensing;
- (b) 309-035-0280 Contracts and Rates;
- (c) 309-035-0290 Administrative Management;
- (d) 309-035-0300 Records;
- (e) 309-035-0310 Staffing;
- (f) 309-035-0320 Physical Environment Requirements;
- (g) 309-035-0330 Safety;
- (h) 309-035-0340 Sanitation;
- (i) 309-035-0350 Resident Furnishings;
- (j) 309-035-0360 Admission to Home;
- (k) 309-035-0370 Termination of Residency;
- (l) 309-035-0380 Resident Rights;
- (m) 309-035-0390 Grievances and Appeals;
- (n) 309-035-0400 Resident Assessment and Residential Service Plan;
- (o) 309-035-0410 Resident Services and Activities;
- (p) 309-035-0420 Prohibition of Seclusion or Restraints;
- (q) 309-035-0430 Food Services; and
- (r) 309-035-0440 Health Services.

(3) Assessment of Civil Penalties. Civil penalties will be assessed in accordance with the following guidelines:

(a) Civil penalties, not to exceed \$250 per violation to a maximum of \$1,000, may be assessed for general violations of these rules. Such penalties will be assessed after the procedures outlined in OAR 309-035-0270(8) have been implemented;

(b) A mandatory penalty up to \$500 will be assessed for falsifying resident or facility records or causing another to do so;

(c) A mandatory penalty of \$250 per occurrence will be imposed for failure to have direct care staff on duty 24 hours per day;

(d) Civil penalties up to \$1,000 per occurrence may be assessed for substantiated abuse;

(e) In addition to any other liability or penalty provided by the law, the Division may impose a penalty for any of the following:

(A) Operating the RTH without a license;

(B) Operating with more residents than the licensed capacity; and

(C) Retaliating or discriminating against a resident, family member, employee, or other person for making a complaint against the program.

(f) In imposing a civil penalty, the following factors will be taken into consideration:

(A) The past history of the person incurring the penalty in taking all feasible steps or procedures to correct the violation;

(B) Any prior violations of statutes, rules or orders pertaining to the RTH;

(C) The economic and financial conditions of the person incurring the penalty;

(D) The immediacy and extent to which the violation threatens or threatened the health, safety or welfare of one or more residents; and

(E) The degree of harm caused to residents.

(4) Notification. Any civil penalty imposed under this section will become due and payable ten days after notice is received, unless a request for a hearing is filed. The notice will be delivered in person, or sent by registered or certified mail and will include a reference to the particular section of the statute or rule involved, a brief summary of the violation, the amount of the penalty or penalties imposed, and a statement of the right to request a hearing.

(5) Request for Hearing. The person to whom the notice is addressed will have ten days from the date of receipt of the notice to request a hearing. This request must be in writing and submitted to the Administrator of the Division. If the written request for a hearing is not received on time, the Division will issue a final order by default.

(6) Hearings. All hearings will be conducted pursuant to the applicable provisions of ORS 183.310 to 183.550, Administrative Procedure and Rules for Civil Penalties.

(7) Judgment. Unless the penalty is paid within ten days after the order becomes final, the order constitutes a judgment and may be recorded by the County Clerk which becomes a lien upon the title to any interest in real property owned by the person. The Division may also take action to revoke the license upon failure to comply with a final order.

(8) Judicial Review. Civil penalties are subject to judicial review under ORS 183.480, except that the court may, at its discretion, reduce the amount of the penalty.

Stat. Auth.: ORS 443.450

Stats. Implemented: ORS 443.400 - 443.465 & 443.991(2)

Hist.: MHD 7-1999, f. 11-15-99, cert. ef. 12-1-99; MHD 5-2005, f. & cert. ef. 4-1-05;

Suspended by MHS 13-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; Suspended by MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-035-0460

Criminal Penalties

(1) Specification of Criminal Penalty. Violation of any provision of ORS 443.400 through 443.465 is a Class B misdemeanor.

(2) Grounds for Law Suit. In addition, the Division may commence an action to enjoin operation of a RTH:

(a) When a RTH is operated without a valid license; or

(b) When a RTH continues to operate after notice of revocation has been given and a reasonable time has been allowed for placement of residents in other programs.

Stat. Auth.: ORS 443.450

Stats. Implemented: ORS 443.400 - 443.465 & 443.991(2)

Hist.: MHD 7-1999, f. 11-15-99, cert. ef. 12-1-99; MHD 5-2005, f. & cert. ef. 4-1-05;

Suspended by MHS 13-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; Suspended by MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

ADMINISTRATIVE RULES

309-035-0500

Residential Facilities

(1) Effective September 1, 1988, and except as otherwise provided in this rule, the capacity of all **Residential Facilities** or home for adults, including foster care homes, group care facilities or residential treatment, training or care facilities, located throughout the state shall not exceed a target based on the number of beds available in 1979, updated at the rate of ten percent per year, as distributed on the basis of the Oregon population by county. The distribution shall be determined by the Oregon Health Authority annually.

(2) Where a county possesses less than one percentile of the State population, then the county with the lowest percentile within an Authority's region shall be grouped until such time as the group reaches one percentile of the State population in determining the distribution target.

(3) Nothing in this rule is intended to prevent placement of a person who was not initially a resident of the county in a domiciliary care facility in the county. The targeted number of beds shall not require reduction in any domiciliary care facility capacity existing on October 4, 1977. No domiciliary care facility will be required to suspend operations, nor will the Authority support be denied such facilities on the basis of the facility being located in a county or county grouping which exceeds the distribution target.

(4) Adult Foster Care Homes as described in section (1) of this rule does not include Adult Foster Care Homes in which the clients of these homes are directly related by blood or marriage to the operator of the homes.

(5) In cases for which the distribution target for residential facilities, except Adult Foster Care Homes, allows for additional capacity in a county or county grouping and such additional capacity is less than ten beds, then one additional facility of the same type of ten-bed capacity may be authorized.

(6) This rule applies only to those residential care facilities as described in sections (1) and (4) of this rule which are established by, contracted for, or operated by the Oregon Health Authority or any of its divisions.

(7) Nothing in this rule will exempt any residential facility from the regulations of funding limitations of the Oregon Health Authority or any of its divisions.

(8) Subject to the appropriate licensing requirements, the governing body of a county may authorize a residential facility located in the county to exceed the capacity limit upon:

(a) Request of an individual or organization operating or proposing to operate a residential facility;

(b) Consultation with an advisory committee appointed by the governing body and consisting of persons who are particularly interested in the type of residential facility contemplated; and

(c) Finding of good cause following notice and public hearing.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.042

Hist.: HR 1-1978, f. & ef. 2-16-78; HR 17-1979, f. & ef. 11-19-79; HR 5-1988, f. & cert. ef. 9-1-88; Renumbered from 410-004-0001, MHS 7-2007, f. & cert. ef. 5-25-07; Suspended by MHS 13-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; Suspended by MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-035-0550

Purpose

(1) OAR 309-035-0550 through 309-035-0600 establish a long-range goal wherein ultimately residential care and adult foster home clients of the Oregon Health Authority, whose primary service needs are associated with mental retardation or other developmental disabilities, or mental or emotional disturbance, or alcohol or drug abuse or dependence, will reside in Adult Residential Care Facilities and Adult Foster Homes under the jurisdiction of the Division serving only such category of residents. Those clients not having such primary service needs will reside in facilities under the jurisdiction of the Aging and People with Disabilities Division, serving only such category of residents.

(2) The goal is realized by assigning certain facilities to the jurisdiction of the Division with interim procedures for case management of mixed clients and by prescribing those facilities to which new placements will be made.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.042

Hist.: HR 2-1984(Temp), f. & ef. 7-16-84; HR 3-1985, f. 2-28-85, ef. 3-1-85; Renumbered from 410-005-0080, MHS 7-2007, f. & cert. ef. 5-25-07; Suspended by MHS 13-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; Suspended by MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-035-0560

Definitions

As used in OAR 309-035-0550 through 309-035-0600:

(1) "Mental Retardation" means:

(a) A person with significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period. Persons of borderline intelligence may be considered mentally retarded if there is also serious impairment of adaptive behavior. Definitions and classifications shall be consistent with the **Manual on Terminology and Classification in Mental Retardation** of the American Association on Mental Deficiency, **1977 Revision**, by this reference made a part hereof. Mental retardation is synonymous with mental deficiency;

(b) For community case management and program purposes, mental retardation includes those persons of borderline intelligence who have a history of residency in a state training center.

(2) "Developmental Disability" means a disability attributable to mental retardation, cerebral palsy, epilepsy, or other neurological handicapping conditions which require training similar to that required by mentally retarded individuals, and the disability:

(a) Originates before the individual attains age 22 except that in the case of mental retardation the condition must be manifested before the age of 18;

(b) Has continued, or can be expected to continue, indefinitely; and

(c) Constitutes a substantial handicap to the individual's ability to function in society.

(3) "Mental or Emotional Disturbance" means a disorder of emotional reactions, thought processes, behavior, or relationships (excluding mental retardation, alcoholism and drug abuse or dependency) which results in substantial subjective distress, impaired perceptions of reality, or impaired ability to control or appreciate the consequences of one's behavior, and which constitutes a substantial impairment of personal, interpersonal, work, educational or civic functioning. If a medical diagnosis is made, classification shall be consistent with the current **Diagnostic and Statistical Manual of Mental Disorders** of the American Psychiatric Association 1980, by this reference made a part hereof.

(4) "Alcohol or Drug Abuse" or "Dependence" means a person who has lost the ability to control the use of alcohol or controlled substances or other substances with abuse potential, or who uses alcohol or such substances to the extent that the person's health or that of others is substantially impaired or endangered or the person's social or economic functions are substantially disrupted. An alcohol or drug dependent person may be physically dependent, a condition in which the body requires a continuing supply of alcohol, a drug, or controlled substance to avoid characteristic withdrawal symptoms, or psychologically dependent, a condition characterized by an overwhelming mental desire for continued use of alcohol, a drug, or a controlled substance.

(5) "Residents" mean persons who are clients of the Oregon Health Authority who reside in Adult Residential Care Facilities and Adult Foster Homes.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.042

Hist.: HR 2-1984(Temp), f. & ef. 7-16-84; HR 3-1985, f. 2-28-85, ef. 3-1-85; Renumbered from 410-005-0085, MHS 7-2007, f. & cert. ef. 5-25-07; Suspended by MHS 13-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; Suspended by MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-035-0570

Jurisdiction Over Homes and Centers

(1) The Division shall have jurisdiction over and shall license all Adult Residential Care Homes and Centers and certify Adult Foster Homes having residents 60 percent or more of which have primary service needs associated with mental retardation or other developmental disabilities, or mental or emotional disturbance or alcohol or drug abuse dependence.

(2) Adult Residential Care Homes and Centers and Adult Foster Homes not within the criteria in section (1) of this rule shall be under the jurisdiction of and be licensed or certified by Aging and People with Disabilities Division.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.042

Hist.: HR 2-1984(Temp), f. & ef. 7-16-84; HR 3-1985, f. 2-28-85, ef. 3-1-85; Renumbered from 410-005-0090, MHS 7-2007, f. & cert. ef. 5-25-07; Suspended by MHS 13-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; Suspended by MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

ADMINISTRATIVE RULES

309-035-0580

Case Management

(1) Those residents in homes and centers under the jurisdiction of Addictions and Mental Health Division, whose primary service needs are not associated with mental retardation or other developmental disabilities, or mental or emotional disturbances or alcohol or drug abuse or dependence shall be Aging and People with Disabilities Division clients and shall receive case management from such Division. All other residents in such facilities shall be Addictions and Mental Health Division clients and shall receive case management from such Division.

(2) Those residents in Adult Residential Care Homes and Centers and Adult Foster Homes under the jurisdiction of Aging and People with Disabilities Division whose primary service needs are associated with mental retardation or other developmental disabilities, or mental or emotional disturbance or alcohol or drug abuse or dependence, shall be Division clients and shall receive case management from such Division. All other residents in such facilities shall be Aging and People with Disabilities Division clients and receive case management from such Division.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.042

Hist.: HR 2-1984(Temp), f. & ef. 7-16-84; HR 3-1985, f. 2-28-85, ef. 3-1-85; Renumbered from 410-005-0095, MHS 7-2007, f. & cert. ef. 5-25-07; Suspended by MHS 13-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; Suspended by MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-035-0590

Placement

(1) Residential Care and Adult Foster Home clients shall be newly placed on the basis of primary service needs — Those having such needs as those described in OAR 309-035-0100 to 309-035-0190 will be placed in the facilities described in that paragraph and those not having such needs shall be placed in those facilities described in OAR 309-035-0250 to 309-035-0460.

(2) Exceptions may be made only when a client cannot be placed because of the unavailability of an appropriate facility and the facility in which the client is placed is capable of serving the needs of the client. Exceptions will be granted by the Division responsible for the receiving facility.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.042

Hist.: HR 2-1984(Temp), f. & ef. 7-16-84; HR 3-1985, f. 2-28-85, ef. 3-1-85; Renumbered from 410-005-0100, MHS 7-2007, f. & cert. ef. 5-25-07; Suspended by MHS 13-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; Suspended by MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-035-0600

Effective Date

OAR 309-035-0550 through 309-035-0590 are prospective as well as retroactive to July 1, 1982. Such prospective and retroactive effect is each severable of the other.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.042

Hist.: HR 2-1984(Temp), f. & ef. 7-16-84; HR 3-1985, f. 2-28-85, ef. 3-1-85; Renumbered from 410-005-0105, MHS 7-2007, f. & cert. ef. 5-25-07; Suspended by MHS 13-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; Suspended by MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

Rule Caption: Rules Revisions Required to Comply with Federal 1915(i) Home and Community-based Regulations

Adm. Order No.: MHS 3-2017(Temp)

Filed with Sec. of State: 3-3-2017

Certified to be Effective: 3-4-17 thru 8-30-17

Notice Publication Date:

Rules Adopted: 309-040-0307, 309-040-0393, 309-040-0394

Rules Amended: 309-040-0300, 309-040-0305, 309-040-0310, 309-040-0315, 309-040-0320, 309-040-0325, 309-040-0330, 309-040-0335, 309-040-0340, 309-040-0345, 309-040-0350, 309-040-0355, 309-040-0360, 309-040-0365, 309-040-0370, 309-040-0375, 309-040-0380, 309-040-0385, 309-040-0390, 309-040-0395, 309-040-0400, 309-040-0405, 309-040-0410, 309-040-0415, 309-040-0420, 309-040-0425, 309-040-0430, 309-040-0435, 309-040-0440, 309-040-0445, 309-040-0450, 309-040-0455

Subject: Under Oregon Revised Statutes 413.042 and 413.450, the Authority licenses and has authority to regulate mental health treatment providers, including adult foster homes for adults with mental or emotional health disorders. The Authority's administrative rules set the minimum standards for providing services in licensed settings

and describe the process by which the Authority regulates the service providers.

The temporary rule provides updated procedural detail regarding federal regulation requirements, as issued by the Centers for Medicare and Medicaid Services (CMS), for 1915(i) Home and Community-Based Services (HCBS). The purpose of these updated regulations is to ensure individuals receive HCBS in settings that are integrated in and support full access to the greater community. The temporary rule also provides clarification of current and appropriate behavioral health terminology. In particular, the use of "adults with mental or emotional disorders," rather than adults with "mental illness."

This amendment is necessary to provide for and clarify the Authority's and the providers' of HCBS practices and procedures regarding each individual's federal rights under HCBS.

Rules Coordinator: Sandy Cafourek—(503) 945-6430

309-040-0300

Purpose and Scope

(1) These rules prescribe care and service standards by which the Health Systems Division (Division) of the Oregon Health Authority (Authority) licenses community-based Adult Foster Homes (AFHs) for adults with mental or emotional disorders. The care and services standards are designed to promote the individual's right to independence, choice, and decision making while providing a safe, secure, homelike environment. The provider shall address the individual's needs in a manner that enables the individual to function at the highest level of independence possible:

(a) These rules incorporate and implement the requirements of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services for home and community-based services authorized under section 1915(i) of the Social Security Act;

(b) These rules establish requirements to ensure individuals receive services in settings that are integrated in and support the same degree of access to the greater community as people not receiving these services consistent with the standards set out in OAR chapter 411, division 4.

(2) These rules apply to adult foster homes providing services to five or fewer adults with mental or emotional disorders, regardless of whether the provider receives public funds.

Stat. Auth.: ORS 413.042, 413.032, 413.085

Stats. Implemented: ORS 443.705 - 443.825

Hist.: MHD 19-1985(Temp), f. & ef. 12-27-85; MHD 6-1986, f. & ef. 7-2-86; MHD 1-1992, f. & cert. ef. 1-7-92 (and corrected 1-31-92); MHD 6-1999, f. 8-24-99, cert. ef. 8-26-99; Renumbered from 309-040-0000, MHD 3-2005, f. & cert. ef. 4-1-05; MHS 11-2011(Temp), f. & cert. ef. 12-5-11 thru 5-31-12; MHS 4-2012, f. 5-3-12, cert. ef. 5-4-12; MHS 14-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; MHS 3-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-040-0305

Definitions

As used in these rules, the following definitions apply:

(1) "Abuse" includes but is not limited to the following:

(a) Any death caused by other than accidental or natural means or occurring in unusual circumstances;

(b) Any physical injury caused by other than accidental means, or that appears to be at variance with the explanation given of the injury;

(c) Willful infliction of physical pain or injury;

(d) Sexual harassment or exploitation including, but not limited to, any sexual contact between an employee of an AFH or community program, or provider, or other caregiver and the individual. For all other situations, sexual harassment or exploitation means unwelcome verbal or physical sexual contact including requests for sexual favors and other verbal or physical conduct directed toward the individual;

(e) Neglect that leads to physical harm through withholding of services necessary to maintain health and well-being;

(f) Abuse does not include spiritual treatments by a duly accredited practitioner of a recognized church or religious denomination when voluntarily consented to by the individual.

(2) "Abuse Investigation and Protective Services" means an investigation and any subsequent services or supports necessary to prevent further abuse as required by ORS 430.745 to 430.765 and OAR 943-045-0000, or any other rules established by the Division applicable to allegations of abuse of individuals residing at an AFH licensed by the Division.

(3) "Activities of Daily Living (ADL)" means those individual skills necessary for an individual's continued well-being including eating and nutrition, dressing, personal hygiene, mobility, and toileting.

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(4) "Administration of Medication" means administration of medicine or a medical treatment to an individual as prescribed by a Licensed Medical Practitioner.

(5) "Adult Foster Home (AFH)" means any home licensed by the Health Systems Division of the Authority in which residential care is provided to five or fewer individuals who are not related to the provider by blood or marriage as described in ORS 443.705 through 443.825. If an adult family member of the provider receives care, they shall be included as one of the individuals within the total license capacity of the AFH. An AFH or individual that advertises, including word-of-mouth advertising, to provide room, board, and care and services for adults is considered an AFH. For the purpose of these rules, an AFH does not include facilities referenced in 443.715.

(6) "Aid to Physical Functioning" means any special equipment ordered for an individual by a Licensed Medical Professional (LMP) or other qualified health care professional that maintains or enhances the individual's physical functioning.

(7) "Applicant" means any individual or entity that makes an application for a license that is also the owner of the business.

(8) "Assessment" means an evaluation of an individual and the individual's level of functioning completed by a qualified provider and provides the basis for the development of the individual's residential care plan and person-centered service plan.

(9) "Authority" means the Oregon Health Authority or designee.

(10) "Behavioral Interventions" means interventions that modify the individual's behavior or the individual's environment.

(11) "Bill of Rights" means civil, legal, or human rights afforded to those individuals residing in an AFH that are in accord with those rights afforded to all other U.S. citizens, including but not limited to those rights delineated in the AFH Bill of Rights as outlined in OAR 309-040-0410.

(12) "Board of Nursing Rules" means the standards for Registered Nurse Teaching and Delegation and assignments to Unlicensed Persons according to the statutes and rule of the Oregon State Board of Nursing, chapter 851, division 47 and ORS 678.010 to 678.445.

(13) "Care" means the provision of but is not limited to services of room, board, services and assistance with ADLs, such as assistance with bathing, dressing, grooming, eating, money management, recreational activities, and medication management. Care also means services that promote maximum individual independence and enhance quality of life.

(14) "Caregiver" means the provider, resident managers, or substitute caregivers who provide services to an individual.

(15) "Case Manager" means an individual employed by a local, regional, or state allied agency approved by the Division to provide case management services and assist in the development of the personal care plan. Case manager's evaluate the appropriateness of services in relation to the consumer's assessed need and review the residential care plan every 180 days.

(16) "CMS" means the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

(17) "Community Mental Health Program (CMHP)" means the organization of all services for individuals with mental or emotional disturbances, drug abuse problems, and alcoholism and alcohol abuse problems operated by or contractually affiliated with a local mental health authority, operated in a specific geographic area of the state under an intergovernmental agreement or direct contract with the Division.

(18) "Compensation" means payments made by or on behalf of an individual to a provider in exchange for room and board, care and services, including services described in the individual's residential care plan and person-centered service plan

(19) "Complaint Investigation" means an investigation of any allegation that a provider has taken action, or inaction, that is perceived as contrary to law, rule, or policy but does not meet the criteria for an abuse investigation.

(20) "Condition" means a provision attached to a new or existing license that limits or restricts the scope of the license or imposes additional requirements on the licensee.

(21) "Contested Case Hearing" means a hearing resulting in a directed or recommended action. The hearing is held at the request of the provider or the Division in response to an action, sanction, or notice of finding issued by the Division that would result in the loss of license of the provider or other sanctions that would adversely affect the license of the provider. The hearing group is composed of:

- (a) The provider and if the provider chooses, the provider's attorney;
- (b) The Division as represented by the Attorney General's Office; and
- (c) The Office of Administration Hearings Administrative Law Judge.

(22) "Contract" means a written agreement between a provider and the Division to provide room and board, care and services for compensation for individuals of a licensed AFH.

(23) "Controlled Substance" means any drug classified as schedules one through five under the Federal Controlled Substance Act.

(24) "Criminal History Check (CHC)" means the Oregon Criminal History Check and when required, a National Criminal History check and or a State-Specific Criminal History check, and the processes and procedures required by the rules OAR 943-007-0001 through 943-007-0501 (Criminal History Checks).

(25) "Day Care" means care and services in an AFH for an individual who is not an individual of the AFH. Children under the age of five living in the AFH are included in the licensed capacity of the home.

(26) "Declaration for Mental Health Treatment" means a document that states the individual's preferences or instructions regarding mental health treatment as defined by ORS 127.700 through 127.737.

(27) "Designated Representative" means:

(a) Any adult who is not the individual's paid provider, who:

(A) The individual has authorized to serve as his or her representative;

or

(B) The individual's legal representative is authorized to serve as the individual's representative.

(b) The power to act as a designated representative is valid until the individual or the individual's legal representative modifies the authorization and notifies the Division of the modification, the individual or the individual's representative notifies the provider that the designated representative is no longer authorized to act the individual's behalf, or there is a change in the legal authority upon which the designation was based. Notice shall include the individual's or the representative's signature as appropriate;

(c) An individual or the individual's legal representative is not required to appoint a designated representative; and

(d) For the purposes of these rules, the term individual shall be considered to include the individual's designated representative.

(28) "Director" means the Director of the Oregon Health Authority or designee.

(29) "Discharge Summary" means a document that describes the conclusion of the planned course of services described in the individual's residential care plan and person-centered service plan, regardless of outcome or attainment of goals described in the individual's individualized personal care plan. In addition, the discharge summary addresses individual's monies, financial assets and monies, medication and personal belongings at time of discharge.

(30) "Division" means the Health Systems Division of the Oregon Health Authority or designee.

(31) "Division Staff" means an employee of the Division, the Division's designee, or the designee of the local Community Mental Health Program.

(32) "Employee" means an individual employed by a licensed AFH and who receives wages, a salary, or is otherwise paid by the AFH for providing the service. The term also includes employees of other providers delivering direct services to an individual.

(33) "Exempt Area" means a county agency that provides similar programs for licensing and inspection of AFH's that the Director finds equal to or superior to the requirements of ORS 443.705 to 443.825 and that has entered into an agreement with the Division to license, inspect, and collect fees according to the provisions of 443.705 to 443.825.

(34) "Family Member" means a husband or wife, natural parent, child, sibling, adopted child, domestic partner, adopted parent, stepparent, stepchild, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, brother-in-law, sister-in-law, grandparent, grandchild, aunt, uncle, niece, nephew, or first cousin.

(35) "HCB" means Home and Community Based.

(36) "Home" means the Adult Foster Home (AFH) and as indicated by the context of its use may refer to the one or more buildings and adjacent grounds on contiguous properties used in the operation of the AFH.

(37) "Home and Community-Based Services" or "HCBS" means Home and Community-Based Services as defined in OAR chapter 411, division 4. HCBS are services provided in the individual's home or community.

(38) "Home-like" means an environment that promotes the dignity, security, and comfort of individuals through the provision of personalized care and services and encourages independence, choice, and decision-making by the individuals.

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(39) "House Rules" means the written standards governing house activities developed by the provider and approved by the Division. These standards may not conflict with the AFH Bill of Rights or other individual rights set out by these rules.

(40) "Incident Report" means a written description and account of any occurrence including but not limited to any injury, accident, acts of physical aggression, use of physical restraints, medication error, or any unusual incident involving an individual, the home, or provider.

(41) "Individual" means any individual being considered for placement or currently residing in a licensed home receiving residential, HCBS and other services regulated by these rules on a 24-hour basis except as excluded under ORS 443.400.

(42) "Individual Care Services" means services prescribed by a physician or other designated individual in accordance with the individual's plan of treatment. The services are provided by a caregiver that is qualified to provide the service and is not a member of the individual's immediate family. For those AFH individuals who are Medicaid eligible, personal care services are funded under Medicaid.

(43) "Individually-Based Limitation" means a limitation to the qualities outlined in OAR 309-040-0393(1)(a) through (g), due to health and safety risks. An individually-based limitation is based on a specific assessed need and implemented only with the informed consent of the individual or the individual's legal representative as outlined in 309-040-0393.

(44) "Informed Consent" means:

(a) Options, risks, and benefits of the services outlined in these rules have been explained to an individual and, in a manner that the individual comprehends; and

(b) The individual consents to a person-centered service plan of action, including any individually-based limitations to the rules, prior to implementation of the initial or updated person-centered service plan or any individually-based limitation.

(45) "Initial Residential Care Plan (IRCP)" means a written document developed for an individual, within 24 hours of admission to the home, the addressed the care and services to be provided for the individual during the first 30 days or less until the residential care plan can be developed.

(46) "Legal Representative" means an individual who has the legal authority to act for an individual and only within the scope and limits to the authority as designated by the court or other agreement. A legal representative may include the following:

(a) For an individual under the age of 18, the parent, unless a court appoints another person or agency to act as the guardian; or

(b) For an individual 18 years of age or older, a guardian appointed by a court order or an agent legally designated as the health care representative.

(c) For purposes of these rules, the term individual shall be considered to include the individual's legal representative.

(47) "Level One AFH" means an AFH licensed by the Division to provide care and services to individuals with severe and persistent mental illness, who may also have limited medical conditions.

(48) "License" means a document issued by the Division to applicants who are determined by the Division to be in substantial compliance with these rules.

(49) "Licensed Medical Practitioner (LMP)" means any individual who meets the following minimum qualifications as documented by the CMHP or designee and holds at least one of the following educational degrees and a valid license:

(a) Physician licensed to practice in the State of Oregon; or

(b) Nurse practitioner licensed to practice in the State of Oregon.

(50) "Licensee" means the individual or entity to whom a license is issued and whose name is on the license.

(51) "Local Mental Health Authority (LMHA)" means the county court or board of county commissioners of one or more counties who choose to operate a community mental health program, or in the case of a Native American reservation, the tribal council, or if the county declines to operate or contract for all or part of a community mental health program, the board of directors of a public or private corporation that directly contracts with the Division to operate a CMHP for that county.

(52) "Mandatory Reporter" means any public or private official who, while acting in an official capacity, comes in contact with and has reasonable cause to believe that the adult has suffered abuse, or that any individual with whom the official contact while acting in an official capacity, has abused the adult. Pursuant to ORS 430.765(2) psychiatrists, psychologists, clergy, and attorneys are not mandatory reporters with regard to information received through communications that are privileged under 40.225 to 40.295.

(53) "Medication" means any drug, chemical, compound, suspension or preparation in suitable form for use as a curative or remedial substance taken either internally or externally by any individual.

(54) "Mental or Emotional Disturbances (MED)" means a disorder of emotional reactions, thought processes, or behavior that results in substantial subjective distress or impaired perceptions of reality or impaired ability to control or appreciate the consequences of the person's behavior and constitutes a substantial impairment of the individual's social, educational, or economic functioning. Medical diagnosis and classification shall be consistent with the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association (DSM-V). As used in these rules, this term is functionally equivalent to "serious and persistent mental illness."

(55) "Mistreatment" means the following behaviors, displayed by an employee, program staff, caregiver, provider or volunteer of an AFH when directed toward an individual:

(a) "Abandonment" means desertion or willful forsaking when the desertion or forsaking results in harm or places the individual at a risk of serious harm;

(b) "Financial Exploitation" means:

(A) Wrongfully taking the assets, funds, or property belonging to or intended for the use of an individual;

(B) Alarming an individual by conveying a threat to wrongfully take or appropriate money or property of the individual if the individual would reasonably believe that the threat conveyed would be carried out;

(C) Misappropriating, misusing, or transferring without authorization any money from any account held jointly or singly by an individual;

(D) Failing to use the income or assets of an individual effectively for the support and maintenance of the individual. "Effectively" means use of income or assets for the benefit of the individual.

(c) "Involuntary Restriction" means the involuntary restriction of an individual for the convenience of a caregiver or to discipline the individual. Involuntary restriction may include but is not limited to placing restrictions on an individual's freedom of movement by restriction to their room or a specific area, or restriction from access to ordinarily accessible areas of the facility, residence or program, unless agreed to by the treatment plan. Restriction may be permitted on an emergency or short-term basis when an individual's presence would pose a risk to health or safety to themselves or others;

(d) "Neglect" means active or passive failure to provide the care, supervision, or services necessary to maintain the physical and mental health of an individual that creates a significant risk of harm to an individual or results in significant mental injury to an individual. Services include but are not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene, or any other services essential to the individual's well-being;

(e) "Verbal Mistreatment" means threatening significant physical harm or emotional harm to an individual through the use of:

(A) Derogatory or inappropriate names, insults, verbal assaults, profanity, or ridicule;

(B) Harassment, coercion, punishment, deprivation, threats, implied threats, intimidation, humiliation, mental cruelty, or inappropriate sexual comments;

(C) A threat to withhold services or supports, including an implied or direct threat of termination of services. "Services" include but are not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene, or any other services essential to the well-being of an individual;

(D) For purposes of this definition, verbal conduct includes but is not limited to the use of oral, written, or gestured communication that is directed to an individual or within their hearing distance or sight, regardless of their ability to comprehend. In this circumstance the assessment of the conduct is based on a reasonable person standard;

(E) The emotional harm that can result from verbal abuse may include but is not limited to anguish, distress, or fear.

(f) "Wrongful Restraint" means any use of a physical or chemical restraint except for the following:

(A) An act of restraint prescribed by a licensed physician pursuant to OAR 309-033-0730; or

(B) A physical emergency restraint to prevent immediate injury to an individual who is in danger of physically harming themselves or others, provided that only the degree of force reasonably necessary for protection is used for the least amount of time necessary.

(56) "National Criminal History Check" means obtaining and reviewing criminal history outside Oregon's borders. This information may be obtained from the Federal Bureau of Investigation through the use of fin-

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gerprint cards and from other criminal information resources in accordance with OAR 943-007-0001 through 943-007-0501 (Criminal History Checks).

(57) "Neglect" means an action or inaction that leads to physical harm through withholding of services necessary to maintain health and well-being. For purposes of this paragraph, "neglect" does not include a failure of the state or a community program to provide services due to a lack of funding available to provide the services.

(58) "Nurse Practitioner" means a registered nurse who has been certified by the board as qualified to practice in an expanded specialty role within the practice of nursing.

(59) "Nursing Care" means the practice of nursing by a licensed nurse, including tasks and functions relating to the provision of nursing care that are delegated under specified conditions by a registered nurse to individuals other than licensed nursing personnel, which is governed by ORS chapter 678 and rules adopted by the Oregon State Board of Nursing in OAR Chapter 851.

(60) "Nursing Delegation" means that a registered nurse authorizes an unlicensed individual to perform special tasks for individuals in select situations and indicates that authorization in writing. The delegation process includes nursing assessment of an individual in a specific situation, evaluation of the ability of the unlicensed person, teaching the task, and ensuring supervision.

(61) "Person-Centered Service Plan" means written documentation that includes the details of the supports, desired outcomes, activities, and resources required for an individual to achieve and maintain personal goals, health, and safety as described in OAR 411-004-0030.

(62) "Person-Centered Service Plan Coordinator" means the individual, which may be a case manager, service coordinator, personal agent, and other individual designated by the Division to provide person-centered service planning for and with individuals.

(63) "Practice of Registered Nursing" means the application of knowledge drawn from broad in-depth education in the social and physical sciences in assessing, planning, ordering, giving, delegating, teaching, and supervising care that promotes the person's optimum health and independence.

(64) "Program Staff" means an employee or individual who by contract with an AFH provides a service to an individual.

(65) "Provider" means a qualified individual or an organizational entity operated by or contractually affiliated with a community mental health program or contracted directly with the Division for the direct delivery of mental health services and supports to adults receiving residential and supportive services in an AFH.

(66) "Psychiatric Security Review Board (PSRB)" means the Board consisting of five members appointed by the Governor and subject to confirmation by the Senate under Section Four, Article 111 of the Oregon Constitution and described in ORS 161.295 through 161.400.

(67) "Registered Nurse" means an individual licensed and registered to practice nursing by the State of Oregon Board of Nursing in accordance with ORS Chapter 678 and OAR Chapter 851.

(68) "Related" means the following relationships: spouse, domestic partner, natural parent, child sibling, adopted child, adopted parent, step-parent, stepchild, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, grandchild, aunt, uncle, niece, nephew, or first cousin.

(69) "Relative" means any individual identified as a family member.

(70) "Representative" means both "Designated Representative" and "Legal Representative" as defined in these rules unless otherwise stated.

(71) "Residency Agreement" means the written, legally enforceable agreement between a provider and an individual when the individual receives services from the provider.

(72) "Resident Manager" means an employee of the provider who is approved by the Division to live in the AFH and is responsible for the care and services of individuals on a day-to-day basis.

(73) "Residential Care" means the provision of room, board, and services that assist the individual in activities of daily living such as assistance with bathing, dressing, grooming, eating, medication management, money management, or recreation. Residential care includes 24-hour supervision; being aware of the individual's general whereabouts; monitoring the activities of the individual while on the premises of the AFH to ensure the individual's health, safety, and welfare; providing social and recreational activities; and assistance with money management as requested.

(74) "Residential Care Plan (RCP)" means a written plan outlining the care and services to be provided to an individual. The RCP is based upon the review of current assessment, referral, observations, individual

preference, and input from members of the residential care plan team. The plan identifies the care, services, activities, and opportunities to be provided by the caregiver to promote the individual's recovery and independence.

(75) "Residential Care Plan Team (RCP Team)" means a group composed of the individual, the case manager or other designated representative, CMHP representative, the provider, resident manager, and others needed including the individual's legal guardian, representatives of all current service providers, advocates or others determined appropriate by the individual receiving services. If the individual is unable or does not express a preference, other appropriate team membership shall be determined by the RCP team members.

(76) "Residents' Bill of Rights" means the AFH residents have the rights set forth in ORS 443.739.

(77) "Respite Care" means the provision of room, board, care, and services in an AFH for a period of up to 14 days. Respite care for individuals shall be counted in the total licensed capacity of the home. Respite care is not crisis respite care.

(78) "Restraints" means any physical hold, device, or chemical substance that restricts or is meant to restrict the movement or normal functioning of an individual.

(79) "Room and Board" means the provision of meals, a place to sleep, laundry, and housekeeping.

(80) "Seclusion" means the involuntary confinement of an individual to a room or area where the individual is physically prevented from leaving.

(81) "Self-Administration of Medication" means the act of an individual placing a medication in or on the individual's own body. The individual identifies the medication and the times and manners of administration and placed the medication internally or externally on the individual's own body without assistance.

(82) "Self-Preservation" means in relation to fire and life safety the ability of individuals to respond to an alarm without additional cues and be able to reach a point of safety without assistance.

(83) "Services" means those activities that are intended to help the individual develop appropriate skills to increase or maintain their level of functioning and independence. Services include coordination and consultation with other service providers or entities to assure the individual's access to necessary medical care, treatment, or services identified in the individual's personal care plan.

(84) "Substitute Caregiver" means any individual meeting the qualifications of a caregiver who provides care and services in an AFH under the Division's jurisdiction in the absence of the provider or resident manager. An individual may not be a substitute caregiver.

(85) "Unit" means the bedroom and other space of an individual residing in an AFH as agreed to in the residency agreement. Unit includes the following:

- (a) Private single occupancy spaces; and
- (b) Shared units with roommates as allowed by these rules.

(86) "Unusual Incident" means those incidents involving acts of physical aggression, serious illnesses or accidents, any injury or illness of an individual requiring a non-routine visit to a health care practitioner, suicide attempts, death of an individual, a fire requiring the services of a fire department, or any incident requiring an abuse investigation.

(87) "Variance" means an exception from a regulation or provision of these rules granted in writing by the Division upon written application from the provider.

(88) "Volunteer" means a person who provides a service or who takes part in a service provided to individuals receiving services in an AFH or other provider, and who is not a paid employee of the AFH or other provider. The services shall be non-clinical unless the person has the required credentials to provide a clinical service.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 413.042; 413.032

Stats. Implemented: ORS 426.072 & 443.705 - 443.825

Hist.: MHD 19-1985(Temp), f. & ef. 12-27-85; MHD 6-1986, f. & ef. 7-2-86; MHD 1-1992, f. & cert. ef. 1-7-92 (and corrected 1-31-92); MHD 6-1999, f. 8-24-99, cert. ef. 8-26-99; Renumbered from 309-040-0005, MHD 3-2005, f. & cert. ef. 4-1-05; MHS 6-2007(Temp), f. & cert. ef. 5-25-07 thru 11-21-07; MHS 13-2007, f. & cert. ef. 8-31-07; MHS 11-2011(Temp), f. & cert. ef. 12-5-11 thru 5-31-12; MHS 4-2012, f. 5-3-12, cert. ef. 5-4-12; MHS 14-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; MHS 3-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-040-0307

Required Home-like Qualities

This rule becomes effective July 1, 2016, and is enforceable as described in OAR 309-040-0315(7).

- (1) Each AFH shall have all of the following:

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(a) The home shall be integrated in and supports the same degree of access to the greater community as people not receiving HCBS, including opportunities for an individual to:

(A) Seek employment and work in competitive integrated employment settings;

(B) Engage in greater community life;

(C) Control personal resources; and

(D) Receive services in the greater community.

(b) The individual selects the AFH from among available setting options, including non-disability specific settings and an option for a private unit in a residential setting. The setting options must be:

(A) Identified and documented in the individual's person-centered service plan;

(B) Based on the individual's needs and preferences; and

(C) Based on the individual's available resources for room and board.

(c) The AFH shall ensure individual rights of privacy, dignity, respect, and freedom from coercion and restraint;

(d) The AFH shall optimize, but 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;

(e) The AFH shall facilitate individual choice regarding services and supports and who provides the services and supports.

(2) The provider shall maintain the AFH as follows:

(a) The home shall be physically accessible to each individual;

(b) The provider shall provide the individual with a unit of specific physical place that the individual may own, rent, or occupy under a legally enforceable residency agreement;

(c) The provider shall provide and include in the residency agreement that the individual has, at a minimum, the same responsibilities and protections from an eviction that a tenant has under the landlord-tenant law of the State of Oregon and other applicable laws or rules of the county, city, or other designated entity. For a setting in which landlord-tenant laws do not apply, the residency agreement shall provide substantially equivalent protections for the individual and address eviction and appeal processes. The eviction and appeal processes shall be substantially equivalent to the processes provided under landlord-tenant laws;

(d) The provider shall ensure that each individual has privacy in their own unit;

(e) The provider shall maintain units with entrance doors lockable by the individual and ensure that only the individual, the individual's roommate, and only appropriate staff, as described in the individual's person-centered service plan, have keys to access the unit;

(f) The provider shall ensure that individuals sharing units have a choice of roommates;

(g) The provider shall provide that individuals have the freedom to decorate and furnish their unit as agreed to within the Residency Agreement;

(h) The provider shall permit each individual to have visitors of their choosing at any time;

(i) The provider shall ensure each individual has the freedom and support to control their own schedule and activities;

(j) The provider shall ensure each individual has the freedom and support to have access to food at any time.

(3) The provider shall take reasonable steps to ensure that the program maintains the qualities identified in this rule. Failure to take reasonable steps may include, but is not limited to, failure to:

(a) Maintain a copy of the person-centered service plan at the home;

(b) Cooperate or provide necessary information to the person-centered service plan coordinator; or

(c) Attend or schedule a person-centered planning meeting when necessary.

(4) When a provider is unable to ensure the qualities as outlined in section (2)(d) through (2)(j) of this rule due to threats to the health and safety of the individual or others, the provider may seek an individually-based limitation with the individual's consent through the process outlined in OAR 309-040-0393. The provider may not apply an individually-based limitation until the limitation is approved and documented as required by OAR 309-040-0393.

Stat. Auth.: ORS 413.042, 413.032

Stats. Implemented: ORS 413.085, 443.705 - 443.825

Hist.: MHS 3-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-040-0310

License Required

(1) License Required. In accordance with ORS 443.725, every provider of Adult Foster Care shall be licensed by the Division before opening or operating an AFH.

(a) The provider shall live in the home that is to be licensed or hire a resident manager to live in the home.

(b) There must be a provider, resident manager, or substitute caregiver on duty 24 hours per day in an AFH under the jurisdiction of the Division.

(2) Placement. An AFH may not accept placement of an individual without first being licensed by the Division.

(3) Unlicensed AFH. No individual shall be placed in an AFH that is not licensed.

(4) Criminal History Check Requirements. Providers, resident managers, substitute caregivers, volunteers, and occupants over the age of 16, excluding individuals, shall have documentation of an approved criminal history background check in accordance with ORS 181A.200, 443.735 and OAR 943-007-0001 through 0501.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

Hist.: MHD 19-1985(Temp), f. & ef. 12-27-85; MHD 6-1986, f. & ef. 7-2-86; MHD 1-1992, f. & cert. ef. 1-7-92 (and corrected 1-31-92); MHD 6-1999, f. 8-24-99, cert. ef. 8-26-99; Renumbered from 309-040-0010, MHD 3-2005, f. & cert. ef. 4-1-05; MHS 14-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; MHS 3-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-040-0315

License Application and Fees

(1) A completed, written application shall be submitted by the applicant on forms supplied by the Division. The application is not complete until all information is received by the Division. Incomplete applications are void 60 days after initial receipt by the Division.

(2) An applicant shall submit a separate application for each location operated as an AFH.

(3) The application shall include the following:

(a) The maximum capacity requested and a written statement describing family members needing care, individuals who receive respite care, individuals who receive day care, or individuals who receive room and board;

(b) A written statement from an LMP regarding the mental and physical ability of the applicant to provide care to individuals and to operate the AFH. If the applicant employs a resident manager, the applicant shall provide a written statement from a physician or a LMP regarding the mental and physical ability of the resident manager to operate the AFH and to provide care to individuals;

(c) A completed financial information form provided by the Division. The applicant shall demonstrate to the Division the applicant's financial ability and the resources necessary to operate the AFH. Financial ability shall include but is not limited to providing the Division with a list of unsatisfied judgments, pending litigation, and unpaid taxes and notifying the Division regarding whether the applicant is in bankruptcy. If the applicant is unable to demonstrate the financial ability and resources required, the Division may require the applicant to furnish a financial guarantee as a condition of initial licensure in accordance with ORS 443.735(3)(e);

(d) A completed Facility Provider Enrollment Application;

(e) A signed letter of support from the Local Mental Health Authority or designee for the applicant to be licensed to operate the AFH;

(f) Documentation of a Criminal History Check approval in accordance with OAR 943-007-0001 through 0501 for the provider, the resident manager, caregivers, volunteers and other occupants over the age of 16, excluding individuals, and other persons as defined in ORS 443.735;

(g) A floor plan of the AFH showing the location and size of rooms, exits, secondary emergency egress, smoke detectors and fire extinguishers, and evidence of compliance with facility safety requirements as outlined in OAR 309-040-0370;

(h) A completed AFH Self-Inspection Guide; and

(i) Each application must be accompanied by a fee of \$20 per bed requested for license.

(4) The Division shall determine compliance with these rules based on receipt of the completed application material and fees, a review of information submitted, an investigation of information submitted, an inspection of the AFH, and interviews with the provider determined by the Division and other individuals as identified by the Division.

(5) The applicant may withdraw the application at any time during the application process by notifying the Division in writing.

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(6) An applicant whose license has been revoked or voluntarily surrendered, following a receipt of Notice of Intent to Revoke or Notice of Intent of Non-Renewal from the Division, or whose application has been denied by the Division for reasons relating to but not limited to criminal convictions, civil proceedings against the applicant, or substantiated allegations of abuse by the applicant, may not be permitted to submit an application for one year from the date that the revocation, surrender, or denial is made final. A longer period may be specified in the order revoking or denying the license.

(7) Enforcement of Home and Community-Based Required Qualities:

(a) An AFH licensed on or after July 1, 2016, shall be in full compliance with all requirements under these rules at the time of initial licensure;

(b) An AFH licensed prior to July 1, 2016, shall come into compliance with applicable rules as follows:

(A) All AFH's shall be in full compliance with all applicable rules no later than January 1, 2017;

(B) For those rules designated by the Division to become effective July 1, 2016, the provider must make measurable progress towards compliance with those rules. The Division may not issue sanctions or penalties for failure to meet those rules effective July 1, 2016, or those obligations imposed by OAR chapter 411, division 4, until January 1, 2017, if the provider demonstrates measurable progress towards compliance.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

MHD 1-1992, f. & cert. ef. 1-7-92 (and corrected 1-31-92); MHD 6-1999, f. 8-24-99, cert. ef. 8-26-99; Renumbered from 309-040-0015, MHD 3-2005, f. & cert. ef. 4-1-05; MHS 14-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; MHS 3-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-040-0320

Classification of AFHs

(1) The Division licenses Level 1 AFHs. Level 1 AFHs provide care and services to individuals with severe and persistent mental illness who may also have limited medical conditions.

(2) A Level 1 AFH license may be issued by the Division based upon a determination that an AFH is in substantial compliance with these rules and a review of the qualifications of the provider and the resident manager if applicable, and is in compliance with the OAR 309-040-0300 through 0455 and has met the training requirements set forth in OAR 309-040-0335.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

Hist.: MHD 6-1999, f. 8-24-99, cert. ef. 8-26-99; Renumbered from 309-040-0011, MHD 3-2005, f. & cert. ef. 4-1-05; MHS 14-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; MHS 3-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-040-0325

Capacity

(1) The Division shall determine the number of individuals permitted to reside in an AFH based on the ability of the caregiver to meet the care needs of the individuals, the fire safety standards, and compliance with the physical structure standards of these rules. Determination of maximum licensed capacity shall include consideration of total household composition including children. Sleeping requirements for children are:

(a) Sleeping arrangements for children in care shall be safe and appropriate, based on the child's age, gender, special needs, behavior, and history of abuse and neglect;

(b) Each child in care shall have a safe and adequate bed in which to sleep.

(2) Limiting Capacity. The following limits apply:

(a) The number of individuals is limited to five;

(b) Respite care individuals are included in the licensed capacity of five;

(c) Day care individuals are included in the licensed capacity of five;

(d) Adult family members of the provider or resident manager who need care are included in the licensed capacity of five; and,

(e) Child family members of the provider or resident manager who need care may be included in the licensed capacity of five.

(3) If the number of individuals who receive care exceeds the ability of the provider to meet the care, health, life, and safety needs of the individuals, the Division may reduce the AFH licensed capacity.

(4) The Division may place conditions, restrictions, or limitations on the AFH license as necessary to maintain the health, life, and safety of the individual.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

Hist.: MHD 1-1992, f. & cert. ef. 1-7-92 (and corrected 1-31-92); Renumbered from 309-040-0012, MHD 3-2005, f. & cert. ef. 4-1-05; MHS 14-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; MHS 3-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-040-0330

Zoning for Adult Foster Homes

(1) An AFH is a residential use of property for zoning purposes. Under ORS 197.665, an AFH is a permitted use in any residential zone that allows a single family dwelling and in any commercial zone that allows a single family dwelling.

(2) No city or county may impose any zoning requirement on the establishment and maintenance of an AFH in residential or commercial zones that is more restrictive than that imposed on a single-family dwelling in the same zone.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

Hist.: MHD 6-1986, f. & cert. ef. 7-2-86; MHD 1-1992, f. & cert. ef. 1-7-92 (and corrected 1-31-92); MHD 1-1992, f. & cert. ef. 1-7-92 (and corrected 1-31-92); MHD 6-1999, f. 8-24-99, cert. ef. 8-26-99; Renumbered from 309-040-0100, MHD 3-2005, f. & cert. ef. 4-1-05; MHS 14-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; MHS 3-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-040-0335

Training Requirements for Providers, Resident Managers, and Substitute Caregivers

(1) All providers, resident managers, and substitute caregivers shall satisfactorily meet all educational requirements established by the Division. Providers and staff may not provide care to any individual prior to acquiring education or supervised training designed to impart the basic knowledge and skills necessary to maintain the health, safety, and welfare of the individual. Required course work and necessary skills may include, but are not limited to, physical caregiving; screening for care and service needs; appropriate behavior towards individuals with physical, cognitive, and emotional disabilities; emergency procedures; medication management; personal care products; food preparation; home environment and safety procedures; residents' rights; issues related to architectural accessibility; and mandatory abuse reporting.

(2) The provider, resident manager, and substitute caregivers shall be able to understand and communicate in oral and written English in accordance with ORS 443.730.

(3) Training for all providers, resident managers, and substitute caregivers shall comply with ORS 443.738. The provider shall satisfactorily pass any testing requirements established by the Division before being licensed or becoming a resident manager or substitute caregiver. The test shall be completed by the caregiver without the help of any other individual. The provider, resident manager, and substitute caregiver shall have the ability to, but not be limited to, understand and respond appropriately to emergency situations, changes in medical conditions, physicians' orders and professional instructions, nutritional needs, and individuals' preferences and conflicts.

(4) The Division may make exceptions to the training requirements for individuals appropriately licensed medical care professionals in Oregon or who possess sufficient education, training, or experience to warrant an exception. The Division may not make any exceptions to the testing requirements.

(5) In accordance with ORS 443.738, the Division may permit a person who has not completed the training or passed the required test to act as a resident manager until the training and testing are completed or for 60 days, whichever is shorter, if the Division determines that an unexpected and urgent staffing need exists. The provider shall notify the Division of the situation and demonstrate that the provider is unable to find a qualified resident manager, that the individual has met the requirements for a substitute caregiver for the AFH, and that the provider shall provide adequate supervision.

(6) The provider or resident manager shall maintain current documentation of the training and testing of substitute caregivers including but not limited to:

(a) Documentation of criminal history check in compliance with OAR 943-007-0001 through 0501;

(b) Documentation that a substitute caregiver has successfully completed the training required by the Division;

(c) Documentation that the provider has trained the caregiver to meet the routine and emergency needs of the individuals;

(d) Documentation that the provider has oriented the caregiver to the individuals in the AFH, their care needs and skills training, personal care plan, and the physical characteristics of the AFH.

(7) The Division shall require a minimum of twelve hours of training annually directly related to the care and services for individuals with mental illness. The provider, resident manager, and substitute caregiver of an AFH must complete required training and document the training in the provider, resident manager, and substitute caregiver's training records. The

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training is in addition to any orientation that is attended by applicants prior to licensing and shall include, but is not limited to:

- (a) Understanding and recognizing severe and persistent mental illness;
 - (b) Mandatory abuse reporting;
 - (c) Medication management, dispensing, and documentation;
 - (d) Incident report writing;
 - (e) Individual rights;
 - (f) AFH emergency planning;
 - (g) Fire safety;
 - (h) Complaints and grievances; and
 - (i) Cardiopulmonary Resuscitation (CPR) and First Aid.
- (8) The Division may require the provider, resident manager, or substitute caregiver to obtain additional training, whether or not the twelve-hour annual training requirement has already been met.
- (9) Providers, resident managers, or substitute caregivers who perform delegated or assigned nursing care services as part of the residential care plan shall receive training and appropriate monitoring from a registered nurse on performance and delivery of those services.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

Hist.: MHD 19-1985(Temp), f. & ef. 12-27-85; MHD 6-1986, f. & ef. 7-2-86; MHD 1-1992, f. & cert. ef. 1-7-92 (and corrected 1-31-92); MHD 6-1999, f. 8-24-99, cert. ef. 8-26-99; Renumbered from 309-040-0030, MHD 3-2005, f. & cert. ef. 4-1-05; MHS 14-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; MHS 3-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-040-0340

Issuance of a License

(1) Applicants shall be in substantial compliance with these rules ORS 443.705 through 443.825 before the Division shall issue a license if cited deficiencies are not corrected within time frames specified by the Division, the application may be denied. The license shall include but is not limited to the name of the applicant, name of the AFH, address of the home to which the license applies, the maximum number of individuals, resident manager if applicable, conditions, if applicable, license number, payment received, effective date and expiration date, and the signature of the assistant administrator of the Division. The license shall be visibly posted in the AFH and available for inspection at all times.

(2) The Division may attach conditions to the license that limit, restrict, or specify other criteria for operation of the AFH. Conditions to a license may include but are not limited to care of a specifically identified individual. The conditions shall be posted with the license in the AFH and be available for inspection at all times.

(3) Each provider shall report promptly to the Division any significant changes to information supplied in the application or subsequent correspondence. Changes include but are not limited to changes in the AFH name, owner entity, resident manager, telephone number, or mailing address, and staffing changes if those changes are significant or impact the health, safety, or well-being of individuals.

(4) When an AFH is sold, the prospective new owner shall apply for a license in accordance with OAR 309-040-0315 if the new owner intends to operate an AFH.

(5) An AFH license is not transferable or applicable to any location or individuals other than those specified on the license.

(6) A license is valid for one year from the effective date on the license unless sooner revoked or suspended.

(7) Applicants shall be in substantial compliance with these rules before a license is issued. If cited deficiencies are not corrected within the time frames specified by the Division, the license shall be denied.

(8) The Division may not issue an initial license unless:

(a) The applicant and the AFH are in compliance with ORS 443.705 to 443.825 and the rules of the Division;

(b) The Division has completed an inspection of the AFH. If cited deficiencies are not corrected within the time frames specified by the Division, the application shall be denied;

(c) The Division has received an approved criminal history records check on the applicant, resident manager, substitute caregiver, and any occupant (other than an individual) 16 years of age or older or is identified in ORS 443.735 and who will be residing in or employed by the AFH, as identified in OAR chapter 943 division 007 and any other rules established by the Division.

(9) The applicant shall demonstrate to the Division the financial ability and resources necessary to operate the AFH. The demonstration of financial ability shall include, but is not limited to, providing the Division with a list of any unsatisfied judgments, pending litigation and unpaid taxes, and notifying the Division regarding whether the applicant is

in bankruptcy. If the applicant is unable to demonstrate the financial ability and resources required in this section, the Division may require the applicant to furnish a financial guarantee as a condition of initial licensure.

(10) If a resident manager leaves during the period of the license, the provider shall notify the Division immediately and identify a plan for providing care to the individuals. The provider shall submit a completed resident manager application on forms supplied by the Division that include a copy of the documentation of criminal history background check and approval in accordance with OAR chapter 943, division 007, a physician statement, and payment of a \$10 fee. If the original plan includes changing the resident manager during the license renewal process, the \$10 is not applicable.

(11) Upon receipt of the completed resident manager application and Division approval, a revised license may be issued in accordance with ORS 443.738(1) through (4).

(12) Notwithstanding any other provision of ORS 443.735, 443.725, or 443.738, the Division may issue a 60-day provisional license to a qualified individual if the Division determines that an emergency situation exists after being notified that the licensed provider of an AFH is no longer overseeing operation of the AFH.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

Hist.: MHD 1-1992, f. & cert. ef. 1-7-92 (and corrected 1-31-92); MHD 6-1999, f. 8-24-99, cert. ef. 8-26-99; Renumbered from 309-040-0020, MHD 3-2005, f. & cert. ef. 4-1-05; MHS 14-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; MHS 3-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-040-0345

Renewal

(1) The provider shall submit a completed renewal application and the required fee at least 165 days prior to the expiration date of the license. If the renewal application is not received by the Division within the time period described, the provider shall request the application from the Division or the County Mental Health partner. If the completed renewal application and fee are not submitted prior to the expiration date, the AFH shall be treated as an unlicensed home subject to civil penalties.

(2) The renewal application must include the same information and fee as required for a new application, except that a physician's statement and financial information form are not required if the Division can reasonably assume this information has not changed.

(3) The Division may require the applicant to submit a current, within six months, physician's statement and a current, within six months, criminal history check if investigation by the Division for license renewal indicates that it is necessary.

(4) The Division shall investigate any information in the renewal application and shall conduct an inspection of the AFH.

(5) The provider shall be given a formal written report from the inspection citing any deficiencies and a time frame for correction that does not exceed 30 days from the date of the inspection report unless otherwise noted in the inspection report.

(6) The AFH provider shall correct cited deficiencies prior to issuing a renewed license. If cited deficiencies are not corrected within the time frame specified by the Division, the renewal application shall be denied and administrative sanctions may be imposed.

(7) The Division may not renew a license unless:

(a) The applicant and the AFH are in compliance with ORS 443.705 to 443.825 and these rules;

(b) The Division has completed an inspection of the AFH;

(c) The Division has completed a criminal records check, as required by ORS 181.536 through 181.537, 443.735 and OAR chapter 943, division 007, on the applicant and any occupant, other than an individual, 16 years of age or older or is identified in ORS 443.735(5)(a)(b), (6)(a)(b)(c) and who will be residing in or employed by or otherwise acting as a provider, resident manager, substitute caregiver, or volunteer for the AFH provider.

(8) The provider, resident manager, substitute caregiver, or volunteer or individual residing in the AFH may continue to work or reside in the home pending the national criminal records check provided that the Oregon criminal record check was clear and no convictions were self-disclosed in accordance with OAR chapter 943, division 007.

(9) A criminal records check shall be completed for the applicant and any occupant, other than an individual, 16 years of age or older who shall be residing in or employed by or otherwise acting as a provider, resident manager, substitute caregiver, or volunteer for the AFH provider if the Division believes there is reason to justify a new criminal history check in accordance with OAR chapter 943, division 007.

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(10) An AFH provider seeking initial licensing or that has been in operation for less than 24 months has the burden of proof to establish compliance with ORS 443.705 to 443.825 and the Division rules.

(11) The burden of proof shall be upon the Division to establish compliance with ORS 443.705 to 443.825 and the Division rules if an AFH provider is seeking renewal of a license and has been in continuous operation for more than 24 months.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

Hist.: MHD 19-1985(Temp), f. & ef. 12-27-85; MHD 6-1986, f. & ef. 7-2-86; MHD 1-1992, f. & cert. ef. 1-7-92 (and corrected 1-31-92); MHD 6-1999, f. 8-24-99, cert. ef. 8-26-99; Renumbered from 309-040-0025, MHD 3-2005, f. & cert. ef. 4-1-05; MHS 14-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; MHS 3-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-040-0350

Variance

(1) A provider or applicant may apply to the Division for a variance from a provision of these rules. The provider shall provide justification that a variance does not jeopardize the health, life, or safety of the individuals, and would not violate or compromise an applicable ORS.

(2) The Division may not grant a variance from a regulation or provision of these rules pertaining to the license capacity of the AFH; inspections of the AFH; civil, legal, and human rights; and inspection of the public files. The Division may not grant a variance related to fire and life safety without prior consultation with the local fire authority or designee.

(3) A provider or applicant may apply to the Division for a variance specific to each individual under ORS 443.725, subject to the following requirements:

(a) The variance is effective only for the specific individual who has been assessed and meets the safety requirements prescribed by the Division. This assessment shall become part of the individual's RCP;

(b) A variance allowing a specific individual to be in the AFH alone may not exceed four hours in a 24-hour period;

(c) No variance allows a provider to leave an individual alone in the AFH between the hours of 11 p.m. to 6 a.m.; and

(d) Twenty-four hour per day care shall continue for any individual that does not qualify to be in the AFH alone.

(4) Variances shall be granted or denied in writing. All variances granted shall be reviewed with each license renewal under OAR 309-040-0345. A variance granted to one AFH provider or a variance granted regarding a specific individual does not constitute a precedent for any other AFH provider, applicant, or individual.

(5) The AFH provider or applicant may appeal the denial of a variance request by submitting a request for reconsideration in writing to the Division. The Division shall make a decision on the appeal within 30 days of receipt of the appeal. The decision of the Division shall be final.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

Hist.: MHD 19-1985(Temp), f. & ef. 12-27-85; MHD 6-1986, f. & ef. 7-2-86; MHD 1-1992, f. & cert. ef. 1-7-92 (and corrected 1-31-92); Renumbered from 309-040-0035, MHD 3-2005, f. & cert. ef. 4-1-05; MHS 2-2007(Temp), f. & cert. ef. 5-4-07 thru 10-31-07; MHS 12-2007, f. & cert. ef. 8-31-07; MHS 14-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; MHS 3-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-040-0355

Contracts

(1) Providers who care for public assistance individuals must enter into a contract with the Division and comply with Division rules governing reimbursement for services and refunds.

(2) Providers who care for private paying individuals must enter into a signed contract with the individual or person paying for care. This contract shall include, but is not limited to, an RCP, a schedule of rates, conditions under which the rates may be changed, and the AFH's policy on refunds at the time of hospitalization, death, discharge, or voluntary move.

(3) The provider shall provide a 30-day prior written notification to private pay individuals of increases, additions, and other modifications to the rates. Unless the change is due to a medical emergency resulting in a greater level of care, in which case the provider shall give notice within ten days of the change.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

Hist.: MHD 19-1985(Temp), f. & ef. 12-27-85; MHD 6-1986, f. & ef. 7-2-86; MHD 1-1992, f. & cert. ef. 1-7-92 (and corrected 1-31-92); MHD 6-1999, f. 8-24-99, cert. ef. 8-26-99; Renumbered from 309-040-0040, MHD 3-2005, f. & cert. ef. 4-1-05; MHS 14-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; MHS 3-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-040-0360

Qualifications for Adult Foster Home Providers, Resident Managers and Other Caregivers

(1) An AFH provider must meet the following qualifications:

(a) Be at least 21 years of age;

(b) Live in the AFH to be licensed, unless an approved resident manager lives in the AFH;

(c) Provide evidence satisfactory to the Division regarding experience, training, knowledge, interest, and concern in providing care to persons with severe and persistent mental illness. Evidence may include, but is not limited to the following:

(A) Certified nurse's aide training;

(B) Nursing home, hospital, or institutional work experience;

(C) Licensed practical nurse or registered nurse training and experience;

(D) Division approved training;

(E) Experience in caring for individuals with severe and persistent mental illness at home; and

(F) Home management skills.

(d) Possess the physical health and mental health determined necessary by the Division to provide 24-hour care for adults who are mentally ill. Applicants shall have a statement from a physician on a Division approved form that they are physically and mentally capable of providing care;

(e) Undergo a criminal history check in accordance with OAR chapter 943 division 007 and be found eligible for licensure by the Division. The Division shall evaluate and verify information regarding criminal history;

(f) Provide evidence of sufficient financial resources to operate an AFH for at least two months, unless the application is for renewal of an AFH that is already in operation. A credit reference check may be required;

(g) Be literate and capable of understanding written and oral orders and communicating with individuals, physicians, case managers, and appropriate others and be able to respond appropriately to emergency situations at all times;

(h) If transporting individuals by motorized conveyance, shall have a current driver's license in compliance with the Department of Motor Vehicles laws and vehicle insurance as required by the State of Oregon.

(2) The resident manager shall meet the provider qualifications listed in section (1)(a) through (h) of this rule. A resident manager applicant may work in the home pending outcome of the national criminal history check, if the Oregon criminal history check was clear and no convictions were self-disclosed on the criminal record authorization.

(3) Substitute caregivers left in charge of an individual for any period of time shall have access to individual records and meet the following qualifications:

(a) Be at least 18 years of age;

(b) Be subject to a criminal history check. A substitute caregiver may work in the home pending outcome of the national criminal history check providing the Oregon criminal history check was clear and no convictions were self-disclosed on the criminal record authorization;

(c) Be able to communicate orally and in writing with individuals, physicians, case managers, and appropriate others;

(d) Know fire safety and emergency procedures;

(e) Have a clear understanding of job responsibilities, have knowledge of RCPs, and be able to provide the care specified for each individual;

(f) Be able to meet the requirements of a resident manager when left in charge of an AFH for 30 days or longer;

(g) Not be an individual; and

(h) If transporting individuals by motorized conveyance, shall have a current driver's license in compliance with Department of Motor Vehicles laws and vehicle insurance as required by the State of Oregon.

(4) The provider may not hire or continue to employ a resident manager or substitute caregiver who does not meet the requirements of this rule.

(5) A provider shall supervise and train resident managers and substitute caregivers and monitor their general conduct when acting within the scope of their employment or duties.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

Hist.: MHD 19-1985(Temp), f. & ef. 12-27-85; MHD 6-1986, f. & ef. 7-2-86; MHD 1-1992, f. & cert. ef. 1-7-92 (and corrected 1-31-92); MHD 6-1999, f. 8-24-99, cert. ef. 8-26-99; Renumbered from 309-040-0045, MHD 3-2005, f. & cert. ef. 4-1-05; MHS 14-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; MHS 3-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-040-0365

Facility Standards

(1) In order to qualify for or maintain a license, an AFH shall meet the following provisions:

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(a) Demonstrate compliance with Oregon Structural Specialty Code (OSSC) and Oregon Fire Code; and

(b) Maintain up-to-date documentation verifying they meet applicable local business license, zoning, and building and housing codes and state and local fire and safety regulations. It is the duty of the provider to check with local government to be sure all applicable local codes have been met;

(c) For AFH's established on or after October 1, 2004, meet all applicable state building, mechanical, and housing codes for fire and life safety. The AFH shall be inspected for fire safety by an inspector designated by the Division using the recommended standards established by the State Fire Marshal for facilities housing one to five persons. Refer to Appendix I of the Oregon Fire Code, the Oregon Residential Specialty Code, and the Oregon Structural Specialty Code. When deemed necessary by the Division, a request for fire inspection shall be made to the State Fire Marshal;

(d) The building and furnishings shall be clean and in good repair and grounds shall be maintained. Walls, ceilings, and floors shall be of such character to permit frequent washing, cleaning, or painting. There shall be no accumulation of garbage, debris, rubbish, or offensive odors;

(e) Stairways shall be provided with handrails. A functioning light shall be provided in each room, stairway, and exit way; incandescent light bulbs shall be protected with appropriate covers. Yard and exterior steps shall be accessible to individuals;

(f) The heating system shall be in working order. Areas of the AFH used by individuals shall be maintained at no less than 68 degrees Fahrenheit during the day and 60 degrees Fahrenheit during sleeping hours. During times of extreme summer heat, the provider shall make a reasonable effort to make the individuals comfortable using available ventilation or fans;

(g) There shall be at least 150 square feet of common space and sufficient comfortable furniture in the AFH to accommodate the recreational and socialization needs of the occupants at one time. Common space shall not be located in the basement or garages unless such space was constructed for that purpose or has otherwise been legalized under permit. Additional space is required if wheelchairs are to be accommodated;

(h) Pools and hot tubs shall be equipped with sufficient safety barriers or devices to prevent accidental injury in accordance with Section R116 of the Oregon Residential Specialty Code.

(2) Any accessibility improvements made to accommodate an identified individual shall be in accordance with the specific needs of the individual and comply with Chapter 11 of the building code.

(3) An AFH shall have an accessible outdoor area that shall be made available to individuals.

(4) Storage of a reasonable size for an individual's belongings beyond that of the individual's unit shall be made available:

(a) All yard maintenance equipment shall be maintained in a locked storage if such equipment poses a safety threat;

(b) A locked storage area for individual medications separate from food, laundry, and toxic or hazardous materials shall be made accessible to all caregivers. For individuals who are self-medicating, the provider shall make a secured locked box available to assure the safety of all occupants of the home;

(c) A locked storage area separate from food and medications shall be designated when there are toxic or hazardous materials on the premises.

(5) All equipment shall be clean and in good repair, provide individual privacy, and shall have but is not limited to, the following:

(a) A finished interior, a mirror, an operable window or other means of ventilation, and a window covering;

(b) Tubs or showers, toilets and sinks. A sink shall be located near each toilet. A toilet and sink shall be provided on each floor where rooms of non-ambulatory individuals or individuals with limited mobility are located. There shall be at least one toilet, one sink, and one tub or shower for each six household occupants, including the provider and family;

(c) Hot and cold water in sufficient supply to meet the needs of individuals for personal hygiene. Hot water temperature sources for bathing areas shall not exceed 120 degrees Fahrenheit;

(d) Shower enclosures with nonporous surfaces. Glass shower doors shall be tempered safety glass. Shower curtains shall be clean and in good condition. Non-slip floor surfaces shall be provided in tubs and showers;

(e) Grab bars for toilets, tubs, or showers for safety as required by an individual's disability;

(f) The AFH may not be designed to allow an individual or employee to walk through another individual's bedroom to get to a bathroom. Individuals shall have barrier-free access to toilet and bathing facilities with appropriate fixtures.

(g) If there are non-ambulatory individuals, alternative arrangements shall be appropriate to meet the non-ambulatory individual's needs for maintaining good personal hygiene.

(h) Individuals shall have appropriate racks or hooks for drying bath linens.

(6) All furniture and furnishings shall be clean and in good repair. Units for all household occupants shall have been constructed as a bedroom when the home was built or remodeled under permit; be finished, with walls or partitions of standard construction that go from floor to ceiling, and a door which opens directly to a hallway or common use room without passage through another unit or common bathroom; be adequately ventilated, heated, and lighted with at least one operable window that meets fire egress regulations. (See Section R310 Emergency Escape and Rescue Openings in the Oregon Residential Specialty Code.) All units shall include a minimum of 70 square feet of usable floor space for each individual or 120 square feet for two individuals, have no more than two persons per room, and allow for a minimum of three feet between beds. In addition, the provider shall ensure that:

(a) Each unit has a lockable entrance door for the individual's privacy:

(A) The locking device shall release with a single-action lever on the inside of the unit and open to a hall or common-use room;

(B) The provider shall provide each individual with a personalized key that operates only the door to his or her unit door from the corridor side;

(C) The provider shall maintain a master key to access all of the units that is quickly available to the provider or resident manager and documented in the individual's person-centered service plan;

(D) The provider may not disable or remove a lock to a unit without first obtaining consent from the individual through the individually-based limitations process outlined in OAR 309-040-0393; and

(E) Section (6) is effective July 1, 2016, and enforceable as described in OAR 309-040-0315(7).

(b) Providers, resident managers, or their family members may not sleep in areas designated as living areas or share units with individuals;

(c) In determining maximum capacity, consideration shall be given to whether children over the age of five have a bedroom separate from their parents;

(d) Units shall be on ground level for individuals who are non-ambulatory or have impaired mobility;

(e) Individual units shall be in close enough proximity to alert the provider or resident manager to night time needs or emergencies or be equipped with a call bell or intercom.

(7) AFH's established on or after October 1, 2004, shall meet all applicable state building, residential, fire, mechanical, and housing codes for fire and life safety. The AFH shall be inspected for fire safety by an inspector designated by the Division using the recommended standards established by the State Fire Marshal for facilities housing one to five individuals. Refer to Appendix I of the Oregon Fire Code, the Oregon Residential Specialty Code, and the Oregon Structural Specialty Code. When deemed necessary by the Division, a request for fire inspection shall be made to the State Fire Marshal.

(8) Special hazards such as the following:

(a) Flammable and combustible liquids and hazardous materials shall be safely and properly stored in original, properly labeled containers, or safety containers and secured to prevent tampering by individuals or others. Firearms on the premises of an AFH shall be stored in a locked cabinet. The firearms cabinet shall be located in an area of the home that is not readily accessible to individuals, and all ammunition shall be stored in a separate, locked location;

(b) Smoking regulations shall be adopted to allow smoking only in designated areas. Smoking shall be prohibited in sleeping rooms and upon upholstered crevasse furniture. Ashtrays of noncombustible material and safe design shall be provided in areas where smoking is permitted;

(c) Cleaning supplies, poisons, and insecticides shall be properly stored in original, properly labeled containers in a safe area away from food, preparation and storage of food, dining areas, and medications.

(9) All furniture and furnishings shall be clean and in good repair. There shall be at least 150 square feet of common space and sufficient comfortable furniture in the AFH to accommodate the recreational and socialization needs of the occupants at one time. Common space may not be located in the basement or garages unless such space was constructed for that purpose or has otherwise been legalized under permit. Additional space shall be required if wheelchairs are to be accommodated.

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(10) All equipment shall be clean and in good repair. Laundry facilities shall be separate from food preparation and other individual use areas. The provider shall maintain the following:

(a) Locked storage area for chemicals that pose a safety threat to individuals or family members;

(b) Sufficient, separate storage and handling space to ensure that clean laundry is not contaminated by soiled laundry;

(c) Outlets, venting, and water hookups according to State Building Code requirements; and

(d) Washing machines shall have a minimum rinse temperature of 140 degrees Fahrenheit.

(11) All equipment shall be clean and in good repair. The provider shall maintain an area for dry storage, not subject to freezing, in cabinets or a separate pantry with a minimum of one week's supply of staple foods. The provider shall maintain the following:

(a) Sufficient refrigeration space maintained at 45 degrees Fahrenheit or less and freezer space maintained at 0 degree Fahrenheit or less for a minimum of two days' supply of perishable foods;

(b) A dishwasher with a minimum final rinse of 140 degrees Fahrenheit;

(c) Smooth, nonabsorbent and cleanable counters for food preparation and serving;

(d) Appropriate storage for dishes and cooking utensils designed to be free from potential contamination;

(e) Stove and oven equipment for cooking and baking needs;

(f) Storage for a mop and other cleaning tools and supplies used for food preparation, dining, and adjacent areas. Such cleaning tools shall be maintained separately from those used to clean other parts of the home; and

(g) Dining Space where meals are served shall be provided to seat all individuals at the same seating.

(12) Details and Finishes:

(a) The building and furnishings shall be clean and in good repair, and grounds shall be maintained. Walls, ceilings, and floors shall be of such character to permit frequent washing, cleaning, or painting;

(b) Locks used on doors to individuals' units shall be in good repair with an interactive lock to release with operation of the inside door handle and be master keyed from the corridor side and comply with the requirements established by OAR 309-040-0365(6)(a) and its subsections. Exit doors may not have locks that prevent evacuation except as permitted by Section 1008.1.8 of the building code. An exterior door alarm or other acceptable system may be provided for security purposes and alert the provider when individuals or others enter or exit the home.

(c) Handrails. Handrails shall be secured on all stairways.

(13) The heating system shall be in working order:

(a) Areas of the AFH used by individuals shall be maintained at no less than 68 degrees Fahrenheit during daytime hours and no less than 60 degrees Fahrenheit during sleeping hours. During times of extreme summer heat, the provider shall make reasonable effort to make the residents comfortable using available ventilation or fans;

(b) All toilets and shower rooms shall be ventilated by a mechanical exhaust system or operable window;

(c) Design and installation of fireplaces, furnaces and wood stoves shall meet standards of the Oregon Mechanical and Residential Specialty Code and have annual inspections to assure no safety hazard exists;

(d) Hot water temperatures shall be maintained within a range of 110¼ to 120 degrees Fahrenheit. Hot water temperatures for washing machines and dishwashers shall be at least 140 degrees Fahrenheit.

(14) All electrical systems shall meet the standards of the Oregon Electrical Specialty Code in effect on the date of installation, and all electrical devices shall be properly wired and in good repair:

(a) When not fully grounded, GFI-type receptacles or circuit breakers as an acceptable alternative may protect circuits in individual areas;

(b) Circuit breakers or non-interchangeable circuit-breaker-type fuses in fuse boxes shall be used to protect all electrical circuits;

(c) A sufficient supply of electrical outlets shall be provided to meet individual and staff needs without the use of extension cords or outlet expander devices;

(d) A functioning light shall be provided in each room, stairway, and exit way. Lighting Fixtures shall be provided in each individual bedroom and bathroom with a light switch near the entry door and in other areas as required to meet task illumination needs;

(e) Incandescent light bulbs shall be protected with appropriate covers.

(15) All plumbing shall meet the Oregon Plumbing Specialty Code in effect on the date of installation, and all plumbing fixtures shall be properly installed and in good repair.

(16) Pools, hot tubs, and ponds shall be equipped with sufficient safety barriers or devices to prevent accidental injury in accordance with Section R116 of the Oregon Residential Specialty Code.

(17) Telephones:

(a) A telephone shall be available and accessible 24 hours a day for individuals' use for incoming and outgoing calls in the AFH;

(b) Emergency telephone numbers for the local CMHP, Police, Fire, Medical, Poison Control, provider, and other emergencies shall be posted by the individuals' telephone. The posting shall include the name, address, and telephone number of the AFH, telephone numbers for making complaints or a report of alleged abuse to the local CMHP, the Division, the Office of Adult Abuse Prevention and Investigations and the Oregon Advocacy Center;

(c) AFH telephone numbers shall be listed in the local telephone directory;

(d) The provider may establish reasonable rules governing telephone use to ensure equal access by all individuals. Each individual or guardian (as applicable) shall be responsible for payment of long distance phone bills where calls were initiated by the individual, unless otherwise mutually agreed arrangements have been made.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

Hist.: MHD 19-1985(Temp), f. & ef. 12-27-85; MHD 6-1986, f. & ef. 7-2-86; MHD 1-1992, f. & cert. ef. 1-7-92 (and corrected 1-31-92), Sections (8)-(10) renumbered to 309-040-0052; MHD 6-1999, f. 8-24-99, cert. ef. 8-26-99; Renumbered from 309-040-0050, MHD 3-2005, f. & cert. ef. 4-1-05; MHS 14-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; MHS 3-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-040-0370

Safety

(1) The provider shall train all program staff in staff safety procedures prior to beginning their first regular shift. All individuals shall be trained in individual safety procedures as soon as possible during their first 72 hours of residency.

(2) Emergency Procedures:

(a) An emergency evacuation procedure shall be developed, posted, and rehearsed with occupants. A record shall be maintained of evacuation drills. Drills shall be scheduled at different times of the day and on different days of the week with different locations designated as the origin of the fire for drill purposes:

(A) Drills shall be held at least once every 30 days;

(B) One drill practice shall be held at least once every 90 days during individual's nighttime sleeping hours between 10 p.m. and 6a.m. Fire drill records shall be maintained for three years and include date, time for full evacuation, safety equipment checked (to include fire extinguishers, smoke detectors, secondary egress points, flashlights, and furnace filters), comments on the drill results, and names of individuals requiring assistance for evacuation;

(b) The residential care plan must document that within 24 hours of arrival, each new individual has received an orientation to basic safety and has been shown how to respond to a fire alarm and how to exit from the AFH in an emergency;

(c) The provider shall demonstrate the ability to evacuate all individuals from the facility within three minutes. If there are problems in demonstrating this evacuation time, the Division may apply conditions to the license that include, but may not be limited to, reduction of individuals under care, additional staffing, increased fire protection, or revocation of the license;

(d) The provider shall provide to the Division, maintain as current, and post a floor plan on each floor containing room sizes, location of each individual's bed, fire exits, resident manager or provider's sleeping room, smoke detectors, fire extinguishers and escape routes. A copy of this drawing shall be submitted with the application and updated to reflect any change;

(e) There shall be at least one plug-in rechargeable flashlight available for emergency lighting in a readily accessible area on each floor including a basement.

(3) A written disaster plan shall be developed to cover such emergencies and disasters as fires, explosions, missing persons, accidents, earthquakes, and floods. The plan shall be posted by the phone and immediately available to the employees. The plan shall specify temporary and long-range habitable shelter where staff and individuals shall reside if the AFH becomes uninhabitable.

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(4) Non-toxic cleaning supplies shall be used whenever available. Poisonous and other toxic materials shall be properly labeled and stored in locked areas distinct and apart from all food and medications.

(5) Evacuation capability categories are based upon the ability of the individuals and staff as a group to evacuate the facility or relocate from a point of occupancy to a point of safety:

(a) Documentation of an individual's ability to safely evacuate from the facility shall be maintained in the individual's personal care plan;

(b) Individuals experiencing difficulty with evacuating in a timely manner shall be provided assistance from staff and offered environmental and other accommodations, as practical. Under these circumstances, the provider shall consider increasing staff levels, changing staff assignments, offering to change the individual's room assignment, arranging for special equipment, and taking other actions that may assist the individual;

(c) Individuals who still cannot evacuate the home safely in the allowable period of time of three minutes must be assisted with transferring to another program with an evacuation capability designation consistent with the individual's documented evacuation capability;

(d) Written evacuation records shall be retained for at least three years. Records shall include documentation made at the time of the drill, specifying the date and time of the drill, the location designated as the origin of the fire for drill purposes, the names of all individuals and staff present, the amount of time required to evacuate, notes of any difficulties experienced, and the signature of the staff person conducting the drill.

(6) All stairways, halls, doorways, passageways, and exits from rooms and from the home shall be unobstructed.

(7) At least one 2A-10BC rated fire extinguisher shall be in a visible and readily accessible location on each floor, including basements, and shall be inspected at least once a year by a qualified worker that is well versed in fire extinguisher maintenance. All recharging and hydrostatic testing shall be completed by a qualified agency properly trained and equipped for this purpose;

(8) Approved smoke detector systems or smoke alarms shall be installed according to Oregon Residential Specialty Code and Oregon Fire Code requirements. These alarms shall be tested during each evacuation drill. The provider shall provide approved signal devices for individuals with disabilities who do not respond to the standard auditory alarms. All of these devices shall be inspected and maintained in accordance with the requirements of the State Fire Marshal or local agency having jurisdiction. Ceiling placement of smoke alarms or detectors is recommended. Alarms shall be equipped with a device that warns of low battery when battery operated. All smoke detectors and alarms shall be maintained in functional condition;

(9) Special hazards:

(a) Flammable and combustible liquids and hazardous materials shall be safely and properly stored in original, properly labeled containers or safety containers, and secured to prevent tampering by individuals and vandals. Firearms on the premises of an AFH must be stored in a locked cabinet. The firearms cabinet shall be located in an area of the home that is not readily accessible to clients, and all ammunition must be stored in a separate, locked location;

(b) Smoking regulations shall be adopted to allow smoking only in designated areas. Smoking shall be prohibited in sleeping rooms and upon upholstered crevasse furniture. Ashtrays of noncombustible material and safe design shall be provided in areas where smoking is permitted;

(c) Cleaning supplies, poisons, and insecticides shall be properly stored in original, properly labeled containers in a safe area away from food, preparation and storage of food, dining areas, and medications.

(10) Sprinkler systems, if used, shall be installed in compliance with the Oregon Structural Specialty Code and Oregon Fire Code and maintained in accordance with rules adopted by the State Fire Marshal.

(11) First aid supplies shall be readily accessible to staff. All supplies shall be properly labeled.

(12) Portable heaters are a recognized safety hazard and may not be used, except as approved by the State Fire Marshal, or authorized representative.

(13) A safety plan shall be developed and implemented to identify and prevent the occurrence of hazards. Hazards may include, but are not limited to, dangerous substances, sharp objects, unprotected electrical outlets, use of extension cords or other special plug-in adapters, slippery floors or stairs, exposed heating devices, broken glass, inadequate water temperatures, overstuffed furniture in smoking areas, unsafe ashtrays and ash disposal, and other potential fire hazards.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

Hist.: MHD 3-2005, f. & cert. ef. 4-1-05; MHS 14-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; MHS 3-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-040-0375

Sanitation

(1) The water supply in the home shall meet the requirements of the current Authority rules governing domestic water supplies:

(a) A municipal water supply shall be utilized if available;

(b) When the home is not served by an approved municipal water system, and the home qualifies as a public water system according to OAR 333-061-0020(94) Authority rules for public water systems, then the provider shall comply with the OAR chapter 333. These include requirements that the drinking water be tested for total coliform bacteria at least quarterly and nitrate at least annually and reported to the Division. For adverse test results, these rules require that repeat samples and corrective action be taken to assure compliance with water quality standards. Public notice shall be given whenever a violation of the water quality standards occurs, and records of water testing shall be retained according to Division requirements.

(2) All floors, walls, ceilings, windows, furniture, and equipment shall be kept in good repair, clean, neat, and orderly.

(3) Each bathtub, shower, lavatory, and toilet shall be kept clean, in good repair, and regularly sanitized.

(4) Kitchen sinks may not be used for the disposal of cleaning wastewater.

(5) Soiled linens and clothing shall be stored in an area or container separate from kitchens, dining areas, clean linens, clothing, and food.

(6) All necessary measures shall be taken to prevent rodents and insects from entering the home. Should pests be found in the home, appropriate action shall be taken to eliminate them.

(7) The grounds of the facility shall be kept orderly and reasonably free of litter, unused articles, and refuse.

(8) Garbage and refuse receptacles shall be clean, durable, watertight, insect and rodent proof, and shall be kept covered with tight-fitting lids. All garbage and solid waste shall be disposed of at least weekly and in compliance with the current rules of the Department of Environmental Quality.

(9) All sewage and liquid wastes shall be disposed of in accordance with the Plumbing Code to a municipal sewage system where such facilities are available. If a municipal sewage system is not available, sewage and liquid wastes shall be collected, treated, and disposed of in compliance with the current rules of the Department of Environmental Quality. Sewage lines and septic tanks or other non-municipal sewage disposal systems, where applicable, shall be maintained in good working order.

(10) Biohazard waste shall be disposed of in compliance with the rules of the Department of Environmental Quality.

(11) Precautions shall be taken to prevent the spread of infectious or communicable diseases as defined by the Centers for Disease Control and to minimize or eliminate exposure to known health hazards:

(a) In accordance with OAR 437-002-0368 through 2226 of the Oregon Occupational Safety and Health Code, program staff shall employ universal precautions whereby all human blood and certain body fluids are treated as if known to be infectious for HIV, HBV, and other blood borne pathogens;

(b) Bathroom facilities shall be equipped with an adequate supply of toilet paper, soap, and towels.

(12) If pets or other household animals exist at the home, sanitation practices shall be implemented to prevent health hazards:

(a) These animals shall be vaccinated in accordance with the recommendations of a licensed veterinarian. Proof of such vaccinations shall be maintained on the premises;

(b) Animals not confined in enclosures shall be under control and maintained in a manner that does not adversely impact individuals or others.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

Hist.: MHD 3-2005, f. & cert. ef. 4-1-05; MHS 14-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; MHS 3-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-040-0380

Individual Furnishings

(1) Bedrooms and Units:

(a) Bedrooms for all household occupants and units for individuals shall have been constructed as a bedroom when the home was built or remodeled under permit; be finished with walls or partitions of standard construction that go from floor to ceiling and a door that opens directly to a hallway or common use room without passage through another bedroom or unit or common bathroom; be adequately ventilated, heated and lighted

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with at least one operable window that meets the requirements of Section R310 of the Oregon Residential Specialty Code; have at least 70 square feet of usable floor space for each individual or 120 square feet for two individuals and have no more than two individuals per room;

(b) Providers, resident managers, or their family members may not sleep in areas designated as living areas, or share bedrooms or units with individuals;

(c) There shall be an individual bed for each individual consisting of a mattress in good condition and springs at least 36 inches wide. Cots, roll-away, bunks, trundles, couches, and folding beds may not be used for individuals. Each bed shall have clean bedding in good condition consisting of a bedspread, mattress pad, two sheets, a pillow, a pillowcase, and blankets adequate for the weather. Sheets and pillowcases shall be laundered at least weekly, and more often if necessary. Waterproof mattress covers shall be used for incontinent individuals. Day care individuals may not use individual beds;

(d) Each unit shall have sufficient separate, private dresser and closet space for each individual's clothing and personal effects, including hygiene and grooming supplies. Individuals shall be allowed to keep and use reasonable amounts of personal belongings and to have private, secure storage space. Drapes or shades for windows shall be in good condition and provider privacy for individuals;

(e) Units shall be on ground level for individuals who are non-ambulatory or have impaired mobility;

(f) Units shall be in close enough proximity to the provider to alert the provider to night time needs or emergencies or be equipped with a call bell or intercom.

(2) Each individual shall be assisted in obtaining personal hygiene items in accordance with individual needs. Items shall be stored in a clean and sanitary manner and may be purchased with the individual's personal allowance. Personal hygiene items include, but are not limited to, a comb or hairbrush, a toothbrush, toothpaste, menstrual supplies (if needed), towels, and washcloths.

(3) Sufficient supplies of soap, shampoo, and toilet paper for all individuals shall be provided.

(4) An adequate supply of furniture for individual use in the living room, dining room, and other common areas shall be maintained in good condition.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

Hist.: MHD 3-2005, f. & cert. ef. 4-1-05; MHS 14-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; MHS 3-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-040-0385

Food Services

(1) Three nutritious meals shall be served daily at times consistent with those in the community. Meals shall be planned and served in accordance with the recommended dietary allowances found in the United States Department of Agriculture Food Guide Pyramid or as directed by a prescriber. Consideration shall be given to cultural and ethnic backgrounds of individuals in food preparation.

(2) An order from an LMP must be obtained for each individual who for health reasons is on a modified or special diet. These diets shall be planned in consultation with the individual.

(3) Menus shall be prepared at least one week in advance and provide a sufficient variety of foods served in adequate amounts for each individual at each meal and adjusted for seasonal changes. Records of menus as served shall be filed and maintained in the AFH for three years. Individual preferences and requests shall be considered in menu planning. Religious and vegetarian preferences must be reasonably accommodated.

(4) Meals shall be prepared and served in the facility where the individuals live. Payment for meals eaten away from the AFH for the convenience of the provider (e.g. restaurants, senior meal sites) shall be paid for by the provider. Meals and snacks as part of an individual recreational outing shall be paid for by the individual. Food preparation areas shall be clean, free of obnoxious odors, and in good repair.

(5) The provider shall maintain adequate supplies of staple foods for a minimum of one week and perishable foods for a minimum of two days at the setting. An emergency supply of potable water shall be available such that the provider maintains seven gallons of water per individual.

(6) Food shall be stored, prepared, and served in accordance with the Authority's Food Sanitation Rules:

(a) All working refrigerators and freezers shall have a thermometer in working order;

(b) Food storage areas and equipment shall be such that food is protected from dirt and contamination and maintained at proper temperatures to prevent spoilage.

(7) Equipment shall be maintained in a safe and sanitary manner. Utensils, dishes, and glassware shall be maintained in a sufficient number to accommodate the licensed capacity of the AFHs. Utensils, dishes, and glassware shall be washed in hot soapy water, rinsed, and stored to prevent contamination. A dishwasher with sanitation cycle is recommended.

(8) The provider shall support the individual's right to access food at any time. The provider may only apply an individually-based limitation when there is a threat to the health and safety of an individual or others, and the provider complies with the requirements outlined in OAR 309-040-0393. This section is effective July 1, 2016, and enforceable as described in OAR 309-040-0315(7).

(9) If an individual misses a meal at a scheduled time, an alternative meal shall be made available.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

Hist.: MHD 3-2005, f. & cert. ef. 4-1-05; MHS 14-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; MHS 3-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-040-0390

Standards and Practices for Care and Services

(1) There shall be a provider, resident manager, or substitute caregiver on duty 24 hours per day in an AFH in accordance with ORS 443.725(3).

(2) Medications and Prescriber's Orders:

(a) There shall be a copy of a medication, treatment, or therapy order signed by a physician, nurse practitioner, or other licensed prescriber in the individual's file for the use of any medications, including over the counter medications, treatments, and other therapies.

(b) A provider, resident manager, or substitute caregiver shall dispense medications, treatments, and therapies as prescribed by a physician, nurse practitioner, or other licensed prescriber. Changes to orders for the dispensing and administration of medication or treatment may not be made without a written order from a physician, nurse practitioner, or other licensed prescriber. A copy of the medication, treatment, or therapy order shall be maintained in the individual's record. The provider, resident manager, or substitute caregiver shall promptly notify the individual's case manager of any request for a change in individual's orders for medications, treatments, or therapies;

(c) Each individual's medications shall be clearly labeled with the pharmacist's label or the manufacturer's originally labeled container and kept in a locked location. The provider or provider's family medication shall be stored in a separate locked location. All medication for pets or other animals shall be stored in a separate locked location. Unused, outdated, or recalled medications may not be kept in the AFH and shall be disposed in a manner to prevent diversion into the possession of people other than for whom it was prescribed. The provider shall document disposal of all unused, outdated, and or recalled medication on individuals' drug disposal forms;

(d) Medications may not be mixed together in another container prior to administration except as packaged by the pharmacy or by physician order;

(e) A written medication administration record (MAR) for each individual shall be kept of all medications administered by the program staff to that individual, including over the counter medications. The MAR shall indicate name of medication, dosage and frequency of administration, route or method, dates and times given, and be immediately initialed by the caregiver dispensing using only blue or black indelible ink. Treatments, therapies, and special diets shall be immediately documented on the medication administration record including times given, type of treatment or therapy, and initials of the caregiver giving it using only blue or black indelible ink. The medication administration record shall have a legible signature for each set of initials using only blue or black indelible ink;

(f) The MAR shall include documentation of any known allergy or adverse reactions to a medication and documentation and an explanation of why a PRN medication was administered and the results of such administration;

(g) For any individual who is self-administering medication, the individual's record shall include the following documentation:

(A) That the individual has been trained for self-administering of prescribed medication or treatment or that the prescriber has provided documentation that training for the individual is unnecessary;

(B) That the individual is able to manage his or her own medication regimen, and the provider shall keep medications stored in an area that is inaccessible to others and locked;

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(C) Of retraining when there is a change in dosage, medication, and time of delivery;

(D) Of review of self-administration of medication as part of the residential care plan process; and

(E) Of a current prescriber order for self-administration of medication.

(h) Injections may be self-administered by the individual or administered by a relative of the individual, a currently licensed registered nurse, a licensed practical nurse under registered nurse supervision, or providers who have been trained and are monitored by a physician or delegated by a registered nurse in accordance with administrative rules of the Board of Nursing chapter 851, division 047. Documentation regarding the training or delegation shall be maintained in the individual's record;

(3) Nursing tasks may be delegated by a registered nurse to providers and other caregivers only in accordance with administrative rules of the Board of Nursing chapter 851, division 47. This includes but is not limited to the following conditions:

(a) The registered nurse has assessed the individual's condition to determine there is not a significant risk to the individual if the provider or other caregiver performs the task;

(b) The registered nurse has determined the provider or other caregiver is capable of performing the task;

(c) The registered nurse has taught the provider or caregiver how to do the task;

(d) The provider or caregiver has satisfactorily demonstrated to the registered nurse the ability to perform the task safely and accurately;

(e) The registered nurse provides written instructions for the provider or caregiver to use as a reference;

(f) The provider or caregiver has been instructed that the task is delegated for this specific person only and is not transferable to other individuals or taught to other care providers;

(g) The registered nurse has determined the frequency for monitoring the provider or caregiver's delivery of the delegated task; and

(h) The registered nurse has documented a residential care plan for the individual including delegated procedures, frequency of registered nurse follow-up visits, and signature and license number of the registered nurse doing the delegating.

(4) The initial residential care plan shall be developed within 24 hours of admission to the AFH.

(5) This section and its subsections are effective July 1, 2016 and enforceable as described in OAR 309-040-0315(7):

(a) During the initial 30 calendar days following the individual's admission to the AFH, the provider shall continue to assess and document the individual's preferences and care needs. The provider shall complete and document the assessment and care plan in an RCP within 30 days after admission unless the individual is admitted to the AFH for crisis-respite services;

(b) An RCP is an individualized plan intended to implement and document the provider's delivery of services as well as any individualized limitations contained within the person-centered service plan and identifies the goals to be accomplished through those services. The RCP shall describe the individual's needs, preferences, capabilities, and what assistance the individual requires for various tasks;

(c) The provider shall develop the RCP based upon the findings of the individual assessment with participation of the individual and through collaboration with the individual's primary mental health treatment provider and the person-centered service plan coordinator. With consent of the individual, family members, representatives from involved agencies, and others with an interest in the individual's circumstances may be invited to participate in the development of the RCP. The provider shall have proper prior authorization from the individual or the individual's representative prior to such contact;

(d) The RCP shall adequately consider and facilitate the implementation of the individual's person-centered service plan by addressing the following:

(A) Address the implementation and provision of services by the provider consistent with the obligations imposed by the person-centered service plan;

(B) Identify the individual's service needs, desired outcomes, and service strategies to advance all areas identified in the person-centered service plan, the individual's physical and medical needs, medication regimen, self-care, social-emotional adjustment, behavioral concerns, independent living capability and community navigation, as well as any other area of concern or the other goals set by the individual;

(e) The RCP shall be signed by the individual, the provider, or the provider's designee, and others, as appropriate, to indicate mutual agreement with the course of services outlined in the plan;

(f) The provider shall review and update each individual's RCP every six months and when an individual's condition changes. The review shall be documented in the individual's record at the time of the review and include the date of the review and the provider's signature. If an RCP contains many changes and becomes less legible, the provider shall write a new care plan;

(g) The provider shall attach the RCP to the person-centered service plan.

(6) A person-centered service plan shall be completed in the following circumstances:

(a) A person-centered service plan coordinator under contract with the Division shall complete a person-centered service plan with each individual pursuant to OAR 411-004-0030. The provider shall make a good faith effort to implement and complete all elements the provider is responsible for implementing as identified in the person-centered service plan;

(b) The person-centered service plan coordinator documents the person-centered service plan on behalf of the individual and provides the necessary information and supports to ensure the individual directs the person-centered service planning process to the maximum extent possible;

(c) The person-centered service plan shall be developed by the individual and, as applicable, the legal or designated representative of the individual, and the person-centered service plan coordinator. Others may be included only at the invitation of the individual and, as applicable, the individual's representative;

(d) To avoid conflict of interest, the person-centered service plan may not be developed by the provider for individuals receiving Medicaid. The Division may grant exceptions when it determines that the provider is the only willing and qualified entity to provide case management and develop the person-centered service plan in a specific geographic area;

(e) For private pay individuals, a person-centered service plan may be developed by the individual, or, as applicable, the legal or designated representative of the individual, and others chosen by the individual. Providers shall assist private pay individuals in developing person-centered service plans when no alternative resources are available. Private pay individuals are not required to have a written person-centered service plan.

(7) A person-centered service plan shall be developed through a person-centered service planning process. The person-centered service planning process includes the following:

(a) Is driven by the individual;

(b) Includes people chosen by the individual;

(c) Provides necessary information and supports to ensure the individual directs the process to the maximum extent possible and is enabled to make informed choices and decisions;

(d) Is timely, responsive to changing needs, occurs at times and locations convenient to the individual, and is reviewed at least annually;

(e) Reflects the cultural considerations of the individual;

(f) Uses language, format, and presentation methods appropriate for effective communication according to the needs and abilities of the individual and, as applicable, the individual's representative;

(g) Includes strategies for resolving disagreement within the process, including clear conflict of interest guidelines for all planning participants, such as:

(A) Discussing the concerns of the individual and determining acceptable solutions;

(B) Supporting the individual in arranging and conducting a person-centered service planning meeting;

(C) Utilizing any available greater community conflict resolution resources;

(D) Referring concerns to the Office of the Long-Term Care Ombudsman; or

(E) For Medicaid recipients, following existing, program-specific grievance processes.

(h) Offers choices to the individual regarding the services and supports the individual receives and from whom, and records the alternative HCB settings that were considered by the individual;

(i) Provides a method for the individual to request updates to the person-centered service plan for the individual;

(j) Is conducted to reflect what is important to the individual to ensure delivery of services in a manner reflecting personal preferences and ensuring health and welfare;

(k) Identifies the strengths and preferences, service and support needs, goals, and desired outcomes of the individual;

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- (L) Includes any services that are self-directed, if applicable;
- (m) Includes, but is not limited to, individually identified goals and preferences related to relationships, greater community participation, employment, income and savings, healthcare and wellness, and education;
- (n) Includes risk factors and plans to minimize any identified risk factors; and
- (o) Results in a person-centered service plan documented by the person-centered services plan coordinator, signed by the individual, participants in the person-centered service planning process, and all individuals responsible for the implementation of the person-centered service plan, including the provider, as described below in section (8)(a)(O) of this rule. The person-centered service plan is distributed to the individual, and other people involved in the person-centered service plan as described below in section (8)(d) of this rule.
- (8) Required Contents of person-centered service plan:
 - (a) When the provider is required to develop the person-centered service plan, the provider shall ensure that the plan includes the following:
 - (A) HCBS and setting options based on the needs and preferences of the individual, and for residential settings, the available resources of the individual for room and board;
 - (B) The HCBS and settings are chosen by the individual and are integrated in and support full access to the greater community;
 - (C) Opportunities to seek employment and work in competitive integrated employment settings for those individuals who desire to work. If the individual wishes to pursue employment, a non-disability specific setting option shall be presented and documented in the person-centered service plan;
 - (D) Opportunities to engage in greater community life, control personal resources, and receive services in the greater community to the same degree of access as people not receiving HCBS;
 - (E) The strengths and preferences of the individual;
 - (F) The service and support needs of the individual;
 - (G) The goals and desired outcomes of the individual;
 - (H) The providers of services and supports, including unpaid supports provided voluntarily;
 - (I) Risk factors and measures in place to minimize risk;
 - (J) Individualized backup plans and strategies, when needed;
 - (K) People who are important in supporting the individual;
 - (L) The person responsible for monitoring the person-centered service plan;
 - (M) Language, format, and presentation methods appropriate for effective communication according to the needs and abilities of the individual receiving services. ;
 - (N) The written informed consent of the individual;
 - (O) Signatures of the individual , participants in the person-centered service planning process, and all people and providers responsible for the implementation of the person-centered service plan as described below in subsection (c) of this section;
 - (P) Self-directed supports; and
 - (Q) Provisions to prevent unnecessary or inappropriate services and supports.
 - (b) When the provider is not required to develop the person-centered service plan but provides services to the individual, the provider shall provide relevant information and provide necessary support for the person-centered service plan coordinator or other persons developing the plan to fulfill the characteristics described in part (a) of this section;
 - (c) The individual decides on the level of information in the person-centered service plan that is shared with providers. To effectively provide services, providers shall have access to the portion of the person-centered service plan that the provider is responsible for implementing;
 - (d) The person-centered service plan is distributed to the individual and other people involved in the person-centered service plan as described above in subsection (c) of this section;
 - (e) The person-centered service plan shall justify and document any individually-based limitation to be applied as outlined in OAR 309-040-0393 when an individual's rights under OAR 309-040-0410(2)(b) through (i) may not be met due to threats to the health and safety of the individual or others;
 - (f) The person-centered service plan shall be reviewed and revised:
 - (A) At the request of the individual;
 - (B) When the circumstances or needs of the individual change; or
 - (C) Upon reassessment of functional needs as required every 12 months.
 - (9) Because it may not be possible to assemble complete records and develop a person-centered service plan during the crisis-respite individual's

short stay, the provider is not required to develop a person-centered service plan under these rules, but shall, at a minimum, develop an initial care plan as required by section (7) of these rules to identify service needs, desired outcomes, and service strategies to resolve the crisis or address the individual's other needs that caused the need for crisis-respite services. In addition, the provider shall provide relevant information and provide necessary support for the person-centered service plan coordinator as described in section (11)(b) of this rule.

(10) The provider shall develop an individual record for each individual. The provider shall keep the individual record current and available on the premises for each individual admitted to the AFH. The provider shall maintain an individual record consistent with the following requirements:

- (a) The record shall include:
 - (A) The individual's name, previous address, date of entry into AFH, date of birth, sex, marital status, religious preference, preferred hospital, Medicaid or Medicare numbers where applicable, guardianship status, and;
 - (B) The name, address, and telephone number of:
 - (i) The individual's legal representative, designated representative, family, advocate, or other significant person;
 - (ii) The individual's preferred primary health provider, designated back up health care provider or clinic;
 - (iii) The individual's preferred dentist;
 - (iv) The individual's day program or employer, if any;
 - (v) The individual's case manager; and
 - (vi) Other agency representatives providing services to the individual.
 - (C) Individual records shall be available to the Authority conducting inspections or investigations as well as to the individual or the individual's representative;
 - (D) Original individual records shall be kept for a period of three years after discharge when an individual no longer resides in the AFH;
 - (E) In all other matters pertaining to confidential records and release of information, providers shall comply with ORS 179.505.
- (b) Medical Information:
 - (A) History of physical, emotional and medical problems, accidents, illnesses or mental status that may be pertinent to current care;
 - (B) Current orders for medications, treatments, therapies, use of restraints, special diets and any known food or medication allergies;
 - (C) Completed medication administration records from the license review period;
 - (D) Name and claim number of medical insurance, and any pertinent medical information such as hospitalizations, accidents, immunization records including previous TB tests, incidents or injuries affecting the health, safety or emotional well-being of any individual.
- (c) Individual Account Record:
 - (A) Individual's Income Sources;
 - (B) Refer to individual's residential care plan with supporting documentation from the income sources to be maintained in the individual's individual record;
 - (C) The individual or the individual's representative shall agree to specific costs for room and board and services within the pre-set limits of the state contract. A copy shall be given to the individual, the individual's representative, and the original in the individual's individual record;
 - (D) Individual's record of discretionary funds.
 - (d) If an individual maintains custody and control of his or her discretionary funds, then no accounting record is required;
 - (e) If a designee of the AFH maintains custody and control of an individual's discretionary fund, a signed and dated account and balance sheet shall be maintained with supporting documentation for expenditures \$10 and greater. The AFH designee shall have specific written permission to manage an individual's discretionary fund;
 - (f) The provider shall maintain a copy of the written house rules with documentation that the provider discussed the house rules with the individual;
 - (g) A written incident report of any unusual incidents relating to the AFH including but not limited to individual care. The incident report shall include how and when the incident occurred, who was involved, what action was taken by staff, and the outcome to the individual. In compliance with HIPAA rules, only the individual's name may be used in the incident report. Separate reports shall be written for each individual involved in an incident. A copy of the incident report shall be submitted to the CMHP within five working days of the incident. The original shall be placed in the individual's individual record.
 - (h) Any other information or correspondence pertaining to the individual;

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(i) Progress notes shall be maintained within each individual's record and document significant information relating to all aspects of the individual's functioning and progress toward desired outcomes as identified in the individual's personal care plan. A progress note shall be entered in the individual's record at least once each month.

(11) Residents' Bill of Rights:

(a) The provider shall guarantee the Residents' Bill of Rights as described in ORS 443.739. The provider shall post a copy of the Residents' Bill of Rights in a location that is accessible to individuals, individuals' representatives, parents, guardians, and advocates. The provider shall give a copy of the Residents' Bill of Rights to each individual, individuals' representative, parent, guardian, and advocate along with a description of how to exercise these rights;

(b) The provider shall explain and document in the individual's file that a copy of the Residents' Bill of Rights was given to each individual at admission and is posted in a conspicuous place including the name and phone number of the office to call to report complaints.

(12) Providers, resident managers, or substitute caregivers may not use physical restraints for individuals receiving personal care services authorized or funded through the Division.

(13) The provider shall:

(a) Conspicuously post the State license and Abuse and Complaint poster where it can be seen by individuals;

(b) Cooperate with Division personnel or designee in complaint investigation procedures, abuse investigations, and protective services, planning for individual care, application procedures, and other necessary activities, and allow access of Division personnel to the AFH, its individuals, and all records;

(c) Give care and services, as appropriate to the age and condition of the individual and as identified on the RCP. The provider shall ensure that physicians' orders and those of other medical professionals are followed and that the individual's physicians and other medical professionals are informed of changes in health status or if the individual refuses care;

(d) House Rules:

(A) The provider shall develop reasonable written house rules regarding hours, visitors, use of tobacco and alcohol, meal times, use of telephones and kitchen, monthly charges and services to be provided and policies on refunds in case of departure, hospitalization, or death;

(B) The provider shall discuss house rules with the individual and families at the time of arrival and be posted in a conspicuous place in the facility. The provider shall maintain written documentation in the individual record that the provider discussed the house rules with the individual along with a copy of the house rules;

(C) House rules are subject to review and approval by the Division and may not violate individual's rights as stated in ORS 430.210;

(D) House rules may not restrict or limit the individual rights under OAR 309-040-0410(2). This subsection is effective July 1, 2016, and enforceable according to 309-040-0315(7).

(e) In the provider's absence, the provider shall have a resident manager or substitute caregiver on the premises to provide care and services to individuals. For absences greater than 72 consecutive hours, the CMHP shall be notified of the name of the substitute caregiver for the provider or resident manager;

(f) A provider, resident manager, or substitute caregiver shall be present in the home at all times;

(g) Allow and encourage individuals to exercise all civil and human rights accorded to other citizens;

(h) Not allow or tolerate physical, sexual, or emotional abuse or punishment, or exploitation, or neglect of individuals;

(i) Provide care and services as agreed to in the RCP;

(j) Keep information related to individuals confidential as required under ORS 179.050;

(k) Ensure that the number of individuals requiring nursing care does not exceed the provider's capability as determined by the Division or CMHP;

(L) Not admit individuals who are clients of Aging and People with Disabilities without the express permission of the Division;

(m) Notify the Division prior to a closure and give individuals, the individuals' representative, families, and CMHP staff 30 days written notice of the planned change except in circumstances where undue delay might jeopardize the health, safety, or well-being of individuals, providers, or caregivers. If a provider has more than one AFH, an individual may not be shifted from one AFH to another without the same period of notice unless prior approval is given and agreement obtained from individuals, family members, and CMHP;

(n) Exercise reasonable precautions against any conditions that could threaten the health, safety, or welfare of individuals;

(o) Immediately notify the appropriate RCP Team members (in particular the CMHP representative and family or guardian) if: the individual has a significant change in medical status; the individual has an unexplained or unanticipated absence from the AFH; the provider becomes aware of alleged or actual abuse of the individual; the individual has a major behavioral incident, accident, illness, hospitalization; the individual contacts or is contacted by the police; or the individual dies, and follow-up with an incident report.

(14) The provider shall write an incident report for any unusual incident and forward a copy of the incident report to the CMHP within five working days of the incident. Any incident that is the result of or suspected of being abuse shall be reported to the Office of Investigations and Training within 24 hours of occurrence.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

Hist.: MHD 1-1992, f. & cert. ef. 1-7-92 (and corrected 1-31-92), Renumbered from 309-040-0050(8)-(10); MHD 6-1999, f. 8-24-99, cert. ef. 8-26-99; MHD 7-2001(Temp) f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 4-2002, f. 2-26-02, cert. ef. 2-27-02; Renumbered from 309-040-0052, MHD 3-2005, f. & cert. ef. 4-1-05; MHS 14-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; MHS 3-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-040-0393

Individually-Based Limitations

This rule becomes effective on July 1, 2016, and enforceable according to OAR 309-040-0315(7).

(1) When the home-like qualities described below create a threat to the health and safety of an individual or others, a provider may seek to apply individually-based limitation through the process described in this rule. A provider may not otherwise limit the following home-like qualities without a valid individually-based limitation:

(a) The freedom and support to access food at any time;

(b) Have visitors of the individual's choosing at any time;

(c) Have a unit entrance door that is lockable by the individual with only appropriate program staff having access;

(d) Choose a roommate when sharing a unit;

(e) Furnish and decorate the individual's unit as agreed to in the Residency Agreement;

(f) The freedom and support to control the individual's schedule and activities; and

(g) Privacy in the individual's unit.

(2) Minimum Requirements for Applying Individually-Based Limitation: A provider may only apply an individually-based limitation if:

(a) The quality threatens the health or safety of the individual or others;

(b) The individually-based limitation is supported by a specific assessed need;

(d) The individual consents;

(e) The limitation is directly proportionate to the specific assessed need; and

(f) The individually-based limitation will not cause harm to the individual.

(3) The provider shall demonstrate and document that the individually-based limitation meets the requirements of section (2) of this rule and that the conditions described below exist in the person-centered service plan. The provider shall submit and sign a provider-created form that includes the following:

(a) The specific and individualized assessed need justifying the individually-based limitation;

(b) The positive interventions and supports used prior to consideration of any individually-based limitation;

(c) Documentation that the provider or other entities have tried other less intrusive methods but did not work;

(d) A clear description of the limitation that is directly proportionate to the specific assessed need;

(e) Regular collection and review of data to measure the ongoing effectiveness of the individually-based limitation;

(f) Established time limits for periodic reviews of the individually-based limitation to determine if the limitation should be terminated or remains necessary;

(g) The informed consent of the individual, including any discrepancy between the wishes of the individual and the consent of the legal representative; and

(h) An assurance that the interventions and support do not cause harm to the individual.

(4) The provider shall:

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(a) Maintain a copy of the completed and signed form documenting the consent to the individually-based limitation described in section (3) of this rule. The form shall be signed by the individual.

(b) Regularly collect and review the ongoing effectiveness of and the continued need for the individually-based limitation; and

(c) Request review of the individually-based limitation by the person-centered service plan coordinator when a new individually-based limitation is indicated, or change or removal of an individually-based limitation is needed, but no less than annually.

(5) The qualities and obligations described in sections (1)(b)-(g) do not apply to an individual receiving crisis-respite services, and a provider is not required to seek an individually-based limitation for such an individual to comply with these rules.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

Hist.: MHS 3-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-040-0394

Residency Agreement

This rule become effective July 1, 2016, and is enforceable as described in OAR 309-040-0315(7).

(1) The provider shall enter into a written residency agreement with each individual or the individual's representative residing at the AFH consistent with the following:

(a) The written residency agreement shall be signed by the provider and the individual or the individual's representative prior to or at the time of admission;

(b) The provider shall provide a copy of the signed agreement to the individual or the individual's representative and shall retain the original signed agreement within the individual's individual record;

(c) The provider shall give written notice to an individual and the individual's representative at least 30 calendar days prior to any general rate increases, additions, or other modifications of the rates; and

(d) The provider shall update residency agreements at least annually and also when social security rates change or an individual's finances change such that the amount paid for room and board changes.

(2) The residency agreement shall include, but is not limited to, the following:

(a) The room and board rate describing the estimated public and private pay portions of the rate:

(A) Where an individual's social security or other funding is not active at the time of admission to the program, the program shall prepare the room and board agreement based upon the estimated benefit to be received by the individual; and

(B) If, when funding is later activated, actual income of the individual varies from the estimated income noted on the residency agreement, the agreement shall be updated and re-signed by all the applicable parties.

(b) Services and supports to be provided in exchange for payment of the room and board rate;

(c) Conditions under which the provider may change the rates;

(d) The provider's refund policy in instances of an individual's hospitalization, death, transfer to a nursing facility or other care facility, and voluntary or involuntary move from the home;

(e) A statement indicating that the individual is not liable for damages considered normal wear and tear;

(f) The provider's policies on voluntary moves and whether or not the provider requires written notification of a non-Medicaid individual's intent to not return;

(g) The potential reasons for involuntary termination of residency in compliance with this rule and individual's rights regarding the eviction and appeal process as outlined in OAR 309-040-0410;

(h) Any policies the provider may have on the use of alcohol, cannabis, and illegal drugs of abuse;

(i) Smoking policies in compliance with the Tobacco Freedom Policy established by the Division;

(j) Policy addressing pet and service animals. The provider may not restrict animals that provide assistance or perform tasks for the benefit of an individual with a disability. Such animals are often referred to as service animals, assistance animals, support animals, therapy animals, companion animals, or emotional support animals.

(k) Policy regarding the presence and use of legal medical and recreational marijuana at the home;

(L) Schedule of meal times. The provider may not schedule meals with more than a 14-hour span between the evening meal and the following morning's meal consistent with OAR 411-050-0645);

(m) Policy regarding refunds for individuals eligible for Medicaid services, including prorating partial months, and if the room and board is refundable;

(n) Any house rules or social covenants required by the provider that may be included in the agreement or as an addendum;

(o) Statement informing the individual of the freedoms authorized by 42 CFR 441.301(c)(2)(xiii) & 42 CFR 441.530(a)(1)(vi)(F), which may not be limited without the informed, written consent of the individual and include the right to:

(A) Live under a legally enforceable agreement with protections substantially equivalent to landlord-tenant laws;

(B) The freedom and support to access food at any time;

(C) To have visitors of the individual's choosing at any time;

(D) Have a lockable door in the individual's unit that may be locked by the individual;

(E) Choose a roommate when sharing a unit;

(F) Furnish and decorate the individual's unit according to the Residency Agreement;

(G) The freedom and support to control the individual's schedule and activities; and

(H) Privacy in the individual's unit.

(3) The provider may not propose or enter into a residency agreement that:

(a) Charges or asks for application fees, refundable deposits, or non-refundable deposits;

(b) Includes any illegal or unenforceable provision or asks or requires the individual to waive any of the individual's rights or the licensee's liability for negligence; or

(c) Conflicts with individual rights or these rules.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

Hist.: MHS 3-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-040-0395

Standards for Admission, Transfers, Respite, Discharges, and Closures

(1) Each individual referred for placement in an AFH may select and choose from available service settings.

(2) A provider may only admit an individual with a referral from, or the prior written approval of the CMHP or the Division. At the time of the referral, a provider shall be given complete information about the case history of the individual as it relates to behavior, skill level, medical status, or other relevant information. The provider may deny admission of any individual if the provider believes the individual cannot be managed effectively in the AFH, or for any other reason not specifically prohibited by this rule. AFHs may not be used as a site for foster care for children, adults from other agencies, or any type of shelter or day care without the written approval of the CMHP or the Division.

(3) Transfers:

(a) An individual may not be transferred by a provider to another AFH or moved out of the AFH without 30 days advance written notice to the individual, the individual's representative, guardian, or conservator, and the CMHP;

(b) The written notice shall state the reasons for the transfer as provided in ORS 443.739(18) and OAR 411-088-0070 and the individual's right to a hearing as provided in ORS 443.738(11)(b);

(c) Except where undue delay might jeopardize the health, safety, or well-being of the individual or other individuals, a provider shall only transfer an individual for the following reasons:

(A) Behavior that poses a significant danger to the individual or others;

(B) Failure to make payment for care;

(C) The AFH has had its license revoked, not renewed, or voluntarily surrendered; or

(D) The individual's care needs exceed the ability of the provider.

(d) Individuals who object to the transfer shall be given the opportunity for a hearing as provided in ORS 443.738(11)(b) and OAR 411-088-0080. Participants may include the individual, and at the individual's request, the provider, a family member, and a CMHP staff member.

(4) Providers may not exceed the licensed capacity of the AFH. However, respite care of no longer than two weeks duration may be provided an individual if the addition of the respite individual does not cause the total number of residents to exceed five. Thus, a provider may exceed the licensed number of residents by one respite individual for two weeks or less if approved by the CMHP or the Division, and if the total number of residents does not exceed five.

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(5) Discharge:

(a) A provider may only discharge an individual for the reasons stated in section (3) of this rule. The provider shall give at least 30 days written notice to an individual and the Division before termination of residency, except where undue delay might jeopardize the health, safety, or well-being of the individual or others;

(b) The provider shall promptly notify the CMHP or Division if an individual gives notice or plans to leave the AFH or if an individual abruptly leaves.

(6) Providers shall notify the Division prior to a voluntary closure of an AFH and give individuals, families, and the CMHP 30 days' written notice, except in circumstances where undue delay might jeopardize the health, safety, or well-being of an individual, provider, or caregiver. If a provider has more than one AFH, an individual cannot be shifted from one house to another house without the same period of notice unless prior approval is given and agreement obtained from individuals, family members, and the CMHP.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

Hist.: MHD 19-1985(Temp), f. & ef. 12-27-85; MHD 6-1986, f. & ef. 7-2-86; MHD 1-1992, f. & cert. ef. 1-7-92 (and corrected 1-31-92), Former sections (3)(a)-(c) renumbered to 309-040-0057; MHD 6-1999, f. 8-24-99, cert. ef. 8-26-99; MHD 7-2001(Temp) f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 4-2002, f. 2-26-02, cert. ef. 2-27-02; Renumbered from 309-040-0055, MHD 3-2005, f. & cert. ef. 4-1-05; MHS 14-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; MHS 3-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-040-0400

Inspections

(1) The Division shall conduct an inspection of an AFH:

(a) Prior to issuance of a license;

(b) Upon receipt of an oral or written complaint of violations that threaten the health, safety, or welfare of individuals; or

(c) Anytime the Division has probable cause to believe that an AFH has violated a regulation or provision of these rules or is operating without a license.

(2) The Division or CMHP may conduct inspections of an AFH:

(a) Anytime such inspections are authorized by these rules and any other time the Division or CMHP considers it necessary to determine if an AFH is in compliance with these rules or with conditions placed upon the license;

(b) To determine if cited deficiencies have been corrected; and

(c) For the purpose of monitoring of the individuals' care.

(3) State or local fire inspectors shall be permitted access to enter and inspect the AFH regarding fire safety upon request of the Division or CMHP.

(4) The Division and CMHP shall have full access to examine AFH records and accounts, including individual records and accounts, and to inspect the physical premises, including the buildings, grounds, equipment, and any vehicles.

(5) The Division or CMHP staff shall be permitted to interview the provider, resident manager, caregiver, and individuals. Interviews are confidential conducted in private and are confidential except as considered public record under ORS 430.763.

(6) Providers shall authorize resident managers and substitute caregivers to permit entrance by the Division or CMHP staff for the purpose of inspection and investigation.

(7) The Division or CMHP staff shall conduct inspections with or without advance notice to the provider, staff, or an individual of the AFH. The Division or CMHP may not give advance notice of any inspection if notice might obstruct or seriously diminish the effectiveness of the inspection or enforcement of these rules.

(8) If the Division or CMHP staff is not permitted access or inspection, a search warrant may be obtained.

(9) The inspector shall respect the private possessions and living area of individuals, providers, and caregivers while conducting an inspection.

(10) Completed reports on inspections, except for confidential information, shall be available to the public upon written request to the Division or CMHP during business hours.

(11) For individuals receiving services authorized or funded by the Division, the Division shall investigate allegations of abuse as defined in ORS 430.735 to 430.765.

(12) When abuse is alleged or death of an individual has occurred and a law enforcement agency or the Division or its designee has determined to initiate an investigation, the provider may not conduct an internal investigation without prior authorization from the Division. For the purposes of this section, an internal investigation is defined as conducting interviews of the alleged victim, witness, the alleged perpetrator, or any other persons

who may have knowledge of the facts of the abuse allegation or related circumstances; reviewing evidence relevant to the abuse allegation, other than the initial report; or any other actions beyond the initial actions of determining:

(a) If there is reasonable cause to believe that abuse has occurred; or

(b) If the alleged victim is in danger or in need of immediate protective services; or

(c) If there is reason to believe that a crime has been committed; or

(d) What, if any, immediate personnel actions must be taken.

(13) The Division or its designee shall complete an abuse investigation and protective services report in accordance with OAR 943-045-0250 through 0370.

(14) When the provider has been notified of the completion of the abuse investigation, a provider may conduct an investigation without Division approval to determine if any other personnel actions are necessary.

(15) Upon completion of the investigation report according to OAR 943-045-0320, the sections of the report that are public records and not exempt from disclosure under the public records law shall be provided to the appropriate provider. The provider shall implement the actions necessary within the deadlines listed to prevent further abuse as stated in the report.

(16) A provider may not retaliate against any person who reports in good faith suspected abuse or against the individual with respect to the report.

(17) In accordance with ORS 430.755 any provider who retaliates against any person because of a report of suspected abuse or neglect may be liable according to 430.755, in a private action to that person for actual damages and, in addition, a penalty in accordance with 443.775(10) not withstanding any other remedy provided by law. The authority of the director to impose civil penalties and the factors to be considered shall be in accordance with 443.790.

(18) In accordance with OAR 943-045-0340 Adverse Action, any adverse action creates a presumption of retaliation if taken within 90 days of a report of abuse. For purposes of this section, "adverse action" means any action taken by a community facility, community program, or person involved in a report against the person making the report or against the adult because of the report and includes but is not limited to the following:

(a) Discharge or transfer from the AFH except for clinical reasons;

(b) Discharge from or termination of employment;

(c) Demotion or reduction in remuneration for services; or

(d) Restriction or prohibition of access to the community facility or its residents.

(19) Adverse action may also be evidence of retaliation after 90 days even though the presumption no longer applies.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

Hist.: MHD 19-1985(Temp), f. & ef. 12-27-85; MHD 6-1986, f. & ef. 7-2-86; MHD 1-1992, f. & cert. ef. 1-7-92 (and corrected 1-31-92); MHD 6-1999, f. 8-24-99, cert. ef. 8-26-99; Renumbered from 309-040-0060, MHD 3-2005, f. & cert. ef. 4-1-05; MHS 14-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; MHS 3-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-040-0405

Procedures for Correction of Violations

(1) At any time after receipt of a notice of violations or an inspection report, the licensee or the Division may request a conference in writing. The conference shall be scheduled within ten days of a request by either party. The purpose of the conference is to discuss the violations stated in the notice of violation and to provide information to the licensee to assist the licensee in complying with the requirements of the rules. The written request by a licensee or the Division for a conference shall not extend any previously established time limit for correction.

(2) The licensee shall notify the Division of correction of violations in writing no later than the date specified in the notice of violation.

(3) If, after inspection of the AFH, the violations have not been corrected by the date specified in the notice of violation or if the Division has not received a report of compliance, the Division may institute one or more of the following actions:

(a) Imposition of an administrative sanction that may include revocation, suspension, placement of conditions on the license, or non-renewal of a license as deemed appropriate by the Division;

(b) Filing of a criminal complaint.

(4) If an individual is in serious and immediate danger, the license may be immediately suspended or revoked and arrangements made to move the individual.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

ADMINISTRATIVE RULES

Hist.: MHD 19-1985(Temp), f. & ef. 12-27-85; MHD 6-1986, f. & ef. 7-2-86; MHD 1-1992, f. & cert. ef. 1-7-92 (and corrected 1-31-92); MHD 6-1999, f. 8-24-99, cert. ef. 8-26-99; Renumbered from 309-040-0070, MHD 3-2005, f. & cert. ef. 4-1-05; MHS 14-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; MHS 3-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-040-0410

Residents' Bill of Rights, Complaints, and Grievances

(1) Residents' Bill of Rights:

(a) The provider shall guarantee Residents' Bill of Rights as described in ORS 443.739 and help residents exercise them;

(b) The provider shall post the Residents' Bill of Rights in a location that is prominent and accessible to individuals, individuals' representatives, parents, guardians, and advocates. The posted rights shall include the telephone number of the office to call to report complaints;

(c) The provider shall give a copy of the Residents' Bill of Rights to each individual, individuals' representatives, parents, guardians, and advocates along with a description of how to exercise these rights;

(d) Upon admission to the AFH:

(A) The provider shall explain the Residents' Bill of Rights to each individual and to individuals' representatives, parents, guardians, and advocates; and

(B) The provider shall document in the individual's file that a copy of the Residents' Bill of Rights is given to each individual and to individuals' representatives, parents, guardians, and advocates.

(e) The Residents' Bill of Rights state that each resident has the right to:

(A) Be treated as an adult with respect and dignity;

(B) Be encouraged and assisted to exercise constitutional and legal rights as a citizen including the right to vote and be informed of all house rules;

(C) Receive appropriate care and services and prompt medical care as needed. Be informed of the individual's medical condition and the right to consent to or refuse treatment;

(D) Adequate personal privacy and privacy to associate and communicate privately with any individual of choice, such as family members, friends, advocates, and legal, social service, and medical professionals; send and receive personal mail unopened; engage in telephone conversations; and have medical and personal information kept confidential;

(E) Have access to and participate in activities of social, religious, and community groups;

(F) Be able to keep and use a reasonable amount of personal clothing and belongings and to have a reasonable amount of private, secure storage space.

(G) Be free of discrimination in regard to race, color, national origin, sex, religion, sexual orientation, or disability;

(H) Manage financial affairs unless legally restricted. Be free from financial exploitation. The provider may not charge or ask for application fees or nonrefundable deposits and may not solicit, accept, or receive money or property from an individual other than the amount agreed to for services;

(I) A safe and secure environment;

(J) Written notices prior to rate increases and evictions;

(K) A written agreement regarding services to be provided and agreed upon rates;

(L) Voice suggestions, complaints, or grievances without fear of retaliation;

(M) Freedom from training, treatment, chemical or physical restraints except as agreed to in writing in an individual's RCP. Be free from chemical or physical restraints except as ordered by a physician or other qualified practitioner;

(N) Be allowed and encouraged to learn new skills, to act on their own behalf to their maximum ability, and to relate to residents in an age appropriate manner;

(O) An opportunity to exercise choices including such areas as food selection, personal spending, friends, personal schedule, leisure activities, and place of residence;

(P) Freedom from punishment. Behavior intervention programs shall be approved in writing on the individual's RCP;

(Q) Freedom from abuse and neglect;

(R) The opportunity to contribute to the maintenance and normal activities of the household;

(S) Access and opportunity to interact with persons with or without disabilities;

(T) The right not to be transferred or moved out of the AFH without 30 days' advance written notice and an opportunity for a hearing as described in ORS 443.738 and OAR 411-088-0080. A provider may trans-

fer or discharge an individual only for medical reasons including a medical emergency described in ORS 443.738, or for the welfare of the individual or other residents, or for nonpayment; and

(U) Utilize advance directives. Advance directives shall be explained to each individual upon admission. If the individual does not already have any advance directive or directives, he or she shall be given an opportunity to complete them. If any advance directives are completed by the individual, the provider shall document these directives in the individual's record; if the individual declines to file any advance directives, this declination shall be documented in the individual's record;

(V) As used in this section, the term "advance directive" has the meaning given under ORS 127.505, and includes the "Declaration for Mental Health Treatment" under ORS 127.700 through 127.737.

(2) Additional Rights for Individuals:

(a) Live under a legally enforceable residency agreement in compliance with protections substantially equivalent to landlord-tenant laws as described in this rule;

(b) Have visitors of the individual's choosing at any time and the freedom to visit with guests within the common areas of the program and the individual's sleeping room;

(c) The freedom and support to control one's own schedule and activities including but not limited to: Accessing the community without restriction;

(d) Access to community resources including recreation, religious services, agency services, employment and day programs, unless such access is legally restricted;

(e) Have a lockable door in the individual's bedroom that may be locked by the individual;

(f) Choose a roommate when sharing a bedroom;

(g) Furnish and decorate the individual's bedroom according to the residency agreement;

(h) The freedom and support to control the individual's schedule and activities;

(i) Privacy in the individual's bedroom;

(j) Section (2) of these rules and its subsections are effective July 1, 2016, and enforceable as described in OAR 309-040-0315(7).

(3) The qualities and obligations described in section 3(b)(c)(d)(e)(h) of this rule do not apply to an individual receiving crisis-respite services, and a provider need not seek an individually-based limitation for such an individual to comply with these rules.

(4) The provider shall actively work to support and ensure each individual's rights described in this rule are not limited or infringed upon by the provider or an AFH caregiver, except where expressly allowed under these rules.

(5) Any person who believes these rules have been violated may file a complaint with the Division or CMHP. The Division or CMHP may investigate any complaint or grievance regarding the AFH.

(6) The Division or CMHP shall furnish each AFH with a Complaint and Grievance Notice that the provider shall post in a conspicuous place stating the telephone number of the Division and the CMHP and the procedure for making complaints or grievances.

(7) A copy of all AFH complaints or grievances shall be maintained by the Division. All complaints or grievances and actions taken on the complaint or grievance, indexed by the name of the provider, shall:

(a) Be placed into the public file at the Division. Information regarding the investigation of the complaint or grievance may not be filed in the public file until the investigation has been completed;

(b) Protect the privacy of the complainant or grievant and the individual; and

(c) Treat the names of the witnesses as confidential information.

(8) Providers who acquire substantiated complaints or grievances pertaining to the health, safety, or welfare of individuals may have their licenses suspended, revoked, or not renewed or may have conditions placed on the license.

(9) The AFH provider, resident manager, or caregiver may not retaliate in any way against any individual after a complaint or grievance has been filed with the Division. Retaliation may include, but is not limited to the following:

(a) Increasing charges or threatening to increase charges;

(b) Decreasing or threatening to decrease services, rights, or privileges;

(c) Threatening to increase charges or decrease services, rights, or privileges;

(d) Taking or threatening to take any action to coerce or compel the individual to leave the AFH; or

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(e) Abusing, harassing, or threatening to abuse or harass an individual in any manner.

(10) A complainant, grievant, witness, or caregiver of an AFH may not be subject to retaliation by a provider or resident manager or substitute caregiver for making a report or being interviewed about a complaint or being a witness. Retaliation may include, but is not limited to, caregiver dismissal or harassment or restriction of access to either the AFH or an individual.

(11) The complainant has immunity from any civil or criminal liability with respect to the making or content of a complaint or grievance made in good faith.

(12) Any individual may inspect and receive a photocopy of the public complaint files, including protective services files, maintained by the Division upon written request subject to the Division's procedures, ORS 192.410 through 192.505, and photocopy charges for public record requests.

Stat. Auth.: ORS 443.735

Stats. Implemented: ORS 127.700 - 127.737 & 443.705 - 443.825

Hist.: MHD 19-1985(Temp), f. & ef. 12-27-85; MHD 6-1986, f. & ef. 7-2-86; MHD 1-1992, f. & cert. ef. 1-7-92 (and corrected 1-31-92); Renumbered from 309-040-0065, MHD 3-2005, f. & cert. ef. 4-1-05; MHS 4-2009(Temp), f. & cert. ef. 8-6-09 thru 2-2-10; MHS 1-2010, f. & cert. ef. 1-29-10; MHS 14-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; MHS 3-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-040-0415

Administrative Sanctions and Conditions

(1) An administrative sanction may be imposed for non-compliance with these rules. An administrative sanction includes one or more of the following actions:

- (a) Attachment of conditions to a license;
- (b) Civil penalties;
- (c) Denial, suspension, revocation, or non-renewal of license.

(2) If the Division imposes an administrative sanction, it shall serve a Notice of Intent of the administrative sanction upon the licensee personally or by certified mail.

(3) The notice of administrative sanction shall state the following:

- (a) Each sanction imposed;
- (b) A short and plain statement of each condition or act that constitutes a violation;
- (c) Each statute or rule allegedly violated;
- (d) A statement of the licensee's right to a contested case hearing;
- (e) A statement of the authority and jurisdiction under which the hearing is to be held;

(f) A statement that the Division files on the subject of the contested case automatically become part of the contested case record upon default for the purpose of proving a prima facie case; and

(g) A statement that the notice becomes a final order upon default if the licensee fails to request a hearing within the specified time.

(4) If an administrative sanction is imposed for reason other than abuse, neglect, or exploitation, a hearing shall precede it if the licensee requests the hearing in writing within 60 days after receipt of the notice pursuant to ORS Chapter 183.

(5) If a licensee fails to request in writing a hearing within 60 days, the Notice of Administrative Sanction shall become a Final Order of the Division by default.

(6) The Division may immediately suspend, revoke, or not renew a license for a substantiated finding of abuse, neglect, or exploitation of an individual. The licensee may submit a request in writing for a contested case hearing within 60 days of the notice of intent of suspension, revocation, or non-renewal.

(7) When a license is denied, suspended, revoked, or not renewed, the Division shall work with the CMHP to arrange for individuals to move for their protection.

(8) Conditions may be attached to a license upon a finding that:

(a) Information on the application or initial inspection requires a condition to protect the health and safety of individuals, pending further action by the Division;

(b) There exists a threat to the health, safety, and welfare of an individual, pending further action by the Division or Division designee;

(c) There is reliable evidence of abuse of an adult, pending further action by the Division;

(d) The AFH is not being operated in compliance with these rules, pending further action by the Division; or

(e) The provider is licensed to care for a specific individual only, and further placements may not be made to the AFH.

(9) Conditions that may be imposed on a licensee include but are not limited to the following:

(a) Restricting the maximum capacity of the AFH;

(b) Restricting the number and impairment level of individuals allowed based upon the capacity of the caregivers to meet the health and safety needs of all residents;

(c) Requiring an additional caregiver or caregiver qualifications;

(d) Requiring additional training of caregivers;

(e) Requiring additional documentation as deemed necessary by the Division;

(f) Restricting a provider from opening an additional AFH; or

(g) Suspending admissions to the AFH.

(10) The provider shall be notified in writing of any conditions imposed, the reason for the conditions, and be given an opportunity to request a hearing under ORS Chapter 183.

(11) In addition to, or in lieu of, a contested case hearing, a provider may request in writing a review by the Division administrator or designee of conditions imposed by the Division or CMHP. The review does not diminish the provider's right to a hearing or extend the time period to request a hearing.

(12) Conditions may be imposed for the extent of the license period (one year), extended to the next license period, or limited to some other shorter period of time as deemed necessary by the Division. If the conditions correspond to the licensing period, the reasons for the conditions shall be considered at the time of renewal to determine if the conditions are still appropriate. The effective date and expiration date of the conditions shall be indicated on the attachment to the license.

(13) Hearing rights are in accordance with ORS 183.411 to 183.550.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

Hist.: MHD 19-1985(Temp), f. & ef. 12-27-85; MHD 6-1986, f. & ef. 7-2-86; MHD 1-1992, f. & cert. ef. 1-7-92 (and corrected 1-31-92); MHD 6-1999, f. 8-24-99, cert. ef. 8-26-99; Renumbered from 309-040-0075, MHD 3-2005, f. & cert. ef. 4-1-05; MHS 14-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; MHS 3-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-040-0420

Denial, Suspension, Revocation or Non-renewal of License

(1) Cautious Action. The Division may deny, suspend, revoke, or refuse to renew a license where it finds:

(a) There has been substantial failure to comply with these rules or when there is substantial non-compliance with local codes and ordinances or any other state or federal law or rule applicable to the health and safety of individuals in an AFH; or

(b) The applicant or provider has been convicted of one or more crimes described in the Criminal Record Check;

(A) The applicant or provider has had a certificate or license to operate a foster home or residential care facility denied, suspended, revoked, or refused to be renewed in this or any other state or county within three years preceding the present action if the denial, suspension, revocation, or refusal to renew was due in any part to abuse of an adult, creating a threat to the individuals, or failure to possess physical health, mental health, or good personal character;

(B) If the denial, suspension, revocation, or refusal to renew occurred more than three years from the present action, the applicant or provider is required to establish to the Division by clear and convincing evidence of the ability and fitness to operate an AFH. If the applicant or provider does not meet this burden, then the Division may deny, suspend, revoke, or refuse to renew the license;

(C) The applicant or provider is associated with a person whose license for a foster home or residential care facility was denied, suspended, revoked, or refused to be renewed due to abuse of an adult or failure to possess physical health, mental health, or good personal character within three years preceding the present action, unless the applicant or provider can demonstrate to the Division by clear and convincing evidence that the person does not pose a threat to the individuals;

(D) For purposes of this subsection, an applicant or provider is "associated with" a person as described above, if the applicant or provider:

(i) Resides with the person;

(ii) Employs the person in the AFH;

(iii) Receives financial backing from the person for the benefit of the AFH;

(iv) Receives managerial assistance from the person for the benefit of the AFH; or

(v) Allows the person to have access to the AFH.

(E) For purposes of this section only, "present action" means the date of the notice of denial, suspension, revocation, or refusal to renew.

(2) The Division may deny, suspend, revoke, or refuse to renew an AFH license if the applicant or provider:

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- (a) Submits fraudulent or untrue information to the Division;
- (b) Has a history of or demonstrates financial insolvency, such as filing for bankruptcy, foreclosure, eviction due to failure to pay rent, or termination of utility services due to failure to pay bills;
- (c) Has a prior denial, suspension, revocation, or refusal to renew a certificate or license to operate a foster home or residential care facility in this or any other state or county;
- (d) Has threatened the health, safety, or welfare of any individual;
- (e) Has a substantiated finding of abuse of an adult;
- (f) Has a medical or psychiatric problem, which interferes with the ability to provide care;
- (g) Refuses to allow access and inspection;
- (h) Fails to comply with a final order of the Division to correct a violation of the rules for which an administrative sanction has been imposed; or
- (i) Fails to comply with a final order of the Division imposing an administrative sanction;
- (j) Fails to report knowledge of the illegal actions of or disclose the known criminal history of a provider, resident manager, substitute caregiver, or volunteer of the AFH.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

Hist.: MHD 19-1985(Temp), f. & ef. 12-27-85; MHD 6-1986, f. & ef. 7-2-86; MHD 1-1992, f. & cert. ef. 1-7-92 (and corrected 1-31-92); MHD 6-1999, f. 8-24-99, cert. ef. 8-26-99; Renumbered from 309-040-0090, MHD 3-2005, f. & cert. ef. 4-1-05; MHS 14-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; MHS 3-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-040-0425

Removal of Residents

- (1) The Division may order the removal of individuals from an AFH to an alternative placement on the following grounds:
 - (a) When a violation of these rules is not corrected after time limit specified in notice;
 - (b) There is a violation of an individual's rights;
 - (c) The number of individuals currently in the AFH exceeds the maximum licensed capacity of the AFH;
 - (d) The AFH is operating without a license; or
 - (e) There is evidence of abuse of an adult that presents a serious and immediate danger to individuals.
- (2) The CMHP shall provide the individual assistance in locating and visiting alternative placements, if needed, and has the right to contest the move as provided in ORS 443.738(11)(b) and OAR 411-088-0080.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

Hist.: MHD 1-1992, f. & cert. ef. 1-7-92 (and corrected 1-31-92), Renumbered from 309-040-0085; MHD 6-1999, f. 8-24-99, cert. ef. 8-26-99; MHD 7-2001(Temp) f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 4-2002, f. 2-26-02, cert. ef. 2-27-02; Renumbered from 309-040-0092, MHD 3-2005, f. & cert. ef. 4-1-05; MHS 14-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; MHS 3-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-040-0430

Conditions

- (1) Attachment to License. Conditions may be attached to a license upon a finding that:
 - (a) Information on the application or initial inspection requires a condition to protect the health and safety of individuals;
 - (b) There exists a threat to the health, safety, and welfare of an individual;
 - (c) There is reliable evidence of abuse of an adult;
 - (d) The AFH is not being operated in compliance with these rules; or
 - (e) The provider is licensed to care for a specific individual only and further placements may not be made to the AFH.
- (2) The provider shall be notified in writing of any conditions imposed, the reason for the conditions, and be given an opportunity to request a hearing under ORS Chapter 183.
- (3) In addition to, or in lieu of, a contested case hearing, a provider may request in writing a review by the Division administrator or designee of conditions imposed by the Division or CMHP. The review does not diminish the provider's right to a hearing or extend the time period to request a hearing.
- (4) Conditions may be imposed for the extent of the license period (one year), extended to the next license period or limited to some other shorter period of time as deemed necessary by the Division. If the conditions correspond to the licensing period, the reasons for the conditions may be considered at the time of renewal to determine if the conditions are still appropriate. The effective date and expiration date of the conditions shall be indicated on the attachment to the license.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

Hist.: MHD 1-1992, f. & cert. ef. 1-7-92 (and corrected 1-31-92); MHD 6-1999, f. 8-24-99, cert. ef. 8-26-99; Renumbered from 309-040-0093, MHD 3-2005, f. & cert. ef. 4-1-05; MHS 14-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; MHS 3-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-040-0435

Criminal Penalties

- (1) Operating an AFH without a license is punishable as a Class C misdemeanor.
- (2) Refusing to allow any of the following is punishable as a Class B misdemeanor:
 - (a) Division access to the AFH for inspection or investigation;
 - (b) Division access to individuals in order to interview individuals privately or to review records; or
 - (c) State and local fire inspector access to the AFH regarding fire safety.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

Hist.: MHD 19-1985(Temp), f. & ef. 12-27-85; MHD 6-1986, f. & ef. 7-2-86; MHD 1-1992, f. & cert. ef. 1-7-92 (and corrected 1-31-92); Renumbered from 309-040-0095, MHD 3-2005, f. & cert. ef. 4-1-05; MHS 14-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; MHS 3-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-040-0440

Civil Penalties

- (1) Civil penalties for other than substantiated allegations of abuse shall not exceed \$100 per violation with a maximum of \$250 and may be assessed for violation of these rules with the exception of substantiated abuse findings.
- (2) Civil penalties of a maximum of \$1000 per occurrence may be assessed for each substantiated abuse finding.
- (3) In addition to any other liability or penalty, the Division may impose a penalty for any of the following:
 - (a) Operating an AFH without a license;
 - (b) Exceeding the number of residents identified on the license;
 - (c) The provider fails to achieve satisfactory compliance with the requirements of these rules within the time specified or fails to maintain such compliance;
 - (d) The AFH is unable to provide an adequate level of care to individuals;
 - (e) There is retaliation or discrimination against an individual, the individual's representative, family, employee, or any other person for making a complaint against the AFH;
 - (f) The provider fails to cooperate with the Division, physician, registered nurse, or other health care professional in carrying out an individual's care plan; or
 - (g) Other violations are found on two consecutive inspections of an AFH after a reasonable amount of time has been allowed for the elimination of the violations.

- (4) Any civil penalty imposed under this section shall become due and payable when the provider incurring the penalty receives a notice in writing from the Division. The notice shall be sent by registered or certified mail and includes the following:

- (a) A reference to the particular sections of the statute, rule, standard, or order involved;
 - (b) A short and plain statement of the matter asserted or charged;
 - (c) A statement of the amount of the penalty or penalties imposed; and
 - (d) A statement of the right to request a hearing.
- (5) The provider to whom the notice is addressed shall have 60 days from the date of the notice of intent in which to make written application for a hearing.
 - (6) All hearings shall be conducted according to the applicable provisions of ORS Chapter 183.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

Hist.: MHD 1-1992, f. & cert. ef. 1-7-92 (and corrected 1-31-92); Renumbered from 309-040-0097, MHD 3-2005, f. & cert. ef. 4-1-05; MHS 14-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; MHS 3-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-040-0445

Public Information

- (1) The Division shall maintain current information on all licensed AFHs and make that information available to prospective individuals, individuals' representatives, their families, and other interested members of the public.
- (2) The information shall include the following:
 - (a) The location of the AFH;
 - (b) A brief description of the physical characteristics of the home;

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- (c) The name and mailing address of the provider;
- (d) The license classification of the home and the date the provider was first licensed to operate that home;
- (e) The date of the last inspection, the name and telephone number of the office that performed the inspection, and a summary of the findings;
- (f) Copies of all complaint investigations involving the home, together with the findings of and actions taken by the Division;
- (g) Any license conditions, suspensions, denials, revocations, civil penalties, exceptions or other actions taken by the department involving the home; and
- (h) Whether care is provided primarily by the licensed provider, a resident manager, or other arrangement.

Stat. Auth.: ORS 413.042
Stats. Implemented: ORS 443.705 - 443.825
Hist.: MHD 6-1999, f. 8-24-99, cert. ef. 8-26-99; Renumbered from 309-040-0098, MHD 3-2005, f. & cert. ef. 4-1-05; MHS 14-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; MHS 3-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-040-0450

Adjustment, Suspension or Termination of Payment

- (1) The Division or CMHP may adjust, suspend, or terminate payment to a provider when any of the following conditions occur:
 - (a) The provider's AFH license is revoked, suspended, or terminated;
 - (b) Upon a finding that the provider is failing to deliver any service as agreed to in the RCP; or
 - (c) When funding, laws, regulations, or the Division or CMHP priorities change such that funding is no longer available, redirected to other purposes, or reduced;
 - (d) The individual's service needs change;
 - (e) The individual is absent without providing notice to the provider for five or more consecutive days;
 - (f) The individual is determined to be ineligible for services;
 - (g) The individual moves, with or without notice, from the AFH; the provider shall be paid only through the last day of the individual's occupancy.
- (2) The Division or CMHP is under no obligation to maintain the AFH at its licensed capacity or to provide payments to potential providers.

Stat. Auth.: ORS 413.042
Stats. Implemented: ORS 443.705 - 443.825
Hist.: MHD 19-1985(Temp), f. & ef. 12-27-85; MHD 6-1986, f. & ef. 7-2-86; MHD 1-1992, f. & cert. ef. 1-7-92 (and corrected 1-31-92), Renumbered from 309-040-0055(3)(a)-(c); MHD 6-1999, f. 8-24-99, cert. ef. 8-26-99; Renumbered from 309-040-0057, MHD 3-2005, f. & cert. ef. 4-1-05; MHS 14-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; MHS 3-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

309-040-0455

Enjoinder of AFH Operation

- The Division may commence an action to enjoin the operation of an AFH pursuant to ORS 443.775(5):
- (1) When an AFH is operated without a valid license; or
 - (2) After notice of revocation, non-renewal, or suspension has been given, a reasonable time for placement of individuals in other facilities has been allowed, and such placement has not been accomplished.

Stat. Auth.: ORS 413.042
Stats. Implemented: ORS 443.705 - 443.825
Hist.: MHD 1-1992, f. & cert. ef. 1-7-92 (and corrected 1-31-92); Renumbered from 309-040-0099, MHD 3-2005, f. & cert. ef. 4-1-05; MHS 14-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; MHS 3-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

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Oregon Health Authority, Public Health Division Chapter 333

Rule Caption: Modification of pesticide testing requirements for usable marijuana by OLCC licensees

Adm. Order No.: PH 6-2017(Temp)

Filed with Sec. of State: 3-2-2017

Certified to be Effective: 3-2-17 thru 8-28-17

Notice Publication Date:

Rules Adopted: 333-007-2000

Subject: The Oregon Health Authority, Public Health Division is temporarily adopting OAR 333-007-2000 pertaining to pesticide testing requirements for usable marijuana by OLCC licensees.

Due to a continuing backlog in laboratory testing, the Oregon Health Authority is modifying the requirements for testing of marijuana to ensure that OLCC licensees are able to bring their product to market while lab capacity develops.

Rules Coordinator: Brittany Hall—(971) 673-1291

333-007-2000

OLCC Licensee Pesticide Testing Requirements

(1) Notwithstanding OAR 333-007-0320, a producer or wholesaler is only required to test one out of three batches per harvest lot for pesticides. The producer or wholesaler must permit the laboratory that conducts the sampling to choose the batches to sample from and may not direct the laboratory to sample from specific batches.

(2) If any sample taken from a batch in accordance with section (1) of this rule fails a pesticide test, every batch from the harvest lot must be tested for pesticides.

(3) If all samples from each randomly chosen batch of a harvest lot pass pesticide testing, the entire harvest lot is considered to have passed pesticide testing and may be transferred or sold.

Stat. Auth.: ORS 475B.555
Stats. Implemented: ORS 475B.555
Hist.: PH 6-2017(Temp), f. & cert. ef. 3-2-17 thru 8-28-17

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Oregon Housing and Community Services Department Chapter 813

Rule Caption: Adopts rulemaking for the Local Innovation and Fast Track (LIFT) program

Adm. Order No.: OHCS 1-2017

Filed with Sec. of State: 3-9-2017

Certified to be Effective: 3-9-17

Notice Publication Date: 2-1-2017

Rules Adopted: 813-135-0010, 813-135-0020, 813-135-0030, 813-135-0040, 813-135-0050, 813-135-0060

Rules Repealed: 813-135-0010(T), 813-135-0020(T), 813-135-0030(T), 813-135-0040(T), 813-135-0050(T), 813-135-0060(T)

Subject: The rules implement the Local Innovation and Fast Track (LIFT) housing program. The program expands the state's supply of affordable housing for low income households and assists and encourages the development of affordable housing units for low-income

households through the allocation of proceeds from Article XI-Q General Obligation Bonds.

As a result of comments received, the purpose statement was amended to remove the word 'rental' to allow use of program resources to assist and encourage the development of affordable housing units for low-income households.

Rules Coordinator: Sandy McDonnell—(503) 986-2012

813-135-0010

Purpose

The rules of OAR chapter 813, division 135, are promulgated to carry out the provisions and enforce ORS 456.515 through 456.720, and specifically 456.559(1)(f). These rules implement the Local Innovation and Fast Track (LIFT) Housing Program. The program's objective is to expand the state's supply of affordable housing for low income households. The program will assist and encourage the development of affordable housing units for low-income households through the allocation of proceeds from Article XI-Q General Obligation bonds. Additional LIFT program policies and instructions are outlined in the Notice of Funding Availability, which may be accessed online on the department's website.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 456.515 - 456.720
Stats. Implemented: ORS 456.559(1)(f)
Hist.: OHCS 9-2016(Temp), f. & cert. ef. 9-12-16 thru 3-10-17; OHCS 1-2017, f. & cert. ef. 3-9-17

813-135-0020

Definitions

All words and terms used in OAR chapter 813, division 90 are as provided in 813-005-0005 and herein. As used in these rules:

(1) "Applicant" means a person or entity that applies for an allocation of LIFT Housing Program resources from the Department by completing an application provided by the Department.

(2) "Department" means Oregon Housing and Community Services.

(3) "Project" means a qualified low income housing project. A project may include one or more buildings and any associated common area and may be located on scattered sites.

(4) "NOFA" means Notice of Funding Availability.

(5) "Reservation and extended use agreement" is a contract between the department and the proposed project owner whereby the proposed proj-

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ect owner agrees, among other things, to provide and maintain the project and to guarantee its compliance with the requirements of the department by executing and recording the Declaration of Land Use Restrictive Covenants on the project in return for an allocation of proceeds from Article XI-Q bonds.

(6) “Low Income Households” means households of one or more individuals whose combined incomes are at or below 60 percent of the area median income.

(7) “Operate” means to have sufficient direct or indirect control of qualified property that reasonably enables the Housing and Community Services Department, in its determination, to ensure the qualified property’s use for the purpose of providing affordable housing under the LIFT Housing Program.

(8) “Own” means to possess one or more interests in a qualified property that reasonably enables Housing and Community Services Department, in its determination, to ensure the qualified property’s use for the purpose of providing affordable housing under the LIFT Housing Program.

(9) “Qualified property” means real or personal property, including infrastructure and indebtedness related to the real or personal property.

Stat. Auth.: ORS 456.515 – 456.720
Stats. Implemented: ORS 456.559(1)(f)
Hist.: OHCS 9-2016(Temp), f. & cert. ef. 9-12-16 thru 3-10-17; OHCS 1-2017, f. & cert. ef. 3-9-17

813-135-0030

Eligibility

(1) The department may use funds available pursuant to Article XI-Q of the Oregon Constitution for the LIFT Housing Program to acquire, construct, remodel, repair, equip, or furnish qualified property that is or will be owned or operated by the State of Oregon for the purpose of providing affordable housing in this state for low income households.

(2) Ownership interests in real property acquired by the department are limited to:

(a) A fee simple interest in land or improvements;

(b) A leased fee interest, meaning an ownership interest with the rights of use and occupancy conveyed by lease to others;

(c) A tenancy in common for which the department’s interest in the property is proportionate to the contribution of the department in the property’s purchase price;

(d) A fee simple interest in a condominium; or

(e) An easement, right of way, license or similar interest functionally related to and necessary for the use of qualified property acquired by the department.

(3) Operational interests by the department are allowable as documented in an Operational Agreement approved by the Oregon Department of Justice.

Stat. Auth.: ORS 456.515 – 456.720
Stats. Implemented: ORS 456.559(1)(f)
Hist.: OHCS 9-2016(Temp), f. & cert. ef. 9-12-16 thru 3-10-17; OHCS 1-2017, f. & cert. ef. 3-9-17

813-135-0040

Allocation of Bond Proceeds

(1) The department may, to the extent of its authority, allocate bond proceeds to projects selected for funding by the Housing Stability Council.

(2) The department shall allocate the funds in compliance with the requirements of the Oregon Constitution, Article XI-Q, ORS 456.559(1)(f) and the rules of this division. Applications will be solicited during specified periods within the department’s Notice of Funding Availability (NOFA). The department may also select from a pool of qualified applicants, or such other process the department deems appropriate.

(3) The department may choose whether or not to allocate all funds available.

(4) The department may choose to forgive LIFT loans or return property purchased with LIFT funds at its discretion; in particular in cases where there is a corresponding increase to the term or type of affordability.

Stat. Auth.: ORS 456.515 – 456.720
Stats. Implemented: ORS 456.559(1)(f)
Hist.: OHCS 9-2016(Temp), f. & cert. ef. 9-12-16 thru 3-10-17; OHCS 1-2017, f. & cert. ef. 3-9-17

813-135-0050

Application Requests and Charges

(1) The department may solicit applications for an allocation of LIFT Housing Program bond proceeds from interested parties when such resources are available.

(2) The department may require a non-refundable application charge from any applicant requesting an allocation of LIFT Housing Program bond proceeds.

(3) The department may charge the project owner reasonable charges for the department’s costs of monitoring the project owner’s compliance with restrictions established by the department.

(4) The department shall evaluate completed applications based on a ranking system established by the department and set forth in the department’s Notice of Funding Availability.

Stat. Auth.: ORS 456.515 – 456.720
Stats. Implemented: ORS 456.559(1)(f)
Hist.: OHCS 9-2016(Temp), f. & cert. ef. 9-12-16 thru 3-10-17; OHCS 1-2017, f. & cert. ef. 3-9-17

813-135-0060

Applications for LIFT Funds

Applicants must submit an application form along with any applicable charges as given in Section 813-090-0031, to qualify for an allocation of LIFT Housing Program funds. The application required by the Department may request, among other information, the following:

(1) The amount of LIFT funds requested;

(2) Building location: state, county, town, street address and legal description;

(3) An initial statement based on waiting list information from the local public housing authority indicating whether or not there is a need for the proposed project;

(4) Complete financial information about the proposed Project showing all sources and uses of funds;

(5) Operating pro forma statement on a cash flow basis showing net operating income before debt service;

(6) Evidence of a commitment for financing, federal loan insurance, or other major source of funds;

(7) Other financial information regarding grants, subsidies, or tax-exempt financing for the proposed Project.

Stat. Auth.: ORS 456.515 – 456.720
Stats. Implemented: ORS 456.559(1)(f)
Hist.: OHCS 9-2016(Temp), f. & cert. ef. 9-12-16 thru 3-10-17; OHCS 1-2017, f. & cert. ef. 3-9-17

Oregon Liquor Control Commission Chapter 845

Rule Caption: The new rule enables remotely located distillery licensees limited shipments to local retail sales agents.

Adm. Order No.: OLCC 1-2017

Filed with Sec. of State: 2-27-2017

Certified to be Effective: 3-1-17

Notice Publication Date: 1-1-2017

Rules Adopted: 845-015-0142

Subject: Distillery licensees are required to send their products to the Milwaukie warehouse for subsequent distribution to Retail Sales Agents. This is a particularly significant burden for remotely located Distillery licensees. This new rule contemplates allowing remotely located Distillery licensees to ship products to local retail sales agents without first sending those products to the warehouse on a limited basis. This would be restricted to Distillery licensees that ship 1 -25 cases to the Commission on a monthly basis.

Rules Coordinator: Bryant Haley—(503) 872-5136

845-015-0142

Remote Distiller Shipments to a Retail Sales Agent

(1) A Distillery licensee who is located at least 75 miles driving distance from the OLCC warehouse at 9079 SE McLoughlin Blvd, Portland Oregon may, upon prior authorization of the Commission and agreement from a retail sales agent, ship distilled spirits to a Retail Sales Agent appointed pursuant to ORS 471.750.

(2) The Commission may, in its discretion, authorize a Distillery licensee to ship distilled alcohol directly to a Retail Sales Agent if:

(a) The Retail Sales Agent is within a 50 mile radius of the distillery licensee’s primary production facility;

(b) The Distillery licensee currently ships between 1-25 cases per month of distilled liquor to the Commission. For purposes of this rule, the number of bottles in a case is determined by the distillery’s current quote on file with the Commission;

(c) The Distillery licensee applies to the Commission at least 48 hours before shipment; and

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(d) The Distillery licensee completes any additional forms, documents, or information that the Commission requires as part of this process.

(3) A Distillery licensee that receives approval from the Commission to ship directly to a Retail Sales Agent must:

(a) Only ship products listed by the Commission;

(b) Only ship products that are imported, manufactured, distilled, rectified, blended or denatured by the Distillery licensee;

(c) Not ship a Manufacturer Only status product. For the purposes of this rule, Manufacture Only status is for products only sold at the distillery retail outlet;

(d) Only ship full cases of product;

(e) Provide Commission staff with a bill of lading prior to the shipment of any distilled spirits; and

(f) Not make more than four shipments in a month.

(4) Deliveries must be shipped between the 3rd and the 24th day of each month.

(5) The Commission may refuse to authorize or process any shipment if a Distillery licensee makes a false statement to the Commission or fails to comply with this rule.

(6) Violations.

(a) Any violation of this rule may be charged as an administrative violation to the Distillery licensee.

(b) Acceptance of a noncompliant shipment by a retail sales agent is a violation of the Retail Sales Agent Agreement.

Stat. Auth.: ORS 471.730

Stats. Implemented: ORS 471.740, 471.750 & 471.754

Hist.: OLCC 1-2017, f. 2-27-17, cert. ef. 3-1-17

Rule Caption: The amendments remove the prohibition on employees working at both wholesale and retail licensees.

Adm. Order No.: OLCC 2-2017

Filed with Sec. of State: 2-27-2017

Certified to be Effective: 3-1-17

Notice Publication Date: 12-1-2016

Rules Amended: 845-013-0100

Subject: This rule change relaxes the prohibition on an employee of a manufacturer or wholesaler also working at a separate retail establishment. Further, the rule change will allow an employee of a brewery or brewery public house to sell alcoholic beverages at a retail licensee, as long as the retail licensee does not sell beverages from the brewery or brewery public house where the employee works.

Rules Coordinator: Bryant Haley—(503) 872-5136

845-013-0100

Wholesale-Retail Relations; Sale at Both Wholesale and Retail

(1) Except as provided in ORS 471.396, 471.394(1) prohibits licensees from selling or engaging in the business of selling alcoholic beverages both at wholesale and retail. A licensee, and its employees and agents, may engage in the business of selling alcoholic beverages both at wholesale and retail to the extent that retail sales are authorized by the statutes establishing the privileges of each license. For purposes of this statute, the direct consumer sales that 471.235 allows a wholesale malt beverage and wine licensee to make are wholesale sales.

(2) As used in ORS 471.394(1):

(a) "Licensee" includes retailers, wholesalers, and manufacturers of any alcoholic beverages and their managers, officers and directors;

(b) "Licensee" also includes retailers', wholesalers', and manufacturers' agents and employees who sell or engage in the business of selling alcoholic beverages.

(3) Despite the prohibition contained in ORS 471.394(1):

(a) A manufacturer or wholesaler licensee as defined in ORS 471.392(1) and a brewery-public house licensee as defined in ORS 471.200 may employ an employee or agent of a retail licensee as defined in ORS 471.392(2) to sell alcoholic beverages at both wholesale and retail.

(b) A retail licensee as defined in ORS 471.392(2) may employ an employee or agent of a manufacturer or wholesaler licensee as defined in ORS 471.392(1) or a brewery-public house licensee as defined in ORS 471.200 to sell alcoholic beverages at retail provided the retail licensee does not sell or offer for sale any alcoholic beverages sold, distributed, or produced by the manufacturer, wholesaler, or brewery-public house licensee.

(c) A brewery-public house licensee as defined in ORS 471.200 may employ an employee or agent of another brewery-public house licensee provided each brewery-public house licensee that employs the same

employee or agent does not sell or offer for sale the other's alcoholic beverages.

(4) Violation of this section is a Category IV violation.

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

Stats. Implemented: ORS 471.394(1)

Hist.: OLCC 8-1987, f. 3-13-87, ef. 4-1-87; OLCC 7-1992, f. & cert. ef. 7-1-92; Renumbered from 845-010-0128; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 2-2017, f. 2-27-17, cert. ef. 3-1-17

Rule Caption: The proposed rule modifies pesticide testing requirements for usable marijuana by OLCC licensees.

Adm. Order No.: OLCC 3-2017(Temp)

Filed with Sec. of State: 3-3-2017

Certified to be Effective: 3-3-17 thru 8-29-17

Notice Publication Date:

Rules Amended: 845-025-5700

Subject: The Oregon Health Authority establishes rules and standards for testing and labeling marijuana items. Due to a continuing backlog in laboratory testing, the Oregon Health Authority has modified the requirements for testing of marijuana to ensure that licensees are able to bring their product to market while lab capacity develops. The temporary amendment removes the March 1, 2017 deadline.

Rules Coordinator: Bryant Haley—(503) 872-5136

845-025-5700

Licensee Testing Requirements

(1) Licensees must comply with the Authority's testing rules in OAR 333-007-0300 to 333-007-0490 and OAR 333, division 64 prior to the sale or transfer of a marijuana item, as specified in those rules, except as described in subsection (2) of this rule.

(2) If commission staff finds there is insufficient laboratory capacity for the testing of pesticides, staff may issue an order allowing licensed marijuana testing laboratories to test randomly chosen samples from batches of usable marijuana submitted for testing by a licensee, for pesticides, rather than testing every batch of usable marijuana for pesticides.

(a) The number of batches to be tested randomly will be specified in the order and may vary based on the laboratory capacity at the time the order is issued and the size of the harvest lot to be tested. Samples from at least one batch of every harvest lot must be tested for pesticides.

(b) If any one of the randomly chosen samples from a batch of a producer licensee's harvest lot fails a pesticide test every batch from the harvest lot must be tested for pesticides.

(c) If samples from each randomly chosen batch that are tested for pesticides pass, the entire harvest lot is considered to have passed pesticide testing and may be transferred or sold.

(d) If Commission staff determines that there is sufficient laboratory capacity to test every batch of usable marijuana for pesticides the staff shall give licensees 10 days' notice that all batches shall thereafter be required to be tested.

(e) Producer licenses are responsible for testing fee and may choose any laboratory licensee to conduct the test.

(3) A violation of this rule is a Category I violation.

Stat. Auth.: ORS 475B.550 & 475B.555

Stats. Implemented: ORS 475B.550 & 475B.555

Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16; OLCC 6-2016, f. 6-28-16, cert. ef. 6-29-16; OLCC 16-2016(Temp), f. & cert. ef. 9-30-16 thru 3-1-17; OLCC 22-2016, f. 12-22-16, cert. ef. 12-27-16; OLCC 3-2017(Temp), f. & cert. ef. 3-3-17 thru 8-29-17

Oregon Patient Safety Commission Chapter 325

Rule Caption: Updates the Oregon Patient Safety Commission 2015-2017 biennial budget by amending OAR 325-005-0015

Adm. Order No.: PSC 1-2017

Filed with Sec. of State: 2-28-2017

Certified to be Effective: 3-1-17

Notice Publication Date: 2-1-2017

Rules Amended: 325-005-0015

Subject: In accordance with the rules governing semi-independent state agencies, this action updates the Oregon Patient Safety Commission 2015-2017 biennial budget from \$4,434,280 to \$4,456,918.

Rules Coordinator: Melissa Parkerton—(503) 224-5034

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325-005-0015

Biennial Budget

The Commission hereby adopts by reference the Oregon Patient Safety Commission's 2015–2017 Biennial Budget of \$4,456,918 covering the period July 1, 2015, through June 30, 2017. The Commission's Executive Director will amend budgeted accounts as necessary, within the approved budget of \$4,456,918 for the effective operation of the Commission. The Commission will not exceed the approved 2015–2017 Biennium Budget without amending this rule, notifying interested parties, and holding a public hearing as required by ORS Chapter 182.462. Copies of the budget are available from the Commission's office and are posted on the Commission's website.

Stat. Auth.: ORS 442.820, 442.831

Stats. Implemented: ORS 182.462, 442.831

Hist.: PSC 1-2006, f. & cert. ef. 2-6-06; PSC 4-2007, f. & cert. ef. 7-2-07; PSC 1-2009, f. & cert. ef. 6-26-09; PSC 1-2011, f. & cert. ef. 7-1-11; PSC 1-2012, f. 3-27-12, cert. ef. 4-1-12; PSC 1-2013, f. & cert. ef. 4-25-13; PSC 2-2013, f. & cert. ef. 7-3-13; PSC 1-2014, f. 3-18-14, cert. ef. 3-21-14; PSC 1-2015, f. & cert. ef. 3-17-15; PSC 2-2015, f. & cert. ef. 7-10-15; PSC 1-2016, f. & cert. ef. 1-29-16; PSC 1-2017, f. 2-28-17, cert. ef. 3-1-17

Oregon State Treasury Chapter 170

Rule Caption: Modifies advance and current forward refunding rule requirements and updates Municipal Advisor requirements.

Adm. Order No.: OST 1-2017

Filed with Sec. of State: 2-23-2017

Certified to be Effective: 2-23-17

Notice Publication Date: 2-1-2017

Rules Amended: 170-062-0000

Subject: This amendment (1) provides greater clarity on documents required for submission when applying for advance and current refunding approval and (2) simplifies the municipal advisor definition.

Rules Coordinator: Kimberly Olson—(503) 378-3562

170-062-0000

Procedure for Submission, Review and Approval of an Advance Refunding Plan or Forward Current Refunding Plan

(1) Plan Contents and Filing. Every public body (as defined in ORS 287A.001(14)) must submit its plans for an advance refunding or forward current refunding (the "Refunding Plan") and receive approval of the Refunding Plan by the Office of the State Treasurer ("OST") prior to the sale of bonds connected to the Refunding Plan, as provided in this rule and ORS 287A.365. The Refunding Plan request should include the name, phone number, U.S. mailing and e-mail address for the public body and for the public body's bond counsel, Municipal Advisor ("MA"), and underwriter. The Refunding Plan must contain:

(a) A statement of purpose of the Refunding Plan;

(b) A description of the bonds to be refunded, including: date and premium, if any, when each is first callable; par amount originally issued, current amount outstanding, proposed amount and maturities to be refunded; and the dated date;

(c) A preliminary estimate of the Net Present Value Savings ("NPVS"): Present value savings is defined as the present value of the difference in debt service between the proposed refunded debt service and the proposed refunding debt service, discounted at the arbitrage yield of the refunding debt service. Any issuance expenses paid from sources other than bond proceeds and any other cash contributed to the escrow other than from bond proceeds must also be subtracted from proceeds to determine NPVS;

(d) A copy of the authorizing Ordinance/Resolution;

(e) A copy of the contract between the public body and its MA;

(f) Completed Municipal Debt Advisory Committee ("MDAC") Form 1;

(g) Estimated costs of issuance for the MA, bond counsel and underwriting costs;

(h) Final Official Statement and Bond Purchase Agreement, if applicable;

(i) Final Net Present Value Savings as described in subsection (c) of this section;

(j) Final version of Issuer's Arbitrage/Tax Certificate;

(k) Escrow verification report;

(l) Copy of the letter from MA to the public body as described in section (2) of this rule;

(m) Completed MDAC Form 2;

(n) Completed MDAC Form 3, if using a synthetic fixed rate refunding issue;

(o) Final draft of Bond Counsel Legal Opinion with Executed version provided within 5 business days of Closing; and

(p) Any additional materials that may be required by OST in support of the Advance Refunding or Forward Current Refunding request.

(2) Municipal Advisor required.

(a) A public body must employ an independent registered MA whose function is to advocate for the public body and advise them on the refinancing transaction that is the subject of the Refunding Plan. The MA must be registered with the Securities and Exchange Commission as required under 17 CFR § 240.15Ba1-2. The MA may not also serve as the underwriter in the same negotiated bond sale as required in Rule G23 of the Municipal Securities Rulemaking Board.

(b) Prior to closing, the public body and the OST must receive from the MA a letter stating that the MA:

(A) Is currently registered with the SEC as an MA and meets the requirements in subsection

(B) Has reviewed the assumptions included in the Refunding Plan; and

(C) Has provided a recommendation on the desirability or undesirability of completing the Refunding Plan and the reasons therefor. Forward current Refunding Plans must also include a description of the suitability of the public body for conducting a forward current refunding and an estimate in basis points of the premium paid to execute the forward refunding.

(3) OST Approval Procedure.

(a) Preliminary Approval. If the items in subsections (1)(a) through (1)(e) of this rule are completed and submitted to OST, then OST will notify the public body of OST's preliminary approval and state its intention to issue a final approval conditioned upon receipt and approval of items in subsections (1)(h) through (1)(p) of this rule;

(b) Preliminary Refunding Plans should be submitted to OST sufficiently in advance to allow 10 working days for review. The 10-day review period begins the working day after all items (1)(a) through (1)(g) of this rule and the application fee identified in OAR 170-061-0015 have been received;

(c) Preliminary approval is valid for a period of one year from the date of the preliminary approval letter. After the one year period expires, a new application fee and Refunding Plan are required;

(d) Final Approval. If the items in subsections (1)(h) through (1)(p) of this rule are received and approved by OST, then OST will issue its final approval for the Refunding Plan within five working days. The five-day period begins after receipt of all items required for final approval; and

(e) At the discretion of OST, drafts of preliminary and final components of Refunding Plans may be accepted and reviewed in lieu of finalized documents with the understanding that finalized documents will be provided within five working days of the bond closing.

(4) Administrative Expenses. To reimburse OST for the services, duties and activities of OST in connection with reviewing the plan, fees and expenses will be charged to public bodies as identified in OAR 170-061-0015.

(5) Ongoing Evaluation. OST evaluates long term trends in Oregon debt issuance. Adverse trends associated with local government refundings may result in a review and revision of the factors used by OST to evaluate refundings with the goal of diminishing potential undesirable impacts upon the higher priority "new money" bond issues.

(6) Waiver of Certain Provisions. OST may waive certain provisions of this rule to accommodate unusual circumstances.

(7) Noncompliance. If OST finds that the Preliminary Refunding Plan is not in substantial compliance with ORS 287A and this rule, the plan may not be approved. Notice that the plan does not comply, and the reasons for this finding will be sent to the public body and its bond counsel within 10 business days after receipt of the plan.

(8) Submission. Refunding Plans should be submitted to OST as provided in OAR 170-055-0001(4).

(9) Through its review and approval or disapproval of a Refunding Plan, OST is not acting as a fiduciary or municipal advisor to a public body, is not providing advice with respect to the structure, timing, terms or other similar matters concerning the Refunding Plan and expects the public body to rely on the advice of its MA with respect to such matters.

[Publications: Publications referenced are available from the Agency.]

Stat. Auth.: ORS 287A.365

Stats. Implemented: ORS 287A.360 - 287A.380

Hist.: TD 2-1986, f. & ef. 6-16-86; TD 2-1990, f. 9-18-90, cert. ef. 9-19-90; TD 2-1994, f. & cert. ef. 9-9-94; OST 5-2004, f. & cert. ef. 6-23-04; OST 2-2006, f. & cert. ef. 8-4-06; OST 7-2008, f. & cert. ef. 12-29-08; OST 5-2010(Temp), f. 11-29-10, cert. ef. 12-1-10 thru 5-29-11; OST 2-2011, f. & cert. ef. 4-1-11; OST 2-2012(Temp), f. & cert. ef. 11-19-12 thru 5-15-

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13; Administrative correction, 6-27-13; OST 2-2015, f. & cert. ef. 7-10-15; OST 1-2016, f. & cert. ef. 2-10-16; OST 4-2016, f. & cert. ef. 6-30-16; OST 1-2017, f. & cert. ef. 2-23-17

Rule Caption: Modifies qualification requirements and application procedures related to the Oregon School Bond Guaranty Program.

Adm. Order No.: OST 2-2017

Filed with Sec. of State: 2-23-2017

Certified to be Effective: 2-23-17

Notice Publication Date: 2-1-2017

Rules Amended: 170-063-0000

Subject: This amendment:

(1) Removes language requiring districts with combined projected future annual guaranteed debt service exceeding 80% of its annual State aid to provide additional collateral or bond insurance to reimburse the State Treasury for any debt service payments made on its behalf.

(2) Inserts language defining Repayment Assurance Agreement.

(3) Inserts language requiring districts to enter into a Repayment Assurance Agreement with Oregon State Treasury - Debt Management Division as a condition of Oregon School Bond Guaranty qualification.

(4) Inserts language requiring districts to provide a copy of Board adopted policy or internally implemented procedure that addresses post issuance compliance with federal tax and securities laws.

Rules Coordinator: Kimberly Olson—(503) 378-3562

170-063-0000

Oregon School Bond Guaranty Program

(1) Definitions. For purposes of this rule, the following definitions shall apply:

(a) "OST" means the Office of the State Treasurer.

(b) The "Act" means the Oregon School Bond Guaranty Act set forth in ORS 328.321 to 328.356.

(c) "Authorized District Official" means the chairperson of the board, the superintendent, president, or business administrator for the School District, or other designee of the board.

(d) "Business Day" means any day on which the offices of the State Treasurer are open to the public for the conduct of substantially all of the powers and duties of the agency. Saturdays, Sundays, or state holidays or any other day recognized by state government as a holiday or a day on which the State Treasurer's offices are officially closed to the public shall not be considered a Business Day.

(e) "Certificate of Qualification" means a letter from OST pursuant to ORS 328.331(3).

(f) "Determination of Ineligibility" means a letter from OST pursuant to ORS 328.336.

(g) "Guaranty Program" means the school bond guaranty program established by the Act.

(h) "Nationally Recognized Bond Counsel Firm" means a bond counsel firm listed in the most recent publication of The Bond Buyer's Municipal Market Place.

(i) "Qualified Bonds" means bonds that are originally issued as tax credit bonds under the Internal Revenue Code and any bonds resulting from a conversion of such tax credit bonds to an interest bearing format over and above interest payments that may be due and payable under the original terms of such tax credit bonds.

(j) "Qualified Paying Agent" means a paying agent acceptable to OST who agrees to comply with the applicable requirements of the Act and provides a letter to OST acknowledging as much.

(k) "School District" or "District" means a common or union high school district, an education service district, or a community college district.

(l) "State School Aid" means the State School Fund Grant described in ORS 327.008(2), plus amounts received from the Common School Fund under 327.410, plus amounts received from federal forest revenues under 294.060, plus amounts received from state managed forests under 530.115.

(m) "Repayment Assurance Agreement" means an agreement between the State of Oregon, acting by and through its Office of the State Treasurer and its Department of Education (the "State") and a "District" in which the District agrees that if the State pays under the guaranty the District will enter into a subsequent repayment agreement with respect to the amount(s) paid by OST.

(n) Terms not otherwise specifically defined herein shall have the meanings given in the Act. For purposes of calculating outstanding bonds or other outstanding borrowings as required under this rule, any borrowings that are defeased as provided in ORS 287A.195(1)(d)(B) shall be excluded and shall not be included in the amount of an outstanding borrowing.

(2) Request for Certificate of Qualification to Participate in Guaranty Program. School Districts may request a Certificate of Qualification at any time during the year by filing a Request for Certificate of Qualification. Such requests, however, must be submitted no less than 30 days prior to sale of the bonds for which the guaranty, if granted, will apply. Requests, and all other written communications pursuant to the Guaranty Program, shall be submitted to OST as provided in OAR 170-055-0001(4), and shall include:

(a) The name, county, and district number (if applicable) of the requesting School District;

(b) The name of the business administrator or other contact person for the requesting School District;

(c) The mailing address, phone number, e-mail address, and fax number (if applicable) of the requesting School District;

(d) A statement of whether any of the School District's previously issued and outstanding debt is covered by the Guaranty Program;

(e) A copy of the requesting School District's most recent audited financial statements, audit opinion, and management letter; and a statement by an Authorized District Official that they have not been contacted and are not participating in any investigation by an oversight agency or, alternatively, documentation of any conclusions reached by such agency regarding their activities.

(f) A listing of outstanding general obligation debt and associated debt service schedules, for debt issued by the School District since the date of its most recent financial audit;

(g) A copy of the School District's Board adopted policy or internal procedure that addresses post issuance compliance with federal tax and securities laws.

(h) A certificate, signed by an Authorized District Official:

(A) Stating whether the requesting School District has ever failed to pay debt service on any of its bonds, certificates of participation, or other financial obligations when due, and explaining the circumstances and resolution of any such defaults or failures;

(B) Describing current lawsuits against the School District challenging the ability or authority of the School District to issue bonds or that may materially affect the ability of the School District to make scheduled debt service payments on its bonds when due;

(C) Stating that the requesting School District has filed its current budget document(s) with the Oregon Department of Education, and in accordance with Oregon Local Budget Law;

(D) Stating the amount of debt the School District is authorized by law to incur, and stating that the requesting School District is within this limit;

(E) Describing the possible repayment structure of all bonds the School District may issue during the period of the requested Certificate of Qualification, including any Qualified Bonds. Such repayment structure shall cover the estimated debt service schedule and, for Qualified Bonds, include any scheduled deposits to a sinking fund and the interest rate to which such bonds may be converted, if they may be converted to an interest bearing format over and above interest payments that may be due and payable under the original terms of such bonds;

(F) Attesting to the accuracy and completeness of the materials provided; and

(G) Stating that the School District has engaged a Qualified Paying Agent, who, under the terms of the agreement between the two parties (the "Paying Agent Agreement"), has agreed to provide the School District with a written notification by January 15 of each year of the required debt service amounts (including any scheduled deposits to a sinking fund for Qualified Bonds) which are due in the then-current fiscal year and the following two fiscal years, such that the School District may have the proper information to levy adequate amounts for such payments coming due in the following fiscal years. For example, a notification provided by January 15, 2010 shall include information on debt service due in the current FY 2010 year (July 1, 2009 through June 30, 2010), the FY 2011 year (July 1, 2010 through June 30, 2011), and FY 2012 year (July 1, 2011 through June 30, 2012).

(i) A non-refundable application processing fee as set forth in OAR 170-061-0015;

(j) An authorizing resolution of the District that expressly authorizes the District to participate in the Guaranty Program and that affirmatively

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pledges the taxing power and full faith and credit of the District to payment of any payments made by the State Treasurer pursuant to ORS 328.341; and

(k) Any additional materials that may be required by OST in support of the request for participation in the Guaranty Program.

(3) Review of Request for Certificate of Qualification. Upon receipt of a request for a Certificate of Qualification, OST shall determine whether all items listed in section (2) of this rule have been provided, whether such items are current, and whether such items demonstrate that the requesting School District is likely to be able to repay any amounts paid by OST under ORS 328.341. To make its determination, OST may request additional information from the School District, as well as from any other person or entity that collects information pertaining to the financial well-being of the requesting School District.

(4) Issuance of Certificate of Qualification. Upon determining that a School District is eligible to participate in the Guaranty Program, OST shall issue a Certificate of Qualification to the School District, if the District has entered into a Repayment Assurance Agreement with OST. A Certificate of Qualification will not apply to Qualified Bonds unless the School District indicated in its request for a Certificate of Qualification that it planned to issue Qualified Bonds under the Certificate of Qualification. OST shall act upon a School District's request for a Certificate of Qualification within 10 business days after receipt of a request under section (2) of this rule. The Certificate of Qualification:

(a) Shall evidence the School District's immediate qualification for the Guaranty Program contingent upon compliance with section (6) and all other sections of this rule for each bond issue contemplated for guaranty under the Act;

(b) Be valid for one year from the date of its issuance;

(c) May be applied to any or all general obligation bonds or general obligation refunding bonds issued by the School District during such one-year period that comply with this rule and the Act, except Qualified Bonds for which specific approval must be noted as set forth in OAR 170-061-0015(4)(d). A bond shall be considered issued as of its dated date.

(d) Will specifically state whether it applies to Qualified Bonds issued by the School District during the period of its validity.

(5) A School District that has received a Certificate of Qualification, but did not request Qualified Bonds to be included under the Certificate of Qualification, may submit an amended request at least one month prior to the scheduled issuance date for any Qualified Bonds requesting an amended Certificate of Qualification that specifically covers the Qualified Bonds, which request shall include the information required for such bonds in OAR 170-063-0000(2). OST shall act upon such request within 5 business days.

(6) School Districts to Provide Information Specific to Each Bond Issued Under the Program. A School District which has received a Certificate of Qualification may, while the Certificate of Qualification is in effect, obtain the state's guaranty of a series of its bonds under the Guaranty Program, by:

(a) Fully complying with Oregon Administrative Rule 170-061-0000 (Notice and Reporting Requirements by Public Bodies When Issuing Bonds), including providing notification on MDAC Form 1 to OST at least 10 business days prior to the marketing of any bonds referencing participation in the Guaranty Program, for the bonds which will be guaranteed (this may be submitted simultaneously with information described in section (2) of this rule);

(b) Submitting the following documents to OST at least 5 business days prior to the closing of the bonds to which the guaranty will apply:

(A) A copy of a resolution adopted by the board or governing body of the School District, authorizing the School District to issue the bonds and participate in the Guaranty Program;

(B) An opinion from a Nationally Recognized Bond Counsel Firm that the bonds, when issued, will be general obligation bonds as defined in the Act, and will be valid and binding obligations of the issuer;

(C) A certificate stating that no litigation is pending or threatened against the School District, questioning the authority of the School District to issue the bonds or levy taxes to pay the bonds;

(D) A specific statement as to whether any of the bonds will be Qualified Bonds; and

(E) Any additional materials that may be required by OST in support of the request for participation in the Guaranty Program, including but not limited to, any information or agreement requested by OST with respect to creation of sufficient debt service funds, assurance that any bond insurance, pledge of security or other credit enhancement required for issuance of the Certificate remains in effect and available, or other repayment mechanisms

to pay any outstanding bonds, including Qualified Bonds or to repay OST when payment is due.

(7) Letter of Confirmation. No later than the day on which the bonds are scheduled to close, OST shall, if the Certificate of Qualification is in effect and the School District has complied with section (6)(a) and (6)(b) of this rule, issue a Letter of Confirmation identifying the series of bonds to which the guaranty shall apply, and stating that the guaranty shall apply to that series of bonds if the series of bonds closes within 15 business days after the date of the letter, and there is filed with bond counsel a certificate, signed by an Authorized District Official and dated the date of the closing, stating that no litigation is pending or threatened against the School District which questions the authority of the District to issue the bonds or levy taxes to pay the bonds. If the series of bonds described in the letter of confirmation is closed within that 15 business day period, and the non-litigation certificate is filed with bond counsel as required by this Section, the series of bonds shall be guaranteed under the Guaranty Program, and the guaranty shall not be affected by any denial or revocation pursuant to section (10) of this rule.

(8) Guaranty Fees. School Districts whose bonds are guaranteed by the state shall submit to OST, within 10 business days of closing of any guaranteed bonds, a fee as set forth in OAR 170-061-0015.

(9) Ratings. OST will undertake to have the Oregon School Bond Guaranty Program rated by one or more of the major debt rating agencies. School Districts may contact the Debt Management Division of OST to determine which agencies have rated the program. School Districts proposing to issue bonds under the Guaranty Program may:

(a) Engage, at their own expense, one or more of the rating agencies to apply the rating of the Guaranty Program to their bonds; and

(b) At their discretion, and at their own expense, choose to obtain an underlying rating on the bonds.

(10) Denial or Revocation of Qualification/Determination of Ineligibility. OST may deny a School District's request for a Certificate of Qualification, or revoke a previously issued Certificate of Qualification, and issue a Determination of Ineligibility in accordance with the Act, if:

(a) The School District fails to meet the provisions outlined in the Act or any of the requirements outlined in this rule;

(b) The State has ever paid, pursuant to the Guaranty Program, any principal of or interest on any of the School District's bonds; or

(c) OST has reason to question the financial integrity of the School District, including but not limited to, whether sufficient funds exist to repay any outstanding Bonds, including Qualified Bonds, when payment is due or to repay the State of Oregon for any payments made by OST under ORS 328.341.

(11) Guaranty Final Upon Issuance. Pursuant to ORS 328.336, issuance of a Determination of Ineligibility shall not affect the validity of the state's guaranty of any outstanding bonds issued under a Letter of Confirmation pursuant to section (7) of this rule.

(12) Reference to Guaranty. School Districts with a valid Certificate of Qualification, and that have complied with section (6) and all other sections of this rule, shall evidence the State's guaranty of the School District's bonds by:

(a) Referencing the guaranty on the cover of the preliminary official statement(s) and official statement(s), or other offering document(s), for the applicable bond(s);

(b) Referencing the guaranty on the face of the School District's applicable bond(s); and

(c) Including language describing the guaranty (to be provided by OST) in the School District's preliminary official statement(s) and official statement(s), or any other offering document(s), for the applicable bond(s). Language supplied by OST must be used in its entirety and may not be modified or amended.

(13) School Districts to Report Changes Affecting Qualification. School Districts who have had bonds guaranteed under the Guaranty Program shall promptly notify OST if at any time there are material changes or occurrences that might affect the School District's eligibility to qualify or maintain its qualification to participate in the Guaranty Program, including but not limited to:

(a) Failure to adopt a resolution or ordinance that formally adopts the budget, sets appropriations, and if needed, levies property taxes in accordance with Oregon local budget law;

(b) Failure to pay debt service on any outstanding bond, certificate of participation, or similar financial obligation; or

(c) Failure to establish or levy for debt service scheduled (including any sinking fund deposits) for any outstanding bonds, including Qualified

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Bonds, or a material change in any other repayment mechanism for outstanding bonds, including Qualified Bonds.

(14) Notice to OST of debt service payments. School Districts who are unable to transfer scheduled debt service payments to a Qualified Paying Agent 15 days prior to the payment date and Qualified Paying Agents who have not received sufficient funds 10 days prior to the payment date, shall provide notice to OST as provided in OAR 170-055-0001(4) and by telephone to (503) 378-4930 or email to DMD@ost.state.or.us.

(15) Notice to OST of sinking fund deposits. School Districts shall provide written verification that they have made any required sinking fund deposits for Qualified Bonds by May 1 of each year to their Qualified Paying Agents and such Qualified Paying Agent shall promptly notify OST if they do not receive such annual verification.

(16) Repayment. Respective School Districts are responsible for paying all of their obligations guaranteed by the State under the Guaranty Program and for the advance funding of any debt service fund established for such obligations. Any funds paid by the State on behalf of a School District under the Guaranty Program shall be recovered by OST in a manner consistent with the Act.

(17) Reporting on Debt Service Fund. Any School District with outstanding Qualified Bonds guaranteed under the Guaranty Program shall report to the OST at least annually the amount of moneys paid into the School District's debt service fund to pay the Qualified Bonds together with a calculation demonstrating that such advance payments are scheduled to be fully funded and sufficient to repay the Qualified Bonds in full when payment is due. To the extent moneys are not scheduled to be paid into the debt service fund on an annual basis, the School District in its notification shall demonstrate that current balances in the debt service fund, along with any future deposits, will be sufficient to repay the Qualified Bonds in full when due. School Districts with outstanding Qualified Bonds that are subject to conversion to taxable interest bearing bonds and any Qualified Paying Agents for such Qualified Bonds shall promptly notify OST of such conversion as provided in OAR-170-055-0001(4) and by telephone to (503) 378-4930 or email to DMD@ost.state.or.us.

(18) Interest. OST will charge interest in connection with the recovery of funds under the Act. Any interest charged will be in a manner consistent with the Act.

(19) Penalty. In addition to charging interest, OST may impose a penalty on a School District for which the State made a payment under the Guaranty Program. Any penalty imposed will be consistent with the Act.

(20) Exceptions. OST may waive any or all provisions of this rule to the extent provided by law. This rule shall be effective on the date it is adopted by OST and filed with the Secretary of State and its requirements shall apply to any Certificates of Qualification that are in effect on such date.

Stat. Auth.: ORS 328.321 - 328.356
Stats. Implemented: ORS 328.321 - 328.356 & 328.331
Hist.: OST 3-1998(Temp), f. 12-14-98, cert. ef. 1-2-99 thru 6-30-99; OST 2-1999, f. 6-22-99, cert. ef. 7-1-99; OST 1-2000(Temp), f. 10-31-00, cert. ef. 10-31-00 thru 4-27-01; Administrative correction 6-7-01; OST 7-2008, f. & cert. ef. 12-29-08; OST 5-2009(Temp), f. & cert. ef. 10-30-09 thru 4-27-10; OST 1-2010, f. & cert. ef. 1-15-10; OST 1-2014(Temp), f. & cert. ef. 1-15-14 thru 7-14-14; OST 2-2014, f. & cert. ef. 4-11-14; OST 2-2016(Temp), f. & cert. ef. 2-12-16 thru 8-8-16; OST 3-2016, f. & cert. ef. 5-25-16; OST 2-2017, f. & cert. ef. 2-23-17

Physical Therapist Licensing Board Chapter 848

Rule Caption: Amend current rule budget to reflect 2017-2019 Board approved expenditures.

Adm. Order No.: PTLB 1-2017

Filed with Sec. of State: 3-9-2017

Certified to be Effective: 7-1-17

Notice Publication Date: 2-1-2017

Rules Amended: 848-005-0010

Subject: The Physical Therapist Licensing Board hereby adopts by reference the Physical Therapist Licensing Board 2017–2019 Biennium Budget of \$1,183,000 covering the period from July 1, 2017 through June 30, 2019. The Executive Director of the Board will amend budgeted accounts as necessary within the approved budget of \$1,183,000 for the effective operation of the Board. The Board will not exceed the approved 2017-2019 Biennium Budget expenditures without amending this rule, notifying holders of licenses, and holding a public hearing thereon as required, by ORS Chapter

182.462(1) and (2). Copies of the budget are available from the Board's office and posted on the Board's website.

Rules Coordinator: James Heider—(971) 673-0203

848-005-0010

Board Budget

The Physical Therapist Licensing Board hereby adopts by reference the Physical Therapist Licensing Board 2017–2019 Biennium Budget of \$1,183,000 covering the period from July 1, 2017 through June 30, 2019. The Executive Director of the Board will amend budgeted accounts as necessary within the approved budget of \$1,183,000 for the effective operation of the Board. The Board will not exceed the approved 2017–2019 Biennium Budget expenditures without amending this rule, notifying holders of licenses, and holding a public hearing thereon as required, by ORS Chapter 182.462(1) and (2). Copies of the budget are available from the Board's office and posted on the Board's website.

Stat. Auth.: ORS 688.210
Stats. Implemented: ORS 688.160(5)(c)
Hist.: PTLB 3-1999(Temp), f. & cert. ef. 9-7-99 thru 3-1-00; PTLB 5-1999, f. 11-23-99, cert. ef. 12-1-99; PTLB 5-2001(Temp) f. & cert. ef. 6-18-01 thru 9-30-01; PTLB 6-2001, f. & cert. ef. 10-1-01; PTLB 2-2003, f. 6-30-03, cert. ef. 7-1-03; Renumbered from 848-010-0105, PTLB 2-2004, f. & cert. ef. 12-29-04; PTLB 1-2005, f. & cert. ef. 4-8-05; PTLB 2-2007, f. 5-25-07, cert. ef. 6-1-07; PTLB 1-2009, f. & cert. ef. 5-14-09; PTLB 2-2009 f. 5-14-09 cert. ef. 7-1-09; PTLB 1-2011, f. 6-20-11, cert. ef. 7-1-11; PTLB 1-2013, f. 6-3-13, cert. ef. 7-1-13; PTLB 1-2015, f. 3-31-15, cert. ef. 7-1-15; PTLB 1-2017, f. 3-9-17, cert. ef. 7-1-17

Public Utility Commission Chapter 860

Rule Caption: In the Matter of Adopting the 2017 Edition of the National Electrical Safety Code (NESC).

Adm. Order No.: PUC 3-2017

Filed with Sec. of State: 2-21-2017

Certified to be Effective: 2-21-17

Notice Publication Date: 1-1-2017

Rules Amended: 860-024-0010

Subject: The rule amendments adopt the current edition of the National Electrical Safety Code (NESC), which became effective February 1, 2017. The PUC's adoption by rule of the 2017 NESC requires subject operators to stay up to date with current national standards and practices used in the construction, operation, and maintenance of electric supply lines and communication lines.

Rules Coordinator: Diane Davis—(503) 378-4372

860-024-0010

Construction, Operation, and Maintenance of Electrical Supply and Communication Lines

Every operator shall construct, operate, and maintain electrical supply and communication lines in compliance with the standards prescribed by the 2017 Edition of the National Electrical Safety Code approved April 26, 2016, by the American National Standards Institute.

[Publications: Publications referenced are available for review from the Commission.]
Stat. Auth.: ORS 183, 756, 757 & 759
Stats. Implemented: ORS 757.035
Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 173, f. & ef. 1-14-76 (Order No. 76-037); PUC 1-1978, f. 1-13-78, ef. 2-13-78 (Order No. 78-076); PUC 3-1981, f. & ef. 6-4-81 (Order No. 81-361); PUC 12-1984, f. & ef. 6-5-84 (Order No. 84-424); PUC 11-1987, f. & ef. 10-8-87 (Order No. 87-861); PUC 6-1990, f. & cert. ef. 5-25-90 (Order No. 90-833); PUC 11-1993, f. & cert. ef. 6-23-93 (Order No. 93-809); PUC 13-1994, f. & cert. ef. 8-31-94 (Order No. 94-1243); PUC 7-1997, f. & cert. ef. 2-6-97; PUC 9-2002, f. & cert. ef. 2-26-02; PUC 6-2007, f. & cert. ef. 5-14-07; PUC 5-2008, f. & cert. ef. 12-29-08; PUC 2-2012, f. & cert. ef. 3-9-12; PUC 3-2017, f. & cert. ef. 2-21-17

Water Resources Department Chapter 690

Rule Caption: Well construction rules regarding measuring tubes, rule references, setbacks, well seals, geotechnical holes, TDS requirement

Adm. Order No.: WRD 1-2017

Filed with Sec. of State: 2-16-2017

Certified to be Effective: 2-16-17

Notice Publication Date: 6-1-2016

Rules Amended: 690-210-0320, 690-240-0005

Subject: Correct incomplete rule text.

Rules Coordinator: Diana Enright—(503) 986-0874

ADMINISTRATIVE RULES

690-210-0320

Methods of Placement of Cement Grout or Concrete

Cement grout or concrete used as a sealing material in a well shall be placed or forced upward from the bottom to completely fill the annular space to be grouted and shall be placed in one continuous operation without significant interruption. If temporary outer surface casing is used in the construction of the well, it shall be withdrawn as the grout or concrete is placed. (For acceptable methods of placement, see Appendix 210-3 and Figure 210-1, 1986).

[ED. NOTE: Figures and Appendices referenced are available from the agency.]
Stat. Auth.: ORS 183, 536, 537 & 540
Stats. Implemented: ORS 183, 536, 537 & 540
Hist.: WRD 9-1978, f. 12-12-78, ef. 1-1-79; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-061-0021 & 690-061-0096; WRD 7-1988, f. & cert. ef. 6-29-88; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 5-2015, f. & cert. ef. 7-1-15; WRD 5-2016, f. & cert. ef. 9-6-16; WRD 1-2017, f. & cert. ef. 2-16-17

690-240-0005

Introduction

(1) Monitoring wells and geotechnical holes drilled to allow ground water and geologic determinations are constructed in a variety of environments and under a variety of conditions. Improper construction, maintenance, operation, and abandonment can allow deterioration of ground water quality and supply. Although enforcement actions may be exercised against other parties, the landowner of the property where the monitoring well or geotechnical hole is constructed is ultimately responsible for the condition, use, maintenance, conversion, and abandonment of the monitoring well, or geotechnical hole.

(2) Holes other than monitoring wells, water supply wells, or geotechnical holes which are drilled, excavated, or otherwise constructed in the earth's surface can also provide an avenue for deterioration of ground water quality. Improper construction, maintenance, use, and abandonment of other holes can pose a significant risk to ground water. Table 240-1 lists common subsurface borings and indicates which administrative rule governs the construction, conversion, maintenance, alteration, and abandonment of the boring.

(3) Ground water problems are difficult, expensive, and time consuming to correct. The Water Resources Commission (Commission) has been authorized to develop standards for wells drilled for the purpose of monitoring ground water in order to protect the state's ground waters. The Commission has also been authorized to develop standards for other holes through which ground water may become contaminated. The rules set forth herein are adopted to provide that protection. Their purpose is to prevent and eliminate ground water contamination, waste, and loss of artesian pressure.

(4) The Commission may develop additional rules as needed prescribing standards for the construction, operation, maintenance, and abandonment of other specific types of wells and holes to protect ground water.

(5) Except for the Commission's power to adopt rules, the Commission may delegate to the Water Resources Director the exercise or discharge in the Commission's name of any power, duty or function of whatever character, vested in or imposed by law upon the Commission. The official act of the Director acting in the Commission's name and by the Commission's authority shall be considered to be an official act of the Commission. The Commission delegates to the Director full authority to act in the Commission's name where that delegation is reflected in these rules.

(6) Under the provisions of ORS 537.780, the Commission is authorized to adopt such procedural rules and regulations as deemed necessary to carry out its function in compliance with the Ground Water Act of 1955. In fulfillment of these responsibilities and to ensure the preservation of the public welfare, safety, and health, the Commission has established these rules and regulations as the minimum standards for the construction, alteration, abandonment, conversion, and maintenance of monitoring wells in Oregon.

(7) Monitoring wells are wells as defined in ORS 537.515(9). A license and licensing fee, bond, examination, well report, and start card are required for construction, conversion, alteration, or abandonment of a monitoring well. In addition, a start card fee is required for new construction, deepening a well, and conversion.

(8) To protect the ground water resource, the Commission has the authority to regulate geotechnical holes under ORS 537.780(1)(c)(A). Construction of geotechnical holes requires either a Water Supply Well Constructor or Monitoring Well Constructor's License or Oregon registration as a geologist or civil engineer. If any one of the criteria in OAR 690-240-0035(2)(a)-(d) is met, a geotechnical hole report must be submitted.

(9) To protect the ground water resource, the Commission has the authority, under ORS 537.780(1)(c)(A), to regulate any hole through which ground water may be contaminated. Construction of holes other than water supply wells and monitoring wells does not require a license and licensing fee, bond, examination, well report, start card, and start card fee.

(10) Holes constructed under ORS Chapters 517, 520, and 522, and rules promulgated from those statutes, are the responsibility of the Oregon Department of Geology and Mineral Industries and are not subject to these rules. These include, but are not limited to, holes constructed for the purposes of exploring for, or producing, petroleum, minerals, or geothermal resources.

(11) The rules and regulations set forth herein shall become effective upon adoption by the Water Resources Commission.

(12) Under no circumstances shall a monitoring well, piezometer, geotechnical hole, or other hole be constructed in a manner that allows commingling or leakage of ground water by gravity flow or artesian pressure from one aquifer to another. (See definition of aquifer.)

(13) The rules and regulations set forth herein provide the minimum standards for the construction, conversion, alteration, maintenance, and abandonment of monitoring wells, geotechnical holes, and other holes. After the effective date of adoption of these rules and regulations, no monitoring well, geotechnical hole, or other hole shall be constructed, altered, converted, or abandoned contrary to the provisions of these rules and regulations without prior approval from the Water Resources Department. Violation of these standards may result in enforcement under OAR chapter 690, division 240, including suspension or revocation of a constructor's license, imposition of civil penalties on the landowner or constructor, action on a bond, or other sanctions authorized by law.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 536.090 & 537.505 - 537.795
Stats. Implemented: ORS 536.090 & 537.505 - 537.795
Hist.: WRD 14-1990, f. & cert. ef. 8-9-90; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 2-1995, f. 5-17-95, cert. ef. 7-1-95; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 4-2004, f. & cert. ef. 6-15-04; WRD 2-2006, f. & cert. ef. 6-20-06; WRD 3-2014, f. & cert. ef. 11-25-14; WRD 5-2015, f. & cert. ef. 7-1-15; WRD 5-2016, f. & cert. ef. 9-6-16; WRD 1-2017, f. & cert. ef. 2-16-17

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141-075-0225	1-12-2017	Repeal	2-1-2017	150-305-0202	1-1-2017	Amend	2-1-2017
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257-095-0100	12-14-2016	Adopt(T)	1-1-2017	309-014-0005	12-1-2016	Amend	1-1-2017
259-008-0025	12-22-2016	Amend	2-1-2017	309-014-0010	12-1-2016	Amend	1-1-2017
259-008-0045	1-1-2017	Amend	2-1-2017	309-014-0015	12-1-2016	Amend	1-1-2017
259-008-0060	1-1-2017	Amend	2-1-2017	309-014-0020	12-1-2016	Amend	1-1-2017
259-009-0062	12-22-2016	Amend	2-1-2017	309-014-0021	12-1-2016	Adopt	1-1-2017
291-001-0115	3-9-2017	Adopt	4-1-2017	309-014-0022	12-1-2016	Adopt	1-1-2017
291-063-0030	3-15-2017	Amend(T)	4-1-2017	309-014-0023	12-1-2016	Adopt	1-1-2017
291-079-0030	11-30-2016	Repeal	1-1-2017	309-014-0025	12-1-2016	Amend	1-1-2017
291-079-0040	11-30-2016	Repeal	1-1-2017	309-014-0030	12-1-2016	Amend	1-1-2017
291-210-0010	2-15-2017	Amend(T)	3-1-2017	309-014-0035	12-1-2016	Amend	1-1-2017
291-210-0020	2-15-2017	Amend(T)	3-1-2017	309-014-0036	12-1-2016	Adopt	1-1-2017
291-210-0030	2-15-2017	Amend(T)	3-1-2017	309-014-0037	12-1-2016	Amend	1-1-2017
291-210-0040	2-15-2017	Adopt(T)	3-1-2017	309-014-0040	12-1-2016	Amend	1-1-2017
291-210-0050	2-15-2017	Adopt(T)	3-1-2017	309-018-0100	11-28-2016	Amend	1-1-2017
309-008-0100	11-30-2016	Adopt	1-1-2017	309-018-0105	11-28-2016	Amend	1-1-2017
309-008-0200	11-30-2016	Adopt	1-1-2017	309-018-0107	11-28-2016	Adopt	1-1-2017

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309-018-0210	11-28-2016	Amend	1-1-2017	309-019-0255	11-30-2016	Adopt	1-1-2017
309-018-0215	11-28-2016	Amend	1-1-2017	309-019-0270	12-28-2016	Adopt(T)	2-1-2017
309-019-0100	11-30-2016	Amend	1-1-2017	309-019-0270	1-18-2017	Amend(T)	3-1-2017
309-019-0105	11-30-2016	Amend	1-1-2017	309-019-0275	12-28-2016	Adopt(T)	2-1-2017
309-019-0105	12-28-2016	Amend(T)	2-1-2017	309-019-0275	1-18-2017	Amend(T)	3-1-2017
309-019-0110	11-30-2016	Amend	1-1-2017	309-019-0280	12-28-2016	Adopt(T)	2-1-2017
309-019-0110	12-28-2016	Amend(T)	2-1-2017	309-019-0280	1-18-2017	Amend(T)	3-1-2017
309-019-0115	12-28-2016	Amend(T)	2-1-2017	309-019-0285	12-28-2016	Adopt(T)	2-1-2017
309-019-0120	12-28-2016	Amend(T)	2-1-2017	309-019-0285	1-18-2017	Amend(T)	3-1-2017
309-019-0125	11-30-2016	Amend	1-1-2017	309-019-0290	12-28-2016	Adopt(T)	2-1-2017
309-019-0125	12-28-2016	Amend(T)	2-1-2017	309-019-0290	1-18-2017	Amend(T)	3-1-2017
309-019-0130	11-30-2016	Amend	1-1-2017	309-019-0295	12-28-2016	Adopt(T)	2-1-2017
309-019-0130	12-28-2016	Amend(T)	2-1-2017	309-019-0295	1-18-2017	Amend(T)	3-1-2017
309-019-0135	11-30-2016	Amend	1-1-2017	309-022-0100	12-1-2016	Amend	1-1-2017
309-019-0135	12-28-2016	Amend(T)	2-1-2017	309-022-0105	12-1-2016	Amend	1-1-2017
309-019-0140	11-30-2016	Amend	1-1-2017	309-022-0105	12-29-2016	Amend(T)	2-1-2017
309-019-0140	12-28-2016	Amend(T)	2-1-2017	309-022-0110	12-29-2016	Amend(T)	2-1-2017
309-019-0145	11-30-2016	Amend	1-1-2017	309-022-0115	12-29-2016	Amend(T)	2-1-2017
309-019-0145	12-28-2016	Amend(T)	2-1-2017	309-022-0125	12-29-2016	Amend(T)	2-1-2017
309-019-0150	12-28-2016	Amend(T)	2-1-2017	309-022-0130	12-29-2016	Amend(T)	2-1-2017
309-019-0150	1-18-2017	Amend(T)	3-1-2017	309-022-0135	12-1-2016	Amend	1-1-2017
309-019-0151	12-28-2016	Adopt(T)	2-1-2017	309-022-0140	12-29-2016	Amend(T)	2-1-2017
309-019-0151	1-18-2017	Amend(T)	3-1-2017	309-022-0155	12-29-2016	Amend(T)	2-1-2017
309-019-0152	12-28-2016	Adopt(T)	2-1-2017	309-022-0160	12-29-2016	Amend(T)	2-1-2017
309-019-0155	12-28-2016	Amend(T)	2-1-2017	309-022-0175	12-1-2016	Amend	1-1-2017
309-019-0160	12-28-2016	Amend(T)	2-1-2017	309-022-0175	12-29-2016	Amend(T)	2-1-2017
309-019-0165	12-28-2016	Amend(T)	2-1-2017	309-022-0180	12-29-2016	Amend(T)	2-1-2017
309-019-0175	11-30-2016	Amend	1-1-2017	309-022-0192	12-29-2016	Adopt(T)	2-1-2017
309-019-0175	12-28-2016	Amend(T)	2-1-2017	309-022-0195	12-29-2016	Amend(T)	2-1-2017
309-019-0180	12-28-2016	Amend(T)	2-1-2017	309-022-0200	12-29-2016	Amend(T)	2-1-2017
309-019-0185	12-28-2016	Amend(T)	2-1-2017	309-022-0205	12-1-2016	Amend	1-1-2017
309-019-0195	11-30-2016	Amend	1-1-2017	309-022-0205	12-29-2016	Amend(T)	2-1-2017
309-019-0210	11-30-2016	Amend	1-1-2017	309-022-0210	12-29-2016	Amend(T)	2-1-2017
309-019-0215	11-30-2016	Amend	1-1-2017	309-022-0215	12-29-2016	Amend(T)	2-1-2017
309-019-0215	12-28-2016	Amend(T)	2-1-2017	309-022-0220	12-29-2016	Amend(T)	2-1-2017
309-019-0220	11-30-2016	Amend	1-1-2017	309-022-0225	12-29-2016	Amend(T)	2-1-2017
309-019-0225	11-30-2016	Adopt	1-1-2017	309-022-0230	12-29-2016	Amend(T)	2-1-2017
309-019-0225	12-28-2016	Amend(T)	2-1-2017	309-023-0100	12-29-2016	Adopt	2-1-2017
309-019-0225	1-18-2017	Amend(T)	3-1-2017	309-023-0110	12-29-2016	Adopt	2-1-2017
309-019-0226	12-28-2016	Adopt(T)	2-1-2017	309-023-0120	12-29-2016	Adopt	2-1-2017
309-019-0226	1-18-2017	Amend(T)	3-1-2017	309-023-0130	12-29-2016	Adopt	2-1-2017
309-019-0230	11-30-2016	Adopt	1-1-2017	309-023-0140	12-29-2016	Adopt	2-1-2017
309-019-0230	12-28-2016	Amend(T)	2-1-2017	309-023-0150	12-29-2016	Adopt	2-1-2017
309-019-0235	11-30-2016	Adopt	1-1-2017	309-023-0160	12-29-2016	Adopt	2-1-2017
309-019-0235	1-18-2017	Amend(T)	3-1-2017	309-023-0170	12-29-2016	Adopt	2-1-2017
309-019-0240	11-30-2016	Adopt	1-1-2017	309-023-0180	12-29-2016	Adopt	2-1-2017
309-019-0240	12-28-2016	Amend(T)	2-1-2017	309-027-0010	12-5-2016	Adopt	1-1-2017
309-019-0241	12-28-2016	Adopt(T)	2-1-2017	309-027-0020	12-5-2016	Adopt	1-1-2017
309-019-0242	12-28-2016	Adopt(T)	2-1-2017	309-027-0030	12-5-2016	Adopt	1-1-2017
309-019-0242	1-18-2017	Amend(T)	3-1-2017	309-027-0040	12-5-2016	Adopt	1-1-2017
309-019-0245	11-30-2016	Adopt	1-1-2017	309-027-0050	12-5-2016	Adopt	1-1-2017
309-019-0245	12-28-2016	Amend(T)	2-1-2017	309-027-0060	12-5-2016	Adopt	1-1-2017
309-019-0248	11-30-2016	Adopt	1-1-2017	309-032-0850	12-1-2016	Amend	1-1-2017
309-019-0248	1-18-2017	Amend(T)	3-1-2017	309-032-0860	12-1-2016	Amend	1-1-2017
309-019-0250	11-30-2016	Adopt	1-1-2017	309-032-0870	12-1-2016	Amend	1-1-2017

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309-033-0210	12-29-2016	Amend	2-1-2017	309-035-0390	3-4-2017	Suspend	4-1-2017
309-033-0410	12-29-2016	Amend	2-1-2017	309-035-0400	3-4-2017	Suspend	4-1-2017
309-033-0432	12-29-2016	Amend	2-1-2017	309-035-0410	3-4-2017	Suspend	4-1-2017
309-033-0510	12-29-2016	Amend	2-1-2017	309-035-0420	3-4-2017	Suspend	4-1-2017
309-033-0530	12-29-2016	Amend	2-1-2017	309-035-0430	3-4-2017	Suspend	4-1-2017
309-033-0610	12-29-2016	Amend	2-1-2017	309-035-0440	3-4-2017	Suspend	4-1-2017
309-033-0710	12-29-2016	Amend	2-1-2017	309-035-0450	3-4-2017	Suspend	4-1-2017
309-033-0720	12-29-2016	Amend	2-1-2017	309-035-0460	3-4-2017	Suspend	4-1-2017
309-033-0740	12-29-2016	Amend	2-1-2017	309-035-0500	3-4-2017	Suspend	4-1-2017
309-033-0910	12-29-2016	Amend	2-1-2017	309-035-0550	3-4-2017	Suspend	4-1-2017
309-033-0970	12-29-2016	Amend	2-1-2017	309-035-0560	3-4-2017	Suspend	4-1-2017
309-035-0100	3-4-2017	Amend(T)	4-1-2017	309-035-0570	3-4-2017	Suspend	4-1-2017
309-035-0105	3-4-2017	Amend(T)	4-1-2017	309-035-0580	3-4-2017	Suspend	4-1-2017
309-035-0110	3-4-2017	Amend(T)	4-1-2017	309-035-0590	3-4-2017	Suspend	4-1-2017
309-035-0113	3-4-2017	Suspend	4-1-2017	309-035-0600	3-4-2017	Suspend	4-1-2017
309-035-0115	3-4-2017	Amend(T)	4-1-2017	309-039-0500	11-30-2016	Amend	1-1-2017
309-035-0117	3-4-2017	Suspend	4-1-2017	309-039-0510	11-30-2016	Amend	1-1-2017
309-035-0120	3-4-2017	Amend(T)	4-1-2017	309-039-0530	11-30-2016	Amend	1-1-2017
309-035-0125	3-4-2017	Amend(T)	4-1-2017	309-039-0580	11-30-2016	Amend	1-1-2017
309-035-0130	3-4-2017	Amend(T)	4-1-2017	309-040-0300	3-4-2017	Amend(T)	4-1-2017
309-035-0135	3-4-2017	Amend(T)	4-1-2017	309-040-0305	3-4-2017	Amend(T)	4-1-2017
309-035-0140	3-4-2017	Amend(T)	4-1-2017	309-040-0307	3-4-2017	Adopt(T)	4-1-2017
309-035-0145	3-4-2017	Amend(T)	4-1-2017	309-040-0310	3-4-2017	Amend(T)	4-1-2017
309-035-0150	3-4-2017	Amend(T)	4-1-2017	309-040-0315	3-4-2017	Amend(T)	4-1-2017
309-035-0155	3-4-2017	Amend(T)	4-1-2017	309-040-0320	3-4-2017	Amend(T)	4-1-2017
309-035-0157	3-4-2017	Suspend	4-1-2017	309-040-0325	3-4-2017	Amend(T)	4-1-2017
309-035-0159	3-4-2017	Suspend	4-1-2017	309-040-0330	3-4-2017	Amend(T)	4-1-2017
309-035-0163	3-4-2017	Adopt(T)	4-1-2017	309-040-0335	3-4-2017	Amend(T)	4-1-2017
309-035-0165	3-4-2017	Amend(T)	4-1-2017	309-040-0340	3-4-2017	Amend(T)	4-1-2017
309-035-0167	3-4-2017	Suspend	4-1-2017	309-040-0345	3-4-2017	Amend(T)	4-1-2017
309-035-0170	3-4-2017	Amend(T)	4-1-2017	309-040-0350	3-4-2017	Amend(T)	4-1-2017
309-035-0175	3-4-2017	Amend(T)	4-1-2017	309-040-0355	3-4-2017	Amend(T)	4-1-2017
309-035-0183	3-4-2017	Adopt(T)	4-1-2017	309-040-0360	3-4-2017	Amend(T)	4-1-2017
309-035-0185	3-4-2017	Amend(T)	4-1-2017	309-040-0365	3-4-2017	Amend(T)	4-1-2017
309-035-0190	3-4-2017	Amend(T)	4-1-2017	309-040-0370	3-4-2017	Amend(T)	4-1-2017
309-035-0195	3-4-2017	Adopt(T)	4-1-2017	309-040-0375	3-4-2017	Amend(T)	4-1-2017
309-035-0200	3-4-2017	Adopt(T)	4-1-2017	309-040-0380	3-4-2017	Amend(T)	4-1-2017
309-035-0205	3-4-2017	Adopt(T)	4-1-2017	309-040-0385	3-4-2017	Amend(T)	4-1-2017
309-035-0210	3-4-2017	Adopt(T)	4-1-2017	309-040-0390	3-4-2017	Amend(T)	4-1-2017
309-035-0215	3-4-2017	Adopt(T)	4-1-2017	309-040-0393	3-4-2017	Adopt(T)	4-1-2017
309-035-0220	3-4-2017	Adopt(T)	4-1-2017	309-040-0394	3-4-2017	Adopt(T)	4-1-2017
309-035-0225	3-4-2017	Adopt(T)	4-1-2017	309-040-0395	3-4-2017	Amend(T)	4-1-2017
309-035-0250	3-4-2017	Suspend	4-1-2017	309-040-0400	3-4-2017	Amend(T)	4-1-2017
309-035-0260	3-4-2017	Suspend	4-1-2017	309-040-0405	3-4-2017	Amend(T)	4-1-2017
309-035-0270	3-4-2017	Suspend	4-1-2017	309-040-0410	3-4-2017	Amend(T)	4-1-2017
309-035-0280	3-4-2017	Suspend	4-1-2017	309-040-0415	3-4-2017	Amend(T)	4-1-2017
309-035-0290	3-4-2017	Suspend	4-1-2017	309-040-0420	3-4-2017	Amend(T)	4-1-2017
309-035-0300	3-4-2017	Suspend	4-1-2017	309-040-0425	3-4-2017	Amend(T)	4-1-2017
309-035-0310	3-4-2017	Suspend	4-1-2017	309-040-0430	3-4-2017	Amend(T)	4-1-2017
309-035-0320	3-4-2017	Suspend	4-1-2017	309-040-0435	3-4-2017	Amend(T)	4-1-2017
309-035-0330	3-4-2017	Suspend	4-1-2017	309-040-0440	3-4-2017	Amend(T)	4-1-2017
309-035-0340	3-4-2017	Suspend	4-1-2017	309-040-0445	3-4-2017	Amend(T)	4-1-2017
309-035-0350	3-4-2017	Suspend	4-1-2017	309-040-0450	3-4-2017	Amend(T)	4-1-2017
309-035-0360	3-4-2017	Suspend	4-1-2017	309-040-0455	3-4-2017	Amend(T)	4-1-2017
309-035-0370	3-4-2017	Suspend	4-1-2017	325-005-0015	3-1-2017	Amend	4-1-2017

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330-063-0015	12-21-2016	Amend	2-1-2017	331-915-0040	1-6-2017	Amend	2-1-2017
330-063-0020	12-21-2016	Amend	2-1-2017	331-915-0045	1-6-2017	Repeal	2-1-2017
330-063-0025	12-21-2016	Amend	2-1-2017	331-915-0050	1-6-2017	Amend	2-1-2017
330-070-0010	1-1-2017	Amend	2-1-2017	331-915-0055	1-6-2017	Amend	2-1-2017
330-070-0013	1-1-2017	Amend	2-1-2017	331-915-0060	1-6-2017	Amend	2-1-2017
330-070-0014	1-1-2017	Amend	2-1-2017	331-915-0065	1-6-2017	Amend	2-1-2017
330-070-0022	1-1-2017	Amend	2-1-2017	331-915-0070	1-6-2017	Amend	2-1-2017
330-070-0024	1-1-2017	Amend	2-1-2017	331-915-0075	1-6-2017	Amend	2-1-2017
330-070-0025	1-1-2017	Amend	2-1-2017	331-915-0080	1-6-2017	Amend	2-1-2017
330-070-0026	1-1-2017	Amend	2-1-2017	331-915-0085	1-6-2017	Amend	2-1-2017
330-070-0027	1-1-2017	Amend	2-1-2017	333-004-0000	1-10-2017	Amend	2-1-2017
330-070-0029	1-1-2017	Amend	2-1-2017	333-004-0010	1-10-2017	Amend	2-1-2017
330-070-0060	1-1-2017	Amend	2-1-2017	333-004-0020	1-10-2017	Amend	2-1-2017
330-070-0073	1-1-2017	Amend	2-1-2017	333-004-0030	1-10-2017	Amend	2-1-2017
330-092-0015	12-21-2016	Amend	2-1-2017	333-004-0040	1-10-2017	Amend	2-1-2017
330-110-0042	1-25-2017	Amend(T)	3-1-2017	333-004-0050	1-10-2017	Amend	2-1-2017
330-160-0015	12-21-2016	Amend	2-1-2017	333-004-0060	1-10-2017	Amend	2-1-2017
330-160-0030	12-21-2016	Amend	2-1-2017	333-004-0070	1-10-2017	Amend	2-1-2017
330-160-0035	12-21-2016	Amend	2-1-2017	333-004-0080	1-10-2017	Amend	2-1-2017
330-160-0080	12-21-2016	Adopt	2-1-2017	333-004-0110	1-10-2017	Amend	2-1-2017
330-160-0090	12-21-2016	Adopt	2-1-2017	333-004-0120	1-10-2017	Amend	2-1-2017
330-220-0000	1-25-2017	Amend	3-1-2017	333-004-0130	1-10-2017	Amend	2-1-2017
330-220-0010	1-25-2017	Amend	3-1-2017	333-004-0140	1-10-2017	Amend	2-1-2017
330-220-0020	1-25-2017	Amend	3-1-2017	333-004-0150	1-10-2017	Amend	2-1-2017
330-220-0030	1-25-2017	Amend	3-1-2017	333-004-0160	1-10-2017	Amend	2-1-2017
330-220-0040	1-25-2017	Amend	3-1-2017	333-007-0010	11-28-2016	Amend	1-1-2017
330-220-0050	1-25-2017	Amend	3-1-2017	333-007-0010(T)	11-28-2016	Repeal	1-1-2017
330-220-0070	1-25-2017	Amend	3-1-2017	333-007-0090	11-28-2016	Amend	1-1-2017
330-220-0080	1-25-2017	Amend	3-1-2017	333-007-0090	12-2-2016	Amend(T)	1-1-2017
330-220-0090	1-25-2017	Amend	3-1-2017	333-007-0090	12-15-2016	Amend(T)	1-1-2017
330-220-0100	1-25-2017	Amend	3-1-2017	333-007-0100	11-28-2016	Amend	1-1-2017
330-220-0150	1-25-2017	Amend	3-1-2017	333-007-0100(T)	11-28-2016	Repeal	1-1-2017
331-910-0000	1-6-2017	Amend	2-1-2017	333-007-0200	11-28-2016	Amend	1-1-2017
331-910-0005	1-6-2017	Amend	2-1-2017	333-007-0210	11-28-2016	Amend	1-1-2017
331-910-0010	1-6-2017	Amend	2-1-2017	333-007-0220	11-28-2016	Amend	1-1-2017
331-910-0015	1-6-2017	Amend	2-1-2017	333-007-0300	11-28-2016	Amend	1-1-2017
331-910-0025	1-6-2017	Amend	2-1-2017	333-007-0310	12-2-2016	Amend(T)	1-1-2017
331-910-0030	1-6-2017	Amend	2-1-2017	333-007-0315	12-2-2016	Amend(T)	1-1-2017
331-910-0035	1-6-2017	Amend	2-1-2017	333-007-0320	12-2-2016	Amend(T)	1-1-2017
331-910-0040	1-6-2017	Amend	2-1-2017	333-007-0320	12-15-2016	Amend(T)	1-1-2017
331-910-0045	1-6-2017	Amend	2-1-2017	333-007-0350	12-2-2016	Amend(T)	1-1-2017
331-910-0050	1-6-2017	Amend	2-1-2017	333-007-0350	12-15-2016	Amend(T)	1-1-2017
331-910-0055	1-6-2017	Amend	2-1-2017	333-007-0360	12-2-2016	Amend(T)	1-1-2017
331-910-0060	1-6-2017	Amend	2-1-2017	333-007-0360	12-15-2016	Amend(T)	1-1-2017
331-910-0070	1-6-2017	Amend	2-1-2017	333-007-0410	12-2-2016	Amend(T)	1-1-2017
331-910-0075	1-6-2017	Amend	2-1-2017	333-007-0430	12-2-2016	Amend(T)	1-1-2017
331-910-0080	1-6-2017	Amend	2-1-2017	333-007-0440	12-2-2016	Amend(T)	1-1-2017
331-910-0085	1-6-2017	Amend	2-1-2017	333-007-0440	12-15-2016	Amend(T)	1-1-2017
331-915-0000	1-6-2017	Amend	2-1-2017	333-007-0450	12-2-2016	Amend(T)	1-1-2017
331-915-0005	1-6-2017	Amend	2-1-2017	333-007-0480	12-2-2016	Amend(T)	1-1-2017
331-915-0007	1-6-2017	Adopt	2-1-2017	333-007-0490	12-2-2016	Suspend	1-1-2017
331-915-0015	1-6-2017	Amend	2-1-2017	333-007-2000	3-2-2017	Adopt(T)	4-1-2017
331-915-0020	1-6-2017	Amend	2-1-2017	333-008-0010	11-28-2016	Amend	1-1-2017
331-915-0025	1-6-2017	Amend	2-1-2017	333-008-0023	11-28-2016	Amend	1-1-2017
331-915-0030	1-6-2017	Amend	2-1-2017	333-008-0040	11-28-2016	Amend	1-1-2017

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333-008-1110	11-28-2016	Amend	1-1-2017	333-046-0070	12-22-2016	Adopt	2-1-2017
333-008-1190	11-28-2016	Repeal	1-1-2017	333-046-0080	12-22-2016	Adopt	2-1-2017
333-008-1200	11-28-2016	Amend	1-1-2017	333-046-0090	12-22-2016	Adopt	2-1-2017
333-008-1200	12-31-2016	Amend(T)	2-1-2017	333-046-0100	12-22-2016	Adopt	2-1-2017
333-008-1200(T)	11-28-2016	Repeal	1-1-2017	333-046-0110	12-22-2016	Adopt	2-1-2017
333-008-1225	11-28-2016	Repeal	1-1-2017	333-046-0120	12-22-2016	Adopt	2-1-2017
333-008-1230	11-28-2016	Amend	1-1-2017	333-046-0130	12-22-2016	Adopt	2-1-2017
333-008-1230	12-31-2016	Amend(T)	2-1-2017	333-064-0100	12-2-2016	Amend(T)	1-1-2017
333-008-1230(T)	11-28-2016	Repeal	1-1-2017	333-064-0100	12-15-2016	Amend(T)	1-1-2017
333-008-1255	11-28-2016	Adopt	1-1-2017	333-064-0110	12-2-2016	Amend(T)	1-1-2017
333-008-1500	11-28-2016	Amend	1-1-2017	333-064-0110	12-15-2016	Amend(T)	1-1-2017
333-008-1500(T)	11-28-2016	Repeal	1-1-2017	333-068-0005	1-1-2017	Repeal	1-1-2017
333-008-1505	11-28-2016	Amend	1-1-2017	333-068-0010	1-1-2017	Repeal	1-1-2017
333-008-1505(T)	11-28-2016	Repeal	1-1-2017	333-068-0015	1-1-2017	Repeal	1-1-2017
333-008-1620	11-28-2016	Amend	1-1-2017	333-068-0020	1-1-2017	Repeal	1-1-2017
333-008-1730	11-28-2016	Amend	1-1-2017	333-068-0025	1-1-2017	Repeal	1-1-2017
333-008-1740	11-28-2016	Amend	1-1-2017	333-068-0030	1-1-2017	Repeal	1-1-2017
333-008-1740(T)	11-28-2016	Repeal	1-1-2017	333-068-0035	1-1-2017	Repeal	1-1-2017
333-008-1760	11-28-2016	Amend	1-1-2017	333-068-0040	1-1-2017	Repeal	1-1-2017
333-008-1770	11-28-2016	Amend	1-1-2017	333-068-0045	1-1-2017	Repeal	1-1-2017
333-008-1820	11-28-2016	Amend	1-1-2017	333-068-0050	1-1-2017	Repeal	1-1-2017
333-008-2080	11-28-2016	Amend	1-1-2017	333-068-0055	1-1-2017	Repeal	1-1-2017
333-008-2120	11-28-2016	Amend	1-1-2017	333-068-0060	1-1-2017	Repeal	1-1-2017
333-008-2130	11-28-2016	Repeal	1-1-2017	333-068-0065	1-1-2017	Repeal	1-1-2017
333-008-2190	11-28-2016	Amend	1-1-2017	333-069-0005	1-1-2017	Repeal	1-1-2017
333-008-9900	11-28-2016	Amend	1-1-2017	333-069-0010	1-1-2017	Repeal	1-1-2017
333-008-9910	12-31-2016	Adopt(T)	2-1-2017	333-069-0015	1-1-2017	Repeal	1-1-2017
333-010-0405	12-12-2016	Amend	1-1-2017	333-069-0020	1-1-2017	Repeal	1-1-2017
333-010-0415	12-12-2016	Amend	1-1-2017	333-069-0030	1-1-2017	Repeal	1-1-2017
333-010-0435	12-12-2016	Amend	1-1-2017	333-069-0040	1-1-2017	Repeal	1-1-2017
333-016-2035	12-1-2016	Adopt	1-1-2017	333-069-0050	1-1-2017	Repeal	1-1-2017
333-016-2040	12-1-2016	Adopt	1-1-2017	333-069-0060	1-1-2017	Repeal	1-1-2017
333-016-2040	2-1-2017	Amend	3-1-2017	333-069-0070	1-1-2017	Repeal	1-1-2017
333-016-2050	12-1-2016	Adopt	1-1-2017	333-069-0080	1-1-2017	Repeal	1-1-2017
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333-016-2060	2-1-2017	Amend	3-1-2017	333-069-0090	1-1-2017	Repeal	1-1-2017
333-016-2070	12-1-2016	Adopt	1-1-2017	333-069-0100	1-1-2017	Adopt	1-1-2017
333-016-2070	2-1-2017	Amend	3-1-2017	333-069-0120	1-1-2017	Adopt	1-1-2017
333-016-2080	2-1-2017	Adopt	3-1-2017	333-070-0075	1-1-2017	Repeal	1-1-2017
333-016-2090	12-1-2016	Adopt	1-1-2017	333-070-0080	1-1-2017	Repeal	1-1-2017
333-023-0805	1-10-2017	Amend	2-1-2017	333-070-0085	1-1-2017	Repeal	1-1-2017
333-023-0820	1-10-2017	Amend	2-1-2017	333-070-0090	1-1-2017	Repeal	1-1-2017
333-023-0830	1-10-2017	Adopt	2-1-2017	333-070-0095	1-1-2017	Repeal	1-1-2017
333-028-0220	7-1-2017	Amend	2-1-2017	333-070-0100	1-1-2017	Repeal	1-1-2017
333-028-0230	7-1-2017	Amend	2-1-2017	333-070-0105	1-1-2017	Repeal	1-1-2017
333-028-0234	7-1-2017	Adopt	2-1-2017	333-070-0110	1-1-2017	Repeal	1-1-2017
333-028-0238	7-1-2017	Adopt	2-1-2017	333-070-0115	1-1-2017	Am. & Ren.	1-1-2017
333-028-0240	7-1-2017	Amend	2-1-2017	333-070-0120	1-1-2017	Am. & Ren.	1-1-2017
333-028-0250	7-1-2017	Amend	2-1-2017	333-070-0125	1-1-2017	Repeal	1-1-2017
333-028-0320	11-18-2016	Amend	1-1-2017	333-070-0130	1-1-2017	Repeal	1-1-2017
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333-046-0020	12-22-2016	Adopt	2-1-2017	333-070-0140	1-1-2017	Repeal	1-1-2017
333-046-0030	12-22-2016	Adopt	2-1-2017	333-070-0145	1-1-2017	Am. & Ren.	1-1-2017
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333-102-0005	2-1-2017	Amend	3-1-2017	340-220-0050	1-19-2017	Amend	3-1-2017
333-102-0015	2-1-2017	Amend	3-1-2017	345-021-0010	3-8-2017	Amend	4-1-2017
333-102-0101	2-1-2017	Amend	3-1-2017	345-022-0000	3-8-2017	Amend	4-1-2017
333-106-0325	2-1-2017	Amend	3-1-2017	345-022-0060	3-8-2017	Amend	4-1-2017
333-125-0040	2-1-2017	Amend	3-1-2017	350-010-0000	4-1-2017	Adopt	4-1-2017
333-125-0120	2-1-2017	Amend	3-1-2017	350-010-0010	4-1-2017	Adopt	4-1-2017
333-510-0130	1-23-2017	Amend	3-1-2017	350-010-0020	4-1-2017	Adopt	4-1-2017
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333-535-0086	12-23-2016	Amend	2-1-2017	350-010-0040	4-1-2017	Adopt	4-1-2017
339-010-0005	2-15-2017	Amend	3-1-2017	350-010-0050	4-1-2017	Adopt	4-1-2017
339-010-0005	3-13-2017	Amend	4-1-2017	350-081-0017	4-1-2017	Repeal	4-1-2017
339-010-0020	1-27-2017	Amend	3-1-2017	407-007-0210	12-1-2016	Amend	1-1-2017
339-010-0020	2-16-2017	Amend	4-1-2017	407-007-0210	3-15-2017	Amend(T)	4-1-2017
340-090-0005	1-19-2017	Amend	3-1-2017	407-007-0210(T)	12-1-2016	Repeal	1-1-2017
340-090-0010	1-19-2017	Amend	3-1-2017	407-007-0250	12-1-2016	Amend	1-1-2017
340-090-0015	1-19-2017	Amend	3-1-2017	407-007-0250	3-15-2017	Amend(T)	4-1-2017
340-090-0020	1-19-2017	Amend	3-1-2017	407-007-0250(T)	12-1-2016	Repeal	1-1-2017
340-090-0030	1-19-2017	Amend	3-1-2017	407-007-0279	12-1-2016	Amend	1-1-2017
340-090-0040	1-19-2017	Amend	3-1-2017	407-007-0279	3-15-2017	Amend(T)	4-1-2017
340-090-0041	1-19-2017	Adopt	3-1-2017	407-007-0279(T)	12-1-2016	Repeal	1-1-2017
340-090-0042	1-19-2017	Adopt	3-1-2017	407-007-0290	12-1-2016	Amend	1-1-2017
340-090-0045	1-19-2017	Repeal	3-1-2017	407-007-0290(T)	12-1-2016	Repeal	1-1-2017
340-090-0050	1-19-2017	Amend	3-1-2017	407-007-0320	12-1-2016	Amend	1-1-2017
340-090-0060	1-19-2017	Amend	3-1-2017	407-007-0320	3-15-2017	Amend(T)	4-1-2017
340-090-0068	1-19-2017	Adopt	3-1-2017	407-007-0320(T)	12-1-2016	Repeal	1-1-2017
340-090-0070	1-19-2017	Amend	3-1-2017	407-007-0330	12-1-2016	Amend	1-1-2017
340-090-0080	1-19-2017	Amend	3-1-2017	407-007-0330	3-15-2017	Amend(T)	4-1-2017
340-090-0090	1-19-2017	Amend	3-1-2017	407-007-0330(T)	12-1-2016	Repeal	1-1-2017
340-090-0100	1-19-2017	Amend	3-1-2017	407-007-0335	1-24-2017	Amend(T)	3-1-2017
340-090-0110	1-19-2017	Amend	3-1-2017	407-045-0800	12-1-2016	Amend	1-1-2017
340-090-0120	1-19-2017	Amend	3-1-2017	407-045-0810	12-1-2016	Repeal	1-1-2017
340-090-0130	1-19-2017	Amend	3-1-2017	407-045-0820	12-1-2016	Amend	1-1-2017
340-090-0140	1-19-2017	Amend	3-1-2017	407-045-0825	12-1-2016	Adopt	1-1-2017
340-090-0150	1-19-2017	Amend	3-1-2017	407-045-0830	12-1-2016	Repeal	1-1-2017
340-090-0180	1-19-2017	Amend	3-1-2017	407-045-0850	12-1-2016	Repeal	1-1-2017
340-090-0190	1-19-2017	Amend	3-1-2017	407-045-0860	12-1-2016	Repeal	1-1-2017
340-090-0310	1-19-2017	Amend	3-1-2017	407-045-0870	12-1-2016	Repeal	1-1-2017
340-090-0320	1-19-2017	Amend	3-1-2017	407-045-0880	12-1-2016	Repeal	1-1-2017
340-090-0330	1-19-2017	Amend	3-1-2017	407-045-0885	12-1-2016	Adopt	1-1-2017
340-090-0340	1-19-2017	Amend	3-1-2017	407-045-0886	12-1-2016	Adopt	1-1-2017
340-090-0350	1-19-2017	Amend	3-1-2017	407-045-0887	12-1-2016	Adopt	1-1-2017
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340-090-0380	1-19-2017	Amend	3-1-2017	407-045-0900	12-1-2016	Repeal	1-1-2017
340-090-0390	1-19-2017	Amend	3-1-2017	407-045-0910	12-1-2016	Amend	1-1-2017
340-090-0400	1-19-2017	Amend	3-1-2017	407-045-0920	12-1-2016	Repeal	1-1-2017
340-090-0410	1-19-2017	Amend	3-1-2017	407-045-0930	12-1-2016	Repeal	1-1-2017
340-090-0420	1-19-2017	Amend	3-1-2017	407-045-0940	12-1-2016	Amend	1-1-2017
340-090-0430	1-19-2017	Amend	3-1-2017	407-045-0940	1-13-2017	Amend(T)	2-1-2017
340-090-0510	1-19-2017	Amend	3-1-2017	407-045-0950	12-1-2016	Amend	1-1-2017
340-143-0005	3-1-2017	Amend	3-1-2017	407-045-0955	12-1-2016	Adopt	1-1-2017
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340-143-0050	3-1-2017	Amend	3-1-2017	407-045-0970	12-1-2016	Repeal	1-1-2017
340-200-0040	1-19-2017	Amend	3-1-2017	407-045-0980	12-1-2016	Repeal	1-1-2017

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409-055-0040	12-22-2016	Amend	2-1-2017	410-138-0060	1-13-2017	Amend(T)	2-1-2017
409-055-0045	12-22-2016	Amend	2-1-2017	410-138-0060	2-10-2017	Amend(T)	3-1-2017
409-055-0050	12-22-2016	Amend	2-1-2017	410-138-0080	1-1-2017	Amend	2-1-2017
409-060-0110	12-22-2016	Amend	2-1-2017	410-138-0080	1-13-2017	Amend(T)	2-1-2017
409-060-0120	12-22-2016	Amend	2-1-2017	410-138-0080	2-10-2017	Amend(T)	3-1-2017
409-060-0140	12-22-2016	Amend	2-1-2017	410-138-0390	1-1-2017	Amend	2-1-2017
409-060-0150	12-22-2016	Amend	2-1-2017	410-138-0390	1-13-2017	Amend(T)	2-1-2017
409-110-0025	11-29-2016	Renumber	1-1-2017	410-138-0390	2-10-2017	Amend(T)	3-1-2017
409-110-0030	11-29-2016	Renumber	1-1-2017	410-138-0420	1-1-2017	Amend	2-1-2017
409-110-0035	11-29-2016	Renumber	1-1-2017	410-138-0420	1-13-2017	Amend(T)	2-1-2017
409-110-0040	11-29-2016	Renumber	1-1-2017	410-138-0420	2-10-2017	Amend(T)	3-1-2017
409-110-0045	11-29-2016	Renumber	1-1-2017	410-141-0520	12-1-2016	Amend	1-1-2017
410-120-0000	1-1-2017	Amend	2-1-2017	410-141-0520	1-1-2017	Amend(T)	2-1-2017
410-120-0000(T)	1-1-2017	Repeal	2-1-2017	410-141-0520	3-1-2017	Amend	4-1-2017
410-120-0006	3-1-2017	Amend(T)	4-1-2017	410-141-0520(T)	12-1-2016	Repeal	1-1-2017
410-120-1230	1-1-2017	Amend	2-1-2017	410-141-0520(T)	3-1-2017	Repeal	4-1-2017
410-121-0030	12-1-2016	Amend	1-1-2017	410-141-3015	1-1-2017	Amend	2-1-2017
410-121-0030	1-1-2017	Amend(T)	2-1-2017	410-141-3015	1-13-2017	Amend	2-1-2017
410-121-0030(T)	12-1-2016	Repeal	1-1-2017	410-141-3015(T)	1-1-2017	Repeal	2-1-2017
410-121-0040	12-1-2016	Amend	1-1-2017	410-141-3015(T)	1-13-2017	Repeal	2-1-2017
410-121-0040	1-1-2017	Amend(T)	2-1-2017	410-141-3070	1-1-2017	Amend	2-1-2017
410-121-0040	2-21-2017	Amend(T)	4-1-2017	410-141-3145	1-1-2017	Amend	2-1-2017
410-121-0040(T)	12-1-2016	Repeal	1-1-2017	410-141-3145	1-13-2017	Amend	2-1-2017
410-123-1220	1-1-2017	Amend(T)	2-1-2017	410-141-3145(T)	1-1-2017	Repeal	2-1-2017
410-123-1260	1-1-2017	Amend(T)	2-1-2017	410-141-3145(T)	1-13-2017	Repeal	2-1-2017
410-125-0085	1-1-2017	Amend	2-1-2017	410-141-3160	1-1-2017	Amend(T)	2-1-2017
410-125-0085(T)	1-1-2017	Repeal	2-1-2017	410-141-3260	1-1-2017	Amend	2-1-2017
410-125-0360	1-1-2017	Amend	2-1-2017	410-141-3260	1-13-2017	Amend	2-1-2017
410-125-0360(T)	1-1-2017	Repeal	2-1-2017	410-141-3260(T)	1-1-2017	Repeal	2-1-2017
410-129-0020	1-1-2017	Amend(T)	1-1-2017	410-141-3260(T)	1-13-2017	Repeal	2-1-2017
410-129-0040	1-1-2017	Amend(T)	1-1-2017	410-141-3300	1-1-2017	Amend	2-1-2017
410-129-0070	1-1-2017	Amend(T)	1-1-2017	410-141-3300	1-1-2017	Amend	2-1-2017
410-129-0190	1-1-2017	Suspend	1-1-2017	410-141-3300	1-13-2017	Amend	2-1-2017
410-131-0040	1-1-2017	Amend(T)	1-1-2017	410-141-3300(T)	1-1-2017	Repeal	2-1-2017
410-131-0080	1-1-2017	Amend(T)	1-1-2017	410-141-3300(T)	1-13-2017	Repeal	2-1-2017
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410-131-0120	1-1-2017	Amend(T)	1-1-2017	410-141-3435	12-1-2016	Amend	1-1-2017
410-138-0000	1-1-2017	Amend	2-1-2017	410-165-0000	2-2-2017	Amend(T)	3-1-2017
410-138-0000	1-13-2017	Amend(T)	2-1-2017	410-165-0020	2-2-2017	Amend(T)	3-1-2017
410-138-0000	2-10-2017	Amend(T)	3-1-2017	410-165-0060	2-2-2017	Amend(T)	3-1-2017
410-138-0005	1-1-2017	Amend	2-1-2017	410-165-0080	2-2-2017	Amend(T)	3-1-2017
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410-138-0005	2-10-2017	Amend(T)	3-1-2017	410-170-0110(T)	11-29-2016	Repeal	1-1-2017
410-138-0007	1-1-2017	Amend	2-1-2017	410-200-0315	3-1-2017	Amend(T)	4-1-2017
410-138-0007	1-13-2017	Amend(T)	2-1-2017	411-004-0040	12-28-2016	Amend	2-1-2017
410-138-0007	2-10-2017	Amend(T)	3-1-2017	411-019-0000	3-1-2017	Adopt	4-1-2017
410-138-0009	1-1-2017	Amend	2-1-2017	411-019-0010	3-1-2017	Adopt	4-1-2017
410-138-0009	1-13-2017	Amend(T)	2-1-2017	411-019-0020	3-1-2017	Adopt	4-1-2017
410-138-0009	2-10-2017	Amend(T)	3-1-2017	411-019-0030	3-1-2017	Adopt	4-1-2017
410-138-0020	1-1-2017	Amend	2-1-2017	411-027-0170	12-28-2016	Amend	1-1-2017
410-138-0020	1-13-2017	Amend(T)	2-1-2017	411-030-0033	12-28-2016	Amend	2-1-2017
410-138-0020	2-10-2017	Amend(T)	3-1-2017	411-030-0068	12-28-2016	Amend	2-1-2017
410-138-0040	1-1-2017	Amend	2-1-2017	411-030-0070	12-28-2016	Amend	2-1-2017
410-138-0040	1-13-2017	Amend(T)	2-1-2017	411-300-0110	2-28-2017	Amend	4-1-2017

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411-305-0010	1-1-2017	Am. & Ren.	2-1-2017	413-010-0535	12-1-2016	Amend	1-1-2017
411-305-0020	1-1-2017	Am. & Ren.	2-1-2017	413-015-0100	12-1-2016	Amend	1-1-2017
411-305-0023	1-1-2017	Am. & Ren.	2-1-2017	413-015-0100(T)	12-1-2016	Repeal	1-1-2017
411-305-0025	1-1-2017	Am. & Ren.	2-1-2017	413-015-0115	12-1-2016	Amend	1-1-2017
411-305-0027	1-1-2017	Repeal	2-1-2017	413-015-0115	2-7-2017	Amend(T)	3-1-2017
411-305-0030	1-1-2017	Am. & Ren.	2-1-2017	413-015-0125	12-1-2016	Amend	1-1-2017
411-305-0050	1-1-2017	Repeal	2-1-2017	413-015-0125(T)	12-1-2016	Repeal	1-1-2017
411-305-0080	1-1-2017	Am. & Ren.	2-1-2017	413-015-0205	12-1-2016	Amend	1-1-2017
411-305-0090	1-1-2017	Am. & Ren.	2-1-2017	413-015-0205	2-7-2017	Amend(T)	3-1-2017
411-305-0105	1-1-2017	Repeal	2-1-2017	413-015-0205(T)	12-1-2016	Repeal	1-1-2017
411-305-0110	1-1-2017	Repeal	2-1-2017	413-015-0212	12-1-2016	Amend	1-1-2017
411-305-0115	1-1-2017	Repeal	2-1-2017	413-015-0212(T)	12-1-2016	Repeal	1-1-2017
411-305-0120	1-1-2017	Am. & Ren.	2-1-2017	413-015-0215	2-7-2017	Amend(T)	3-1-2017
411-305-0140	1-1-2017	Am. & Ren.	2-1-2017	413-015-0300	12-1-2016	Amend	1-1-2017
411-305-0160	1-1-2017	Repeal	2-1-2017	413-015-0300(T)	12-1-2016	Repeal	1-1-2017
411-305-0170	1-1-2017	Repeal	2-1-2017	413-015-0409	12-1-2016	Amend	1-1-2017
411-305-0180	1-1-2017	Repeal	2-1-2017	413-015-0409(T)	12-1-2016	Repeal	1-1-2017
411-317-0000	2-28-2017	Amend	4-1-2017	413-015-0415	2-7-2017	Amend(T)	3-1-2017
411-323-0050	12-16-2016	Amend(T)	2-1-2017	413-015-0420	12-1-2016	Amend	1-1-2017
411-323-0050(T)	12-16-2016	Suspend	2-1-2017	413-015-0420(T)	12-1-2016	Repeal	1-1-2017
411-325-0020	2-28-2017	Amend	4-1-2017	413-015-0432	2-7-2017	Amend(T)	3-1-2017
411-328-0560	2-28-2017	Amend	4-1-2017	413-015-0440	12-1-2016	Amend	1-1-2017
411-345-0020	2-28-2017	Amend	4-1-2017	413-015-0440(T)	12-1-2016	Repeal	1-1-2017
411-360-0020	2-28-2017	Amend	4-1-2017	413-015-0445	12-1-2016	Amend	1-1-2017
411-360-0140	2-15-2017	Amend(T)	3-1-2017	413-015-0445(T)	12-1-2016	Repeal	1-1-2017
411-375-0010	2-28-2017	Amend	4-1-2017	413-015-0450	12-1-2016	Amend	1-1-2017
411-375-0020	2-28-2017	Amend	4-1-2017	413-015-0450(T)	12-1-2016	Repeal	1-1-2017
411-375-0035	2-28-2017	Amend	4-1-2017	413-015-0455	2-7-2017	Amend(T)	3-1-2017
411-375-0040	2-28-2017	Amend	4-1-2017	413-015-0620	12-1-2016	Adopt	1-1-2017
411-375-0050	2-28-2017	Amend	4-1-2017	413-015-0620(T)	12-1-2016	Repeal	1-1-2017
411-375-0055	2-28-2017	Amend	4-1-2017	413-015-0625	12-1-2016	Adopt	1-1-2017
411-375-0070	2-28-2017	Amend	4-1-2017	413-015-0625(T)	12-1-2016	Repeal	1-1-2017
411-380-0020	2-28-2017	Amend	4-1-2017	413-015-0630	12-1-2016	Adopt	1-1-2017
411-380-0030	2-28-2017	Amend	4-1-2017	413-015-0630(T)	12-1-2016	Repeal	1-1-2017
411-380-0060	2-28-2017	Amend	4-1-2017	413-015-0640	12-1-2016	Adopt	1-1-2017
411-380-0090	2-28-2017	Amend	4-1-2017	413-015-0640(T)	12-1-2016	Repeal	1-1-2017
411-415-0020	2-28-2017	Amend	4-1-2017	413-015-1000	12-1-2016	Amend	1-1-2017
411-415-0060	2-28-2017	Amend	4-1-2017	413-015-1000(T)	12-1-2016	Repeal	1-1-2017
411-415-0070	2-28-2017	Amend	4-1-2017	413-015-9030	12-1-2016	Amend	1-1-2017
411-435-0020	2-28-2017	Amend	4-1-2017	413-015-9030(T)	12-1-2016	Repeal	1-1-2017
411-435-0050	2-28-2017	Amend	4-1-2017	413-015-9040	12-1-2016	Amend	1-1-2017
411-435-0060	2-28-2017	Amend	4-1-2017	413-015-9040(T)	12-1-2016	Repeal	1-1-2017
411-435-0070	2-28-2017	Amend	4-1-2017	413-017-0000	2-7-2017	Adopt(T)	3-1-2017
411-450-0020	2-28-2017	Amend	4-1-2017	413-017-0010	2-7-2017	Adopt(T)	3-1-2017
411-450-0030	2-28-2017	Amend	4-1-2017	413-017-0020	2-7-2017	Adopt(T)	3-1-2017
411-450-0060	2-28-2017	Amend	4-1-2017	413-017-0030	2-7-2017	Adopt(T)	3-1-2017
411-450-0070	2-28-2017	Amend	4-1-2017	413-017-0040	2-7-2017	Adopt(T)	3-1-2017
413-010-0000	12-1-2016	Amend	1-1-2017	413-020-0000	2-7-2017	Amend(T)	3-1-2017
413-010-0035	1-1-2017	Amend	2-1-2017	413-020-0010	2-7-2017	Amend(T)	3-1-2017
413-010-0035(T)	1-1-2017	Repeal	2-1-2017	413-020-0020	2-7-2017	Amend(T)	3-1-2017
413-010-0500	12-1-2016	Amend	1-1-2017	413-020-0050	2-7-2017	Amend(T)	3-1-2017
413-010-0501	12-1-2016	Repeal	1-1-2017	413-020-0075	2-7-2017	Amend(T)	3-1-2017
413-010-0502	12-1-2016	Amend	1-1-2017	413-020-0090	2-7-2017	Amend(T)	3-1-2017
413-010-0505	12-1-2016	Amend	1-1-2017	413-030-0000	2-7-2017	Amend(T)	3-1-2017
413-010-0510	12-1-2016	Amend	1-1-2017	413-030-0009	2-7-2017	Amend(T)	3-1-2017

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413-030-0300	1-1-2017	Repeal	2-1-2017	413-080-0059	12-1-2016	Amend	1-1-2017
413-030-0310	1-1-2017	Repeal	2-1-2017	413-080-0059(T)	12-1-2016	Repeal	1-1-2017
413-030-0320	1-1-2017	Repeal	2-1-2017	413-080-0062	1-1-2017	Amend	2-1-2017
413-030-0445	2-7-2017	Amend(T)	3-1-2017	413-080-0062(T)	1-1-2017	Repeal	2-1-2017
413-030-0460	2-7-2017	Amend(T)	3-1-2017	413-080-0070	12-1-2016	Adopt	1-1-2017
413-040-0000	2-7-2017	Amend(T)	3-1-2017	413-080-0070(T)	12-1-2016	Repeal	1-1-2017
413-040-0010	2-7-2017	Amend(T)	3-1-2017	413-090-0000	12-1-2016	Amend	1-1-2017
413-040-0155	2-7-2017	Amend(T)	3-1-2017	413-090-0000(T)	12-1-2016	Repeal	1-1-2017
413-040-0159	2-7-2017	Amend(T)	3-1-2017	413-090-0055	12-1-2016	Amend	1-1-2017
413-040-0310	2-7-2017	Amend(T)	3-1-2017	413-090-0055(T)	12-1-2016	Repeal	1-1-2017
413-040-0325	2-7-2017	Amend(T)	3-1-2017	413-090-0065	12-1-2016	Amend	1-1-2017
413-070-0000	2-7-2017	Amend(T)	3-1-2017	413-090-0065(T)	12-1-2016	Repeal	1-1-2017
413-070-0010	2-7-2017	Amend(T)	3-1-2017	413-090-0070	12-1-2016	Amend	1-1-2017
413-070-0072	2-7-2017	Amend(T)	3-1-2017	413-090-0070(T)	12-1-2016	Repeal	1-1-2017
413-070-0100	2-7-2017	Suspend	3-1-2017	413-090-0075	12-1-2016	Amend	1-1-2017
413-070-0130	2-7-2017	Suspend	3-1-2017	413-090-0075(T)	12-1-2016	Repeal	1-1-2017
413-070-0140	2-7-2017	Suspend	3-1-2017	413-090-0080	12-1-2016	Amend	1-1-2017
413-070-0150	2-7-2017	Suspend	3-1-2017	413-090-0080(T)	12-1-2016	Repeal	1-1-2017
413-070-0160	2-7-2017	Suspend	3-1-2017	413-090-0090	12-1-2016	Amend	1-1-2017
413-070-0170	2-7-2017	Suspend	3-1-2017	413-090-0090(T)	12-1-2016	Repeal	1-1-2017
413-070-0180	2-7-2017	Suspend	3-1-2017	413-100-0020	2-7-2017	Amend(T)	3-1-2017
413-070-0190	2-7-2017	Suspend	3-1-2017	413-100-0240	2-7-2017	Amend(T)	3-1-2017
413-070-0200	2-7-2017	Suspend	3-1-2017	413-110-0000	2-7-2017	Amend(T)	3-1-2017
413-070-0210	2-7-2017	Suspend	3-1-2017	413-110-0280	1-1-2017	Repeal	2-1-2017
413-070-0220	2-7-2017	Suspend	3-1-2017	413-110-0282	1-1-2017	Repeal	2-1-2017
413-070-0230	2-7-2017	Suspend	3-1-2017	413-110-0286	1-1-2017	Repeal	2-1-2017
413-070-0240	2-7-2017	Suspend	3-1-2017	413-110-0288	1-1-2017	Repeal	2-1-2017
413-070-0250	2-7-2017	Suspend	3-1-2017	413-110-0290	1-1-2017	Repeal	2-1-2017
413-070-0260	2-7-2017	Suspend	3-1-2017	413-110-0291	1-1-2017	Repeal	2-1-2017
413-070-0512	2-7-2017	Amend(T)	3-1-2017	413-110-0292	1-1-2017	Repeal	2-1-2017
413-070-0516	1-1-2017	Amend	2-1-2017	413-110-0293	1-1-2017	Repeal	2-1-2017
413-070-0516	2-7-2017	Amend(T)	3-1-2017	413-110-0295	1-1-2017	Repeal	2-1-2017
413-070-0518	1-1-2017	Amend	2-1-2017	413-110-0297	1-1-2017	Repeal	2-1-2017
413-070-0518	1-19-2017	Amend	3-1-2017	413-110-0299	1-1-2017	Repeal	2-1-2017
413-070-0519	2-7-2017	Amend(T)	3-1-2017	413-110-0300	2-7-2017	Amend(T)	3-1-2017
413-070-0625	2-7-2017	Amend(T)	3-1-2017	413-115-0000	2-7-2017	Adopt(T)	3-1-2017
413-070-0670	1-1-2017	Amend	2-1-2017	413-115-0010	2-7-2017	Adopt(T)	3-1-2017
413-070-0900	1-1-2017	Amend	2-1-2017	413-115-0020	2-7-2017	Adopt(T)	3-1-2017
413-070-0900(T)	1-1-2017	Repeal	2-1-2017	413-115-0030	2-7-2017	Adopt(T)	3-1-2017
413-070-0917	1-1-2017	Amend	2-1-2017	413-115-0040	2-7-2017	Adopt(T)	3-1-2017
413-070-0917(T)	1-1-2017	Repeal	2-1-2017	413-115-0050	2-7-2017	Adopt(T)	3-1-2017
413-070-0959	1-1-2017	Amend	2-1-2017	413-115-0060	2-7-2017	Adopt(T)	3-1-2017
413-070-0959(T)	1-1-2017	Repeal	2-1-2017	413-115-0070	2-7-2017	Adopt(T)	3-1-2017
413-070-1020	1-1-2017	Amend	2-1-2017	413-115-0080	2-7-2017	Adopt(T)	3-1-2017
413-070-1050	2-7-2017	Amend(T)	3-1-2017	413-115-0090	2-7-2017	Adopt(T)	3-1-2017
413-080-0050	12-1-2016	Amend	1-1-2017	413-115-0100	2-7-2017	Adopt(T)	3-1-2017
413-080-0050	2-7-2017	Amend(T)	3-1-2017	413-115-0110	2-7-2017	Adopt(T)	3-1-2017
413-080-0050(T)	12-1-2016	Repeal	1-1-2017	413-115-0120	2-7-2017	Adopt(T)	3-1-2017
413-080-0051	12-1-2016	Adopt	1-1-2017	413-115-0130	2-7-2017	Adopt(T)	3-1-2017
413-080-0051(T)	12-1-2016	Repeal	1-1-2017	413-115-0140	2-7-2017	Adopt(T)	3-1-2017
413-080-0052	12-1-2016	Amend	1-1-2017	413-115-0150	2-7-2017	Adopt(T)	3-1-2017
413-080-0052(T)	12-1-2016	Repeal	1-1-2017	413-120-0000	2-7-2017	Amend(T)	3-1-2017
413-080-0053	1-1-2017	Amend	2-1-2017	413-120-0020	2-7-2017	Amend(T)	3-1-2017
413-080-0053(T)	1-1-2017	Repeal	2-1-2017	413-120-0021	2-7-2017	Amend(T)	3-1-2017
413-080-0054	12-1-2016	Amend	1-1-2017	413-120-0025	2-7-2017	Amend(T)	3-1-2017

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413-120-0060	2-7-2017	Amend(T)	3-1-2017	413-215-0101(T)	12-1-2016	Repeal	1-1-2017
413-120-0165	2-7-2017	Amend(T)	3-1-2017	413-215-0106	12-1-2016	Amend	1-1-2017
413-120-0175	2-7-2017	Amend(T)	3-1-2017	413-215-0106(T)	12-1-2016	Repeal	1-1-2017
413-120-0625	2-7-2017	Amend(T)	3-1-2017	413-215-0111	12-1-2016	Amend	1-1-2017
413-120-0730	2-7-2017	Amend(T)	3-1-2017	413-215-0111(T)	12-1-2016	Repeal	1-1-2017
413-120-0750	2-7-2017	Amend(T)	3-1-2017	413-215-0116	12-1-2016	Amend	1-1-2017
413-120-0760	2-7-2017	Amend(T)	3-1-2017	413-215-0116(T)	12-1-2016	Repeal	1-1-2017
413-120-0870	2-7-2017	Amend(T)	3-1-2017	413-215-0121	12-1-2016	Amend	1-1-2017
413-120-0880	2-7-2017	Amend(T)	3-1-2017	413-215-0121(T)	12-1-2016	Repeal	1-1-2017
413-120-0925	2-7-2017	Amend(T)	3-1-2017	413-215-0126	12-1-2016	Amend	1-1-2017
413-120-0950	2-7-2017	Amend(T)	3-1-2017	413-215-0126(T)	12-1-2016	Repeal	1-1-2017
413-200-0260	2-7-2017	Amend(T)	3-1-2017	413-215-0131	12-1-2016	Amend	1-1-2017
413-200-0306	2-7-2017	Amend(T)	3-1-2017	413-215-0131(T)	12-1-2016	Repeal	1-1-2017
413-215-0000	12-1-2016	Adopt	1-1-2017	413-215-0201	12-1-2016	Amend	1-1-2017
413-215-0000	2-7-2017	Amend(T)	3-1-2017	413-215-0201(T)	12-1-2016	Repeal	1-1-2017
413-215-0000(T)	12-1-2016	Repeal	1-1-2017	413-215-0206	12-1-2016	Repeal	1-1-2017
413-215-0001	12-1-2016	Amend	1-1-2017	413-215-0211	12-1-2016	Amend	1-1-2017
413-215-0001(T)	12-1-2016	Repeal	1-1-2017	413-215-0211(T)	12-1-2016	Repeal	1-1-2017
413-215-0006	12-1-2016	Repeal	1-1-2017	413-215-0216	12-1-2016	Amend	1-1-2017
413-215-0011	12-1-2016	Amend	1-1-2017	413-215-0216(T)	12-1-2016	Repeal	1-1-2017
413-215-0011(T)	12-1-2016	Repeal	1-1-2017	413-215-0218	12-1-2016	Adopt	1-1-2017
413-215-0016	12-1-2016	Amend	1-1-2017	413-215-0221	12-1-2016	Amend	1-1-2017
413-215-0016(T)	12-1-2016	Repeal	1-1-2017	413-215-0221(T)	12-1-2016	Repeal	1-1-2017
413-215-0021	12-1-2016	Amend	1-1-2017	413-215-0226	12-1-2016	Amend	1-1-2017
413-215-0021(T)	12-1-2016	Repeal	1-1-2017	413-215-0226(T)	12-1-2016	Repeal	1-1-2017
413-215-0026	12-1-2016	Amend	1-1-2017	413-215-0231	12-1-2016	Amend	1-1-2017
413-215-0026(T)	12-1-2016	Repeal	1-1-2017	413-215-0231(T)	12-1-2016	Repeal	1-1-2017
413-215-0031	12-1-2016	Amend	1-1-2017	413-215-0236	12-1-2016	Amend	1-1-2017
413-215-0031(T)	12-1-2016	Repeal	1-1-2017	413-215-0236(T)	12-1-2016	Repeal	1-1-2017
413-215-0036	12-1-2016	Amend	1-1-2017	413-215-0241	12-1-2016	Amend	1-1-2017
413-215-0036(T)	12-1-2016	Repeal	1-1-2017	413-215-0241(T)	12-1-2016	Repeal	1-1-2017
413-215-0041	12-1-2016	Amend	1-1-2017	413-215-0246	12-1-2016	Amend	1-1-2017
413-215-0041(T)	12-1-2016	Repeal	1-1-2017	413-215-0246(T)	12-1-2016	Repeal	1-1-2017
413-215-0046	12-1-2016	Amend	1-1-2017	413-215-0251	12-1-2016	Amend	1-1-2017
413-215-0046(T)	12-1-2016	Repeal	1-1-2017	413-215-0251(T)	12-1-2016	Repeal	1-1-2017
413-215-0051	12-1-2016	Amend	1-1-2017	413-215-0256	12-1-2016	Repeal	1-1-2017
413-215-0051(T)	12-1-2016	Repeal	1-1-2017	413-215-0261	12-1-2016	Amend	1-1-2017
413-215-0056	12-1-2016	Amend	1-1-2017	413-215-0261(T)	12-1-2016	Repeal	1-1-2017
413-215-0056(T)	12-1-2016	Repeal	1-1-2017	413-215-0266	12-1-2016	Amend	1-1-2017
413-215-0061	12-1-2016	Amend	1-1-2017	413-215-0266(T)	12-1-2016	Repeal	1-1-2017
413-215-0061(T)	12-1-2016	Repeal	1-1-2017	413-215-0271	12-1-2016	Amend	1-1-2017
413-215-0066	12-1-2016	Amend	1-1-2017	413-215-0271(T)	12-1-2016	Repeal	1-1-2017
413-215-0066(T)	12-1-2016	Repeal	1-1-2017	413-215-0276	12-1-2016	Amend	1-1-2017
413-215-0071	12-1-2016	Amend	1-1-2017	413-215-0276(T)	12-1-2016	Repeal	1-1-2017
413-215-0071(T)	12-1-2016	Repeal	1-1-2017	413-215-0301	12-1-2016	Amend	1-1-2017
413-215-0076	12-1-2016	Amend	1-1-2017	413-215-0301(T)	12-1-2016	Repeal	1-1-2017
413-215-0076(T)	12-1-2016	Repeal	1-1-2017	413-215-0306	12-1-2016	Repeal	1-1-2017
413-215-0081	12-1-2016	Amend	1-1-2017	413-215-0311	12-1-2016	Amend	1-1-2017
413-215-0081	2-7-2017	Amend(T)	3-1-2017	413-215-0311(T)	12-1-2016	Repeal	1-1-2017
413-215-0081(T)	12-1-2016	Repeal	1-1-2017	413-215-0313	12-1-2016	Amend	1-1-2017
413-215-0086	12-1-2016	Amend	1-1-2017	413-215-0313(T)	12-1-2016	Repeal	1-1-2017
413-215-0086(T)	12-1-2016	Repeal	1-1-2017	413-215-0316	12-1-2016	Amend	1-1-2017
413-215-0091	12-1-2016	Amend	1-1-2017	413-215-0316(T)	12-1-2016	Repeal	1-1-2017
413-215-0091(T)	12-1-2016	Repeal	1-1-2017	413-215-0318	12-1-2016	Adopt	1-1-2017
413-215-0096	12-1-2016	Repeal	1-1-2017	413-215-0321	12-1-2016	Amend	1-1-2017

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413-215-0326	12-1-2016	Amend	1-1-2017	413-215-0456(T)	12-1-2016	Repeal	1-1-2017
413-215-0326(T)	12-1-2016	Repeal	1-1-2017	413-215-0461	12-1-2016	Amend	1-1-2017
413-215-0331	12-1-2016	Amend	1-1-2017	413-215-0461(T)	12-1-2016	Repeal	1-1-2017
413-215-0331(T)	12-1-2016	Repeal	1-1-2017	413-215-0466	12-1-2016	Amend	1-1-2017
413-215-0336	12-1-2016	Amend	1-1-2017	413-215-0466(T)	12-1-2016	Repeal	1-1-2017
413-215-0336(T)	12-1-2016	Repeal	1-1-2017	413-215-0471	12-1-2016	Amend	1-1-2017
413-215-0341	12-1-2016	Amend	1-1-2017	413-215-0471(T)	12-1-2016	Repeal	1-1-2017
413-215-0341(T)	12-1-2016	Repeal	1-1-2017	413-215-0476	12-1-2016	Amend	1-1-2017
413-215-0346	12-1-2016	Repeal	1-1-2017	413-215-0476(T)	12-1-2016	Repeal	1-1-2017
413-215-0349	12-1-2016	Amend	1-1-2017	413-215-0481	12-1-2016	Amend	1-1-2017
413-215-0349(T)	12-1-2016	Repeal	1-1-2017	413-215-0481(T)	12-1-2016	Repeal	1-1-2017
413-215-0351	12-1-2016	Amend	1-1-2017	413-215-0501	12-1-2016	Amend	1-1-2017
413-215-0351(T)	12-1-2016	Repeal	1-1-2017	413-215-0501(T)	12-1-2016	Repeal	1-1-2017
413-215-0356	12-1-2016	Amend	1-1-2017	413-215-0506	12-1-2016	Repeal	1-1-2017
413-215-0356(T)	12-1-2016	Repeal	1-1-2017	413-215-0511	12-1-2016	Amend	1-1-2017
413-215-0361	12-1-2016	Amend	1-1-2017	413-215-0511(T)	12-1-2016	Repeal	1-1-2017
413-215-0361(T)	12-1-2016	Repeal	1-1-2017	413-215-0516	12-1-2016	Amend	1-1-2017
413-215-0366	12-1-2016	Amend	1-1-2017	413-215-0516(T)	12-1-2016	Repeal	1-1-2017
413-215-0366(T)	12-1-2016	Repeal	1-1-2017	413-215-0521	12-1-2016	Amend	1-1-2017
413-215-0371	12-1-2016	Amend	1-1-2017	413-215-0521(T)	12-1-2016	Repeal	1-1-2017
413-215-0371(T)	12-1-2016	Repeal	1-1-2017	413-215-0526	12-1-2016	Amend	1-1-2017
413-215-0376	12-1-2016	Amend	1-1-2017	413-215-0526(T)	12-1-2016	Repeal	1-1-2017
413-215-0376(T)	12-1-2016	Repeal	1-1-2017	413-215-0531	12-1-2016	Amend	1-1-2017
413-215-0381	12-1-2016	Amend	1-1-2017	413-215-0531(T)	12-1-2016	Repeal	1-1-2017
413-215-0381(T)	12-1-2016	Repeal	1-1-2017	413-215-0536	12-1-2016	Amend	1-1-2017
413-215-0386	12-1-2016	Amend	1-1-2017	413-215-0536(T)	12-1-2016	Repeal	1-1-2017
413-215-0386(T)	12-1-2016	Repeal	1-1-2017	413-215-0541	12-1-2016	Amend	1-1-2017
413-215-0391	12-1-2016	Amend	1-1-2017	413-215-0541(T)	12-1-2016	Repeal	1-1-2017
413-215-0391(T)	12-1-2016	Repeal	1-1-2017	413-215-0546	12-1-2016	Amend	1-1-2017
413-215-0396	12-1-2016	Amend	1-1-2017	413-215-0546(T)	12-1-2016	Repeal	1-1-2017
413-215-0396(T)	12-1-2016	Repeal	1-1-2017	413-215-0551	12-1-2016	Amend	1-1-2017
413-215-0401	12-1-2016	Amend	1-1-2017	413-215-0551(T)	12-1-2016	Repeal	1-1-2017
413-215-0401(T)	12-1-2016	Repeal	1-1-2017	413-215-0554	12-1-2016	Amend	1-1-2017
413-215-0406	12-1-2016	Repeal	1-1-2017	413-215-0554(T)	12-1-2016	Repeal	1-1-2017
413-215-0411	12-1-2016	Amend	1-1-2017	413-215-0556	12-1-2016	Amend	1-1-2017
413-215-0411(T)	12-1-2016	Repeal	1-1-2017	413-215-0556(T)	12-1-2016	Repeal	1-1-2017
413-215-0416	12-1-2016	Amend	1-1-2017	413-215-0561	12-1-2016	Amend	1-1-2017
413-215-0416(T)	12-1-2016	Repeal	1-1-2017	413-215-0561(T)	12-1-2016	Repeal	1-1-2017
413-215-0421	12-1-2016	Amend	1-1-2017	413-215-0566	12-1-2016	Amend	1-1-2017
413-215-0421(T)	12-1-2016	Repeal	1-1-2017	413-215-0566(T)	12-1-2016	Repeal	1-1-2017
413-215-0426	12-1-2016	Amend	1-1-2017	413-215-0571	12-1-2016	Amend	1-1-2017
413-215-0426	2-7-2017	Amend(T)	3-1-2017	413-215-0571(T)	12-1-2016	Repeal	1-1-2017
413-215-0426(T)	12-1-2016	Repeal	1-1-2017	413-215-0576	12-1-2016	Amend	1-1-2017
413-215-0431	12-1-2016	Amend	1-1-2017	413-215-0576(T)	12-1-2016	Repeal	1-1-2017
413-215-0431	2-7-2017	Amend(T)	3-1-2017	413-215-0581	12-1-2016	Amend	1-1-2017
413-215-0431(T)	12-1-2016	Repeal	1-1-2017	413-215-0581(T)	12-1-2016	Repeal	1-1-2017
413-215-0436	12-1-2016	Amend	1-1-2017	413-215-0586	12-1-2016	Amend	1-1-2017
413-215-0436(T)	12-1-2016	Repeal	1-1-2017	413-215-0586(T)	12-1-2016	Repeal	1-1-2017
413-215-0441	12-1-2016	Amend	1-1-2017	413-215-0601	12-1-2016	Amend	1-1-2017
413-215-0441	2-7-2017	Amend(T)	3-1-2017	413-215-0601(T)	12-1-2016	Repeal	1-1-2017
413-215-0441(T)	12-1-2016	Repeal	1-1-2017	413-215-0606	12-1-2016	Repeal	1-1-2017
413-215-0446	12-1-2016	Amend	1-1-2017	413-215-0611	12-1-2016	Amend	1-1-2017
413-215-0446(T)	12-1-2016	Repeal	1-1-2017	413-215-0611(T)	12-1-2016	Repeal	1-1-2017
413-215-0451	12-1-2016	Amend	1-1-2017	413-215-0616	12-1-2016	Amend	1-1-2017
413-215-0451(T)	12-1-2016	Repeal	1-1-2017	413-215-0616(T)	12-1-2016	Repeal	1-1-2017

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413-215-0991(T)	12-1-2016	Repeal	1-1-2017	415-055-0035	12-5-2016	Amend	1-1-2017
413-215-0992	12-1-2016	Amend	1-1-2017	415-060-0010	12-14-2016	Repeal	1-1-2017
413-215-0992(T)	12-1-2016	Repeal	1-1-2017	415-060-0020	12-14-2016	Repeal	1-1-2017
413-215-0996	12-1-2016	Amend	1-1-2017	415-060-0030	12-14-2016	Repeal	1-1-2017
413-215-0996(T)	12-1-2016	Repeal	1-1-2017	415-060-0040	12-14-2016	Repeal	1-1-2017
413-215-1001	12-1-2016	Amend	1-1-2017	415-060-0050	12-14-2016	Repeal	1-1-2017
413-215-1001(T)	12-1-2016	Repeal	1-1-2017	416-070-0010	1-31-2017	Amend	3-1-2017
413-215-1006	12-1-2016	Amend	1-1-2017	416-070-0020	1-31-2017	Amend	3-1-2017
413-215-1006(T)	12-1-2016	Repeal	1-1-2017	416-070-0040	1-31-2017	Amend	3-1-2017
413-215-1011	12-1-2016	Amend	1-1-2017	416-070-0050	1-31-2017	Amend	3-1-2017
413-215-1011(T)	12-1-2016	Repeal	1-1-2017	416-070-0060	1-31-2017	Amend	3-1-2017
413-215-1016	12-1-2016	Amend	1-1-2017	416-335-0090	12-8-2016	Amend	1-1-2017
413-215-1016(T)	12-1-2016	Repeal	1-1-2017	436-009-0004	1-1-2017	Amend(T)	2-1-2017
413-215-1021	12-1-2016	Amend	1-1-2017	436-009-0004	4-1-2017	Amend	4-1-2017
413-215-1021(T)	12-1-2016	Repeal	1-1-2017	436-009-0010	1-1-2017	Amend(T)	2-1-2017
413-215-1026	12-1-2016	Amend	1-1-2017	436-009-0010	4-1-2017	Amend	4-1-2017
413-215-1026(T)	12-1-2016	Repeal	1-1-2017	436-009-0020	4-1-2017	Amend	4-1-2017
413-215-1031	12-1-2016	Amend	1-1-2017	436-009-0023	4-1-2017	Amend	4-1-2017
413-215-1031(T)	12-1-2016	Repeal	1-1-2017	436-009-0025	4-1-2017	Amend	4-1-2017
414-061-0020	12-19-2016	Amend	2-1-2017	436-009-0030	4-1-2017	Amend	4-1-2017
414-061-0040	12-19-2016	Amend	2-1-2017	436-009-0040	1-1-2017	Amend(T)	2-1-2017
414-061-0050	12-19-2016	Amend	2-1-2017	436-009-0040	4-1-2017	Amend	4-1-2017
414-061-0080	1-26-2017	Amend(T)	3-1-2017	436-009-0060	4-1-2017	Amend	4-1-2017
414-061-0100	12-19-2016	Amend	2-1-2017	436-009-0110	4-1-2017	Amend	4-1-2017
414-061-0110	12-19-2016	Amend	2-1-2017	436-010-0210	4-1-2017	Amend	4-1-2017
414-061-0120	12-19-2016	Amend	2-1-2017	436-050-0001	1-1-2017	Repeal	1-1-2017
414-180-0005	1-31-2017	Amend	3-1-2017	436-050-0002	1-1-2017	Repeal	1-1-2017
414-180-0010	1-31-2017	Amend	3-1-2017	436-050-0003	1-1-2017	Amend	1-1-2017
414-180-0015	1-31-2017	Amend	3-1-2017	436-050-0005	1-1-2017	Amend	1-1-2017
414-180-0020	1-31-2017	Amend	3-1-2017	436-050-0006	1-1-2017	Repeal	1-1-2017
414-180-0025	1-31-2017	Amend	3-1-2017	436-050-0008	1-1-2017	Amend	1-1-2017
414-180-0055	1-31-2017	Amend	3-1-2017	436-050-0015	1-1-2017	Amend	1-1-2017
415-012-0000	12-14-2016	Amend	1-1-2017	436-050-0025	1-1-2017	Amend	1-1-2017
415-012-0010	12-14-2016	Amend	1-1-2017	436-050-0040	1-1-2017	Amend	1-1-2017
415-012-0010	2-2-2017	Amend(T)	3-1-2017	436-050-0045	1-1-2017	Amend	1-1-2017
415-012-0020	12-14-2016	Amend	1-1-2017	436-050-0050	1-1-2017	Amend	1-1-2017
415-012-0020	2-2-2017	Amend(T)	3-1-2017	436-050-0055	1-1-2017	Amend	1-1-2017
415-012-0030	12-14-2016	Amend	1-1-2017	436-050-0060	1-1-2017	Repeal	1-1-2017
415-012-0030	2-2-2017	Amend(T)	3-1-2017	436-050-0110	1-1-2017	Amend	1-1-2017
415-012-0035	12-14-2016	Amend	1-1-2017	436-050-0120	1-1-2017	Amend	1-1-2017
415-012-0035	2-2-2017	Amend(T)	3-1-2017	436-050-0150	1-1-2017	Amend	1-1-2017
415-012-0040	12-14-2016	Amend	1-1-2017	436-050-0160	1-1-2017	Amend	1-1-2017
415-012-0050	12-14-2016	Amend	1-1-2017	436-050-0165	1-1-2017	Amend	1-1-2017
415-012-0055	12-14-2016	Amend	1-1-2017	436-050-0170	1-1-2017	Amend	1-1-2017
415-012-0060	12-14-2016	Amend	1-1-2017	436-050-0175	1-1-2017	Amend	1-1-2017
415-012-0060	2-2-2017	Amend(T)	3-1-2017	436-050-0180	1-1-2017	Amend	1-1-2017
415-012-0065	12-14-2016	Amend	1-1-2017	436-050-0180	1-1-2017	Amend	2-1-2017
415-012-0067	12-14-2016	Amend	1-1-2017	436-050-0185	1-1-2017	Amend	1-1-2017
415-012-0075	2-2-2017	Adopt(T)	3-1-2017	436-050-0190	1-1-2017	Amend	1-1-2017
415-012-0090	12-14-2016	Amend	1-1-2017	436-050-0195	1-1-2017	Amend	1-1-2017
415-020-0000	12-14-2016	Amend	1-1-2017	436-050-0200	1-1-2017	Amend	1-1-2017
415-020-0005	12-14-2016	Amend	1-1-2017	436-050-0205	1-1-2017	Amend	1-1-2017
415-020-0010	12-14-2016	Amend	1-1-2017	436-050-0210	1-1-2017	Amend	1-1-2017
415-020-0090	12-14-2016	Amend	1-1-2017	436-050-0220	1-1-2017	Amend	1-1-2017
415-055-0000	12-5-2016	Amend	1-1-2017	436-050-0230	1-1-2017	Amend	1-1-2017

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436-050-0270	1-1-2017	Amend	1-1-2017	436-105-0005	1-1-2017	Amend	1-1-2017
436-050-0280	1-1-2017	Amend	1-1-2017	436-105-0006	1-1-2017	Amend	1-1-2017
436-050-0290	1-1-2017	Amend	1-1-2017	436-105-0008	1-1-2017	Amend	1-1-2017
436-050-0300	1-1-2017	Amend	1-1-2017	436-105-0500	1-1-2017	Amend	1-1-2017
436-050-0340	1-1-2017	Amend	1-1-2017	436-105-0510	1-1-2017	Amend	1-1-2017
436-050-0400	1-1-2017	Amend	1-1-2017	436-105-0511	1-1-2017	Amend	1-1-2017
436-050-0410	1-1-2017	Amend	1-1-2017	436-105-0512	1-1-2017	Amend	1-1-2017
436-050-0420	1-1-2017	Amend	1-1-2017	436-105-0520	1-1-2017	Amend	1-1-2017
436-050-0440	1-1-2017	Amend	1-1-2017	436-105-0530	1-1-2017	Amend	1-1-2017
436-050-0450	1-1-2017	Amend	1-1-2017	436-105-0540	1-1-2017	Amend	1-1-2017
436-050-0455	1-1-2017	Amend	1-1-2017	436-105-0550	1-1-2017	Amend	1-1-2017
436-050-0460	1-1-2017	Amend	1-1-2017	436-105-0560	1-1-2017	Amend	1-1-2017
436-050-0470	1-1-2017	Amend	1-1-2017	436-110-0001	1-1-2017	Repeal	1-1-2017
436-050-0480	1-1-2017	Amend	1-1-2017	436-110-0002	1-1-2017	Repeal	1-1-2017
436-060-0001	1-1-2017	Repeal	1-1-2017	436-110-0003	1-1-2017	Amend	1-1-2017
436-060-0002	1-1-2017	Repeal	1-1-2017	436-110-0005	1-1-2017	Amend	1-1-2017
436-060-0003	1-1-2017	Amend	1-1-2017	436-110-0006	1-1-2017	Amend	1-1-2017
436-060-0005	1-1-2017	Amend	1-1-2017	436-110-0007	1-1-2017	Amend	1-1-2017
436-060-0006	1-1-2017	Repeal	1-1-2017	436-110-0150	1-1-2017	Amend	1-1-2017
436-060-0008	1-1-2017	Amend	1-1-2017	436-110-0240	1-1-2017	Amend	1-1-2017
436-060-0009	1-1-2017	Amend	1-1-2017	436-110-0290	1-1-2017	Amend	1-1-2017
436-060-0010	1-1-2017	Amend	1-1-2017	436-110-0310	1-1-2017	Amend	1-1-2017
436-060-0011	1-1-2017	Adopt	1-1-2017	436-110-0320	1-1-2017	Amend	1-1-2017
436-060-0015	1-1-2017	Amend	1-1-2017	436-110-0325	1-1-2017	Amend	1-1-2017
436-060-0017	1-1-2017	Amend	1-1-2017	436-110-0330	1-1-2017	Amend	1-1-2017
436-060-0018	1-1-2017	Amend	1-1-2017	436-110-0335	1-1-2017	Amend	1-1-2017
436-060-0019	1-1-2017	Amend	1-1-2017	436-110-0336	1-1-2017	Amend	1-1-2017
436-060-0020	1-1-2017	Amend	1-1-2017	436-110-0337	1-1-2017	Amend	1-1-2017
436-060-0025	1-1-2017	Amend	1-1-2017	436-110-0345	1-1-2017	Amend	1-1-2017
436-060-0030	1-1-2017	Amend	1-1-2017	436-110-0346	1-1-2017	Amend	1-1-2017
436-060-0035	1-1-2017	Amend	1-1-2017	436-110-0347	1-1-2017	Amend	1-1-2017
436-060-0040	1-1-2017	Amend	1-1-2017	436-110-0350	1-1-2017	Amend	1-1-2017
436-060-0045	1-1-2017	Amend	1-1-2017	436-110-0351	1-1-2017	Amend	1-1-2017
436-060-0055	1-1-2017	Amend	1-1-2017	436-110-0352	1-1-2017	Amend	1-1-2017
436-060-0060	1-1-2017	Amend	1-1-2017	436-110-0850	1-1-2017	Amend	1-1-2017
436-060-0095	1-1-2017	Amend	1-1-2017	436-110-0900	1-1-2017	Amend	1-1-2017
436-060-0105	1-1-2017	Amend	1-1-2017	436-120-0001	1-1-2017	Repeal	1-1-2017
436-060-0135	1-1-2017	Amend	1-1-2017	436-120-0002	1-1-2017	Repeal	1-1-2017
436-060-0137	1-1-2017	Amend	1-1-2017	436-120-0003	1-1-2017	Amend	1-1-2017
436-060-0140	1-1-2017	Amend	1-1-2017	436-120-0005	1-1-2017	Amend	1-1-2017
436-060-0147	1-1-2017	Amend	1-1-2017	436-120-0006	1-1-2017	Repeal	1-1-2017
436-060-0150	1-1-2017	Amend	1-1-2017	436-120-0007	1-1-2017	Am. & Ren.	1-1-2017
436-060-0153	1-1-2017	Amend	1-1-2017	436-120-0008	1-1-2017	Amend	1-1-2017
436-060-0155	1-1-2017	Amend	1-1-2017	436-120-0012	1-1-2017	Amend	1-1-2017
436-060-0160	1-1-2017	Amend	1-1-2017	436-120-0014	1-1-2017	Repeal	1-1-2017
436-060-0170	1-1-2017	Amend	1-1-2017	436-120-0016	1-1-2017	Repeal	1-1-2017
436-060-0180	1-1-2017	Amend	1-1-2017	436-120-0017	1-1-2017	Repeal	1-1-2017
436-060-0190	1-1-2017	Amend	1-1-2017	436-120-0018	1-1-2017	Repeal	1-1-2017
436-060-0195	1-1-2017	Amend	1-1-2017	436-120-0115	1-1-2017	Amend	1-1-2017
436-060-0200	1-1-2017	Amend	1-1-2017	436-120-0125	1-1-2017	Repeal	1-1-2017
436-060-0400	1-1-2017	Amend	1-1-2017	436-120-0135	1-1-2017	Repeal	1-1-2017
436-060-0500	1-1-2017	Amend	1-1-2017	436-120-0145	1-1-2017	Amend	1-1-2017
436-060-0510	1-1-2017	Amend	1-1-2017	436-120-0155	1-1-2017	Am. & Ren.	1-1-2017
436-105-0001	1-1-2017	Repeal	1-1-2017	436-120-0165	1-1-2017	Amend	1-1-2017
436-105-0002	1-1-2017	Repeal	1-1-2017	436-120-0175	1-1-2017	Amend	1-1-2017

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436-120-0400	1-1-2017	Am. & Ren.	1-1-2017	441-049-1011	2-1-2017	Amend	3-1-2017
436-120-0410	1-1-2017	Amend	1-1-2017	441-049-1051	2-1-2017	Amend	3-1-2017
436-120-0430	1-1-2017	Am. & Ren.	1-1-2017	441-065-0270	2-1-2017	Repeal	3-1-2017
436-120-0443	1-1-2017	Amend	1-1-2017	441-175-0002	2-1-2017	Amend	3-1-2017
436-120-0445	1-1-2017	Amend	1-1-2017	441-175-0020	2-1-2017	Amend	3-1-2017
436-120-0448	1-1-2017	Am. & Ren.	1-1-2017	441-175-0030	2-1-2017	Amend	3-1-2017
436-120-0449	1-1-2017	Repeal	1-1-2017	441-500-0020	2-1-2017	Amend	3-1-2017
436-120-0451	1-1-2017	Am. & Ren.	1-1-2017	441-505-3030	2-1-2017	Amend	3-1-2017
436-120-0455	1-1-2017	Am. & Ren.	1-1-2017	441-505-3090	2-1-2017	Amend	3-1-2017
436-120-0500	1-1-2017	Amend	1-1-2017	441-730-0026	4-1-2017	Amend	3-1-2017
436-120-0510	1-1-2017	Amend	1-1-2017	441-860-0020	4-1-2017	Amend	3-1-2017
436-120-0520	1-1-2017	Amend	1-1-2017	441-860-0025	4-1-2017	Amend	3-1-2017
436-120-0530	1-1-2017	Amend	1-1-2017	441-860-0050	4-1-2017	Amend	3-1-2017
436-120-0700	1-1-2017	Amend	1-1-2017	441-880-0310	1-1-2017	Amend	2-1-2017
436-120-0710	1-1-2017	Amend	1-1-2017	441-885-0010	4-1-2017	Amend	3-1-2017
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436-120-0800	1-1-2017	Amend	1-1-2017	459-017-0060	1-1-2017	Amend	1-1-2017
436-120-0810	1-1-2017	Amend	1-1-2017	459-080-0500	1-27-2017	Amend	3-1-2017
436-120-0820	1-1-2017	Amend	1-1-2017	461-025-0310	1-1-2017	Amend	2-1-2017
436-120-0830	1-1-2017	Repeal	1-1-2017	461-110-0370	1-1-2017	Amend	2-1-2017
436-120-0840	1-1-2017	Amend	1-1-2017	461-115-0020	1-1-2017	Amend	2-1-2017
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436-120-0915	1-1-2017	Amend	1-1-2017	461-120-0345	1-1-2017	Amend	1-1-2017
437-002-0170	1-1-2018	Amend	3-1-2017	461-130-0305	1-1-2017	Amend	2-1-2017
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437-004-6401	1-1-2018	Adopt	3-1-2017	461-130-0310(T)	1-1-2017	Repeal	2-1-2017
437-004-6501	1-1-2018	Adopt	3-1-2017	461-130-0315	1-1-2017	Amend	2-1-2017
437-004-6502	1-1-2018	Adopt	3-1-2017	461-130-0315(T)	1-1-2017	Repeal	2-1-2017
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440-007-0210	1-6-2017	Repeal	2-1-2017	461-135-0520(T)	1-1-2017	Repeal	2-1-2017
440-007-0230	1-6-2017	Repeal	2-1-2017	461-135-0730	1-1-2017	Amend	1-1-2017
440-007-0240	1-6-2017	Repeal	2-1-2017	461-135-0780	1-1-2017	Amend	1-1-2017
440-007-0250	1-6-2017	Repeal	2-1-2017	461-135-0820	1-1-2017	Amend	1-1-2017
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440-007-0290	1-6-2017	Repeal	2-1-2017	461-145-0035	1-1-2017	Adopt	1-1-2017
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461-170-0101	3-10-2017	Amend(T)	4-1-2017	584-225-0065	2-1-2017	Adopt	3-1-2017
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461-190-0360	1-1-2017	Amend	2-1-2017	584-420-0020	2-1-2017	Amend	3-1-2017
461-190-0500	1-1-2017	Amend	2-1-2017	584-420-0310	2-1-2017	Amend	3-1-2017
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573-050-0040	12-6-2016	Amend	1-1-2017	584-420-0460	2-1-2017	Amend	3-1-2017
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581-002-1805	2-1-2017	Adopt	3-1-2017	585-010-0310	2-7-2017	Amend	3-1-2017
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603-075-0130	1-17-2017	Amend	3-1-2017	635-023-0125	1-1-2017	Amend	2-1-2017
603-075-0140	1-17-2017	Amend	3-1-2017	635-023-0125	3-1-2017	Amend(T)	4-1-2017
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635-004-0330	1-1-2017	Amend	1-1-2017	635-023-0140	1-1-2017	Amend	2-1-2017
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635-016-0080	1-1-2017	Amend	2-1-2017	635-044-0015	1-24-2017	Repeal	3-1-2017
635-016-0090	1-1-2017	Amend	2-1-2017	635-044-0020	1-24-2017	Repeal	3-1-2017
635-017-0080	1-1-2017	Amend	2-1-2017	635-044-0025	1-24-2017	Repeal	3-1-2017
635-017-0090	1-1-2017	Amend	2-1-2017	635-044-0030	1-24-2017	Repeal	3-1-2017
635-017-0090	1-25-2017	Amend	3-1-2017	635-044-0035	1-24-2017	Repeal	3-1-2017
635-017-0095	1-1-2017	Amend	2-1-2017	635-044-0035	1-24-2017	Repeal	3-1-2017
635-018-0080	1-1-2017	Amend	2-1-2017	635-044-0040	1-24-2017	Repeal	3-1-2017

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635-044-0050	1-24-2017	Repeal	3-1-2017	635-500-6740	12-15-2016	Amend	1-1-2017
635-044-0051	1-24-2017	Repeal	3-1-2017	635-500-6740	1-25-2017	Amend	3-1-2017
635-044-0060	1-24-2017	Repeal	3-1-2017	635-500-6745	12-15-2016	Amend	1-1-2017
635-044-0075	1-24-2017	Repeal	3-1-2017	635-500-6745	1-25-2017	Amend	3-1-2017
635-044-0080	1-24-2017	Repeal	3-1-2017	635-500-6750	12-15-2016	Amend	1-1-2017
635-044-0120	1-24-2017	Repeal	3-1-2017	635-500-6750	1-25-2017	Amend	3-1-2017
635-044-0125	1-24-2017	Repeal	3-1-2017	660-023-0030	2-10-2017	Amend	3-1-2017
635-044-0130	1-24-2017	Repeal	3-1-2017	660-023-0200	2-10-2017	Amend	3-1-2017
635-044-0132	1-24-2017	Repeal	3-1-2017	660-025-0030	2-28-2017	Amend	4-1-2017
635-044-0400	1-24-2017	Adopt	3-1-2017	660-038-0020	2-28-2017	Amend	4-1-2017
635-044-0410	1-24-2017	Adopt	3-1-2017	660-038-0210	2-28-2017	Adopt	4-1-2017
635-044-0420	1-24-2017	Adopt	3-1-2017	660-039-0000	2-27-2017	Adopt	4-1-2017
635-044-0430	1-24-2017	Adopt	3-1-2017	660-039-0010	2-27-2017	Adopt	4-1-2017
635-044-0440	1-24-2017	Adopt	3-1-2017	660-039-0020	2-27-2017	Adopt	4-1-2017
635-044-0450	1-24-2017	Adopt	3-1-2017	660-039-0030	2-27-2017	Adopt	4-1-2017
635-044-0460	1-24-2017	Adopt	3-1-2017	660-039-0040	2-27-2017	Adopt	4-1-2017
635-044-0470	1-24-2017	Adopt	3-1-2017	660-039-0050	2-27-2017	Adopt	4-1-2017
635-044-0475	1-24-2017	Adopt	3-1-2017	660-039-0060	2-27-2017	Adopt	4-1-2017
635-044-0480	1-24-2017	Adopt	3-1-2017	660-039-0070	2-27-2017	Adopt	4-1-2017
635-044-0490	1-24-2017	Adopt	3-1-2017	660-039-0080	2-27-2017	Adopt	4-1-2017
635-044-0500	1-24-2017	Adopt	3-1-2017	660-039-0090	2-27-2017	Adopt	4-1-2017
635-044-0500	3-9-2017	Amend	4-1-2017	660-039-0100	2-27-2017	Adopt	4-1-2017
635-044-0510	1-24-2017	Adopt	3-1-2017	660-044-0000	3-1-2017	Amend	4-1-2017
635-044-0520	1-24-2017	Adopt	3-1-2017	660-044-0005	3-1-2017	Amend	4-1-2017
635-044-0530	1-24-2017	Adopt	3-1-2017	660-044-0010	3-1-2017	Repeal	4-1-2017
635-044-0540	1-24-2017	Adopt	3-1-2017	660-044-0020	3-1-2017	Amend	4-1-2017
635-044-0550	1-24-2017	Adopt	3-1-2017	660-044-0025	3-1-2017	Amend	4-1-2017
635-044-0560	1-24-2017	Adopt	3-1-2017	660-044-0030	3-1-2017	Amend	4-1-2017
635-044-0570	1-24-2017	Adopt	3-1-2017	660-044-0035	3-1-2017	Amend	4-1-2017
635-044-0580	1-24-2017	Adopt	3-1-2017	660-044-0040	3-1-2017	Amend	4-1-2017
635-044-0590	1-24-2017	Adopt	3-1-2017	660-044-0060	3-1-2017	Amend	4-1-2017
635-045-0002	3-2-2017	Amend	4-1-2017	661-010-0000	1-1-2017	Amend	2-1-2017
635-050-0045	3-9-2017	Amend(T)	4-1-2017	661-010-0005	1-1-2017	Amend	2-1-2017
635-060-0000	3-2-2017	Amend	4-1-2017	661-010-0015	1-1-2017	Amend	2-1-2017
635-065-0625	3-2-2017	Amend	4-1-2017	661-010-0021	1-1-2017	Amend	2-1-2017
635-065-0760	3-2-2017	Amend	4-1-2017	661-010-0025	1-1-2017	Amend	2-1-2017
635-066-0000	3-2-2017	Amend	4-1-2017	661-010-0030	1-1-2017	Amend	2-1-2017
635-066-0010	3-2-2017	Amend	4-1-2017	661-010-0035	1-1-2017	Amend	2-1-2017
635-066-0020	3-2-2017	Amend	4-1-2017	661-010-0050	1-1-2017	Amend	2-1-2017
635-067-0000	3-2-2017	Amend	4-1-2017	661-010-0068	1-1-2017	Amend	2-1-2017
635-068-0000	3-2-2017	Amend	4-1-2017	661-010-0075	1-1-2017	Amend	2-1-2017
635-069-0000	3-2-2017	Amend	4-1-2017	690-210-0320	2-16-2017	Amend	4-1-2017
635-070-0000	3-2-2017	Amend	4-1-2017	690-240-0005	2-16-2017	Amend	4-1-2017
635-071-0000	3-2-2017	Amend	4-1-2017	715-045-0001	1-1-2017	Amend	2-1-2017
635-072-0000	3-2-2017	Amend	4-1-2017	715-045-0007	1-1-2017	Amend	2-1-2017
635-500-6705	1-25-2017	Amend	3-1-2017	715-045-0033	1-1-2017	Amend	2-1-2017
635-500-6715	12-15-2016	Amend	1-1-2017	734-005-0015	12-16-2016	Amend	2-1-2017
635-500-6715	1-25-2017	Amend	3-1-2017	734-010-0285	11-28-2016	Adopt	1-1-2017
635-500-6720	12-15-2016	Amend	1-1-2017	734-010-0290	11-28-2016	Amend	1-1-2017
635-500-6720	1-25-2017	Amend	3-1-2017	734-010-0300	11-28-2016	Amend	1-1-2017
635-500-6725	12-15-2016	Amend	1-1-2017	734-010-0320	11-28-2016	Amend	1-1-2017
635-500-6725	1-25-2017	Amend	3-1-2017	734-010-0330	11-28-2016	Amend	1-1-2017
635-500-6730	12-15-2016	Amend	1-1-2017	734-010-0340	11-28-2016	Amend	1-1-2017
635-500-6730	1-25-2017	Amend	3-1-2017	734-010-0350	11-28-2016	Repeal	1-1-2017
635-500-6735	12-15-2016	Amend	1-1-2017	734-010-0360	11-28-2016	Amend	1-1-2017

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734-050-0105	12-16-2016	Am. & Ren.	2-1-2017	801-030-0005	1-4-2017	Amend	2-1-2017
734-059-0015	11-28-2016	Amend	1-1-2017	801-030-0020	1-4-2017	Amend	2-1-2017
734-059-0200	11-28-2016	Amend	1-1-2017	801-040-0020	1-4-2017	Amend	2-1-2017
734-060-0000	11-28-2016	Amend	1-1-2017	801-040-0030	1-4-2017	Amend	2-1-2017
734-060-0010	11-28-2016	Repeal	1-1-2017	801-040-0050	1-4-2017	Amend	2-1-2017
734-060-0175	11-28-2016	Amend	1-1-2017	801-040-0090	1-4-2017	Repeal	2-1-2017
734-060-0180	11-28-2016	Adopt	1-1-2017	801-050-0020	1-4-2017	Amend	2-1-2017
734-060-0190	11-28-2016	Amend	1-1-2017	801-050-0040	1-4-2017	Amend	2-1-2017
734-065-0010	11-28-2016	Amend	1-1-2017	804-003-0000	2-10-2017	Amend	3-1-2017
734-065-0015	11-28-2016	Amend	1-1-2017	804-022-0025	2-10-2017	Amend	3-1-2017
734-065-0020	11-28-2016	Amend	1-1-2017	804-030-0011	2-10-2017	Amend	3-1-2017
734-065-0025	11-28-2016	Amend	1-1-2017	804-035-0000	2-10-2017	Adopt	3-1-2017
734-065-0035	11-28-2016	Amend	1-1-2017	804-035-0010	2-10-2017	Amend	3-1-2017
734-065-0040	11-28-2016	Amend	1-1-2017	804-035-0020	2-10-2017	Amend	3-1-2017
734-065-0045	11-28-2016	Amend	1-1-2017	804-035-0030	2-10-2017	Amend	3-1-2017
735-001-0100	2-1-2017	Amend	3-1-2017	804-035-0035	2-10-2017	Amend	3-1-2017
735-010-0020	1-24-2017	Amend	3-1-2017	804-035-0040	2-10-2017	Amend	3-1-2017
735-024-0015	11-22-2016	Amend	1-1-2017	804-040-0000	2-10-2017	Amend	3-1-2017
735-024-0025	11-22-2016	Amend	1-1-2017	804-050-0005	2-10-2017	Amend	3-1-2017
735-040-0115	1-24-2017	Amend	3-1-2017	804-050-0010	2-10-2017	Amend	3-1-2017
735-150-0005	2-22-2017	Amend	4-1-2017	804-050-0015	2-10-2017	Amend	3-1-2017
735-150-0005	3-7-2017	Amend	4-1-2017	808-003-0700	12-19-2016	Amend	2-1-2017
736-040-0100	2-2-2017	Adopt	3-1-2017	808-003-0700(T)	12-19-2016	Repeal	2-1-2017
736-040-0110	2-2-2017	Adopt	3-1-2017	811-010-0005	1-6-2017	Amend	2-1-2017
738-124-0020	3-8-2017	Amend(T)	4-1-2017	811-010-0015	1-6-2017	Amend	2-1-2017
738-125-0020	3-8-2017	Amend(T)	4-1-2017	811-010-0025	1-6-2017	Amend	2-1-2017
740-200-0010	2-22-2017	Amend	4-1-2017	811-010-0040	1-6-2017	Amend	2-1-2017
740-200-0010	3-7-2017	Amend	4-1-2017	811-010-0066	1-6-2017	Amend	2-1-2017
740-200-0020	2-22-2017	Amend	4-1-2017	811-010-0071	1-6-2017	Amend	2-1-2017
740-200-0020	3-7-2017	Amend	4-1-2017	811-010-0084	1-6-2017	Amend	2-1-2017
740-200-0040	2-22-2017	Amend	4-1-2017	811-010-0090	1-6-2017	Amend	2-1-2017
740-200-0040	3-7-2017	Amend	4-1-2017	811-010-0093	1-6-2017	Amend	2-1-2017
800-010-0015	1-27-2017	Amend	3-1-2017	811-010-0095	1-6-2017	Amend	2-1-2017
800-010-0035	1-27-2017	Amend	3-1-2017	812-003-0131	1-1-2017	Amend	2-1-2017
800-010-0040	1-27-2017	Amend	3-1-2017	812-003-0171	1-1-2017	Amend	2-1-2017
800-010-0050	1-27-2017	Amend	3-1-2017	812-003-0221	1-1-2017	Amend	2-1-2017
800-015-0010	1-27-2017	Amend	3-1-2017	813-005-0005	12-14-2016	Amend	1-1-2017
800-015-0020	1-27-2017	Amend	3-1-2017	813-005-0005(T)	12-14-2016	Repeal	1-1-2017
800-020-0015	1-27-2017	Amend	3-1-2017	813-005-0025	12-14-2016	Adopt	1-1-2017
800-020-0020	1-27-2017	Amend	3-1-2017	813-005-0025(T)	12-14-2016	Repeal	1-1-2017
800-020-0022	1-27-2017	Amend	3-1-2017	813-006-0005	12-19-2016	Amend	2-1-2017
800-025-0060	1-27-2017	Amend	3-1-2017	813-006-0005(T)	12-19-2016	Repeal	2-1-2017
801-001-0005	1-4-2017	Amend	2-1-2017	813-006-0010	12-19-2016	Amend	2-1-2017
801-001-0035	1-4-2017	Amend	2-1-2017	813-006-0010(T)	12-19-2016	Repeal	2-1-2017
801-005-0010	1-4-2017	Amend	2-1-2017	813-135-0010	3-9-2017	Adopt	4-1-2017
801-010-0060	1-4-2017	Amend	2-1-2017	813-135-0010(T)	3-9-2017	Repeal	4-1-2017
801-010-0065	1-4-2017	Amend	2-1-2017	813-135-0020	3-9-2017	Adopt	4-1-2017
801-010-0080	1-4-2017	Amend	2-1-2017	813-135-0020(T)	3-9-2017	Repeal	4-1-2017
801-010-0110	1-4-2017	Amend	2-1-2017	813-135-0030	3-9-2017	Adopt	4-1-2017
801-010-0115	1-4-2017	Amend	2-1-2017	813-135-0030(T)	3-9-2017	Repeal	4-1-2017
801-010-0120	1-4-2017	Amend	2-1-2017	813-135-0040	3-9-2017	Adopt	4-1-2017
801-010-0130	1-4-2017	Amend	2-1-2017	813-135-0040(T)	3-9-2017	Repeal	4-1-2017
801-010-0340	1-4-2017	Amend	2-1-2017	813-135-0050	3-9-2017	Adopt	4-1-2017
801-010-0345	1-4-2017	Amend	2-1-2017	813-135-0050(T)	3-9-2017	Repeal	4-1-2017
801-020-0690	1-4-2017	Amend	2-1-2017	813-135-0060	3-9-2017	Adopt	4-1-2017

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818-021-0011	3-1-2017	Amend	3-1-2017	845-025-1115	12-27-2016	Amend	2-1-2017
818-021-0025	3-1-2017	Amend	3-1-2017	845-025-1160	12-27-2016	Amend	2-1-2017
819-005-0005	1-3-2017	Adopt	2-1-2017	845-025-1175	12-27-2016	Amend	2-1-2017
819-020-0015	1-3-2017	Adopt	2-1-2017	845-025-1230	12-27-2016	Amend	2-1-2017
819-020-0020	1-3-2017	Adopt	2-1-2017	845-025-1360	12-27-2016	Amend	2-1-2017
819-020-0035	1-3-2017	Adopt	2-1-2017	845-025-1410	12-27-2016	Amend	2-1-2017
819-020-0045	1-3-2017	Adopt	2-1-2017	845-025-1420	12-27-2016	Amend	2-1-2017
819-020-0055	1-3-2017	Adopt	2-1-2017	845-025-1440	12-27-2016	Amend	2-1-2017
819-020-0065	1-3-2017	Adopt	2-1-2017	845-025-1450	12-27-2016	Amend	2-1-2017
819-020-0075	1-3-2017	Adopt	2-1-2017	845-025-1470	12-27-2016	Amend	2-1-2017
819-020-0085	1-3-2017	Adopt	2-1-2017	845-025-2020	12-27-2016	Amend	2-1-2017
819-020-0090	1-3-2017	Adopt	2-1-2017	845-025-2030	12-27-2016	Amend	2-1-2017
819-030-0000	1-3-2017	Adopt	2-1-2017	845-025-2040	12-27-2016	Amend	2-1-2017
819-040-0005	1-3-2017	Adopt	2-1-2017	845-025-2060	12-27-2016	Amend	2-1-2017
820-010-0520	12-29-2016	Amend	2-1-2017	845-025-2070	1-1-2017	Amend(T)	2-1-2017
820-010-0720	12-29-2016	Amend	2-1-2017	845-025-2100	12-27-2016	Adopt	2-1-2017
820-025-0005	12-29-2016	Amend	2-1-2017	845-025-2800	12-27-2016	Amend	2-1-2017
824-010-0005	1-1-2017	Amend	1-1-2017	845-025-2840	12-27-2016	Amend	2-1-2017
824-030-0010	1-1-2017	Amend	1-1-2017	845-025-2900	12-27-2016	Adopt	2-1-2017
824-030-0040	1-1-2017	Amend	1-1-2017	845-025-2910	12-27-2016	Adopt	2-1-2017
824-035-0005	1-1-2017	Repeal	1-1-2017	845-025-3215	12-27-2016	Amend	2-1-2017
824-036-0001	1-1-2017	Adopt	1-1-2017	845-025-3250	1-1-2017	Amend(T)	2-1-2017
824-040-0010	1-1-2017	Amend	1-1-2017	845-025-3255	1-1-2017	Adopt(T)	2-1-2017
824-050-0010	1-1-2017	Amend	1-1-2017	845-025-3260	12-27-2016	Amend	2-1-2017
824-060-0010	1-1-2017	Amend	1-1-2017	845-025-3300	12-27-2016	Adopt	2-1-2017
824-070-0005	1-1-2017	Adopt	1-1-2017	845-025-3310	12-27-2016	Adopt	2-1-2017
824-070-0010	1-1-2017	Adopt	1-1-2017	845-025-3500	12-27-2016	Amend	2-1-2017
830-011-0065	1-12-2017	Amend	2-1-2017	845-025-3510	12-27-2016	Adopt	2-1-2017
833-040-0041	12-12-2016	Amend(T)	1-1-2017	845-025-3600	12-27-2016	Adopt	2-1-2017
834-030-0010	1-17-2017	Amend(T)	3-1-2017	845-025-5000	12-27-2016	Amend	2-1-2017
834-050-0000	1-9-2017	Amend	2-1-2017	845-025-5300	12-27-2016	Amend	2-1-2017
834-050-0010	1-9-2017	Amend	2-1-2017	845-025-5350	12-27-2016	Amend	2-1-2017
836-005-0405	1-10-2017	Adopt	2-1-2017	845-025-5500	12-27-2016	Amend	2-1-2017
836-010-0135	1-9-2017	Amend	2-1-2017	845-025-5540	12-27-2016	Amend	2-1-2017
836-010-0140	1-9-2017	Amend	2-1-2017	845-025-5700	12-27-2016	Amend	2-1-2017
836-011-0000	1-31-2017	Amend(T)	3-1-2017	845-025-5700	3-3-2017	Amend(T)	4-1-2017
836-011-0030	12-21-2016	Adopt	2-1-2017	845-025-5700(T)	12-27-2016	Repeal	2-1-2017
836-031-0605	12-21-2016	Adopt	2-1-2017	845-025-7000	12-27-2016	Amend	2-1-2017
836-053-0015	3-9-2017	Amend	4-1-2017	845-025-7020	12-27-2016	Amend	2-1-2017
837-120-0501	2-1-2017	Adopt	3-1-2017	845-025-7030	12-27-2016	Amend	2-1-2017
837-120-0510	2-1-2017	Adopt	3-1-2017	845-025-7060	12-27-2016	Amend	2-1-2017
837-120-0520	2-1-2017	Adopt	3-1-2017	845-025-7520	12-27-2016	Amend	2-1-2017
837-120-0530	2-1-2017	Adopt	3-1-2017	845-025-7580	12-27-2016	Amend	2-1-2017
837-120-0540	2-1-2017	Adopt	3-1-2017	845-025-7700	12-27-2016	Amend	2-1-2017
839-025-0700	1-1-2017	Amend	2-1-2017	845-025-7750	12-27-2016	Amend	2-1-2017
839-025-0700	4-1-2017	Amend	4-1-2017	845-025-8040	12-27-2016	Amend	2-1-2017
845-005-0412	1-1-2017	Adopt	1-1-2017	845-025-8060	12-27-2016	Amend	2-1-2017
845-006-0500	12-1-2016	Amend	1-1-2017	845-025-8520	12-27-2016	Amend	2-1-2017
845-013-0100	3-1-2017	Amend	4-1-2017	845-025-8560	12-27-2016	Amend	2-1-2017
845-015-0142	3-1-2017	Adopt	4-1-2017	845-025-8750	12-27-2016	Adopt	2-1-2017
845-025-1015	12-27-2016	Amend	2-1-2017	847-003-0200	7-1-2017	Amend	2-1-2017
845-025-1030	12-27-2016	Amend	2-1-2017	847-035-0030	1-6-2017	Amend	2-1-2017
845-025-1045	12-27-2016	Amend	2-1-2017	847-070-0005	1-6-2017	Amend	2-1-2017
845-025-1060	12-27-2016	Amend	2-1-2017	848-005-0010	7-1-2017	Amend	4-1-2017
845-025-1090	12-27-2016	Amend	2-1-2017	851-010-0000	1-1-2017	Adopt	1-1-2017

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851-010-0010	1-1-2017	Amend	1-1-2017	860-032-0060	2-7-2017	Amend	3-1-2017
851-010-0015	1-1-2017	Amend	1-1-2017	860-032-0610	11-22-2016	Am. & Ren.	1-1-2017
851-010-0020	1-1-2017	Repeal	1-1-2017	860-032-0620	11-22-2016	Am. & Ren.	1-1-2017
851-010-0024	1-1-2017	Amend	1-1-2017	860-032-0630	11-22-2016	Am. & Ren.	1-1-2017
851-010-0035	1-1-2017	Amend	1-1-2017	860-032-0640	11-22-2016	Renumber	1-1-2017
851-050-0001	3-1-2017	Amend	4-1-2017	860-032-0650	11-22-2016	Renumber	1-1-2017
851-052-0000	3-1-2017	Amend	4-1-2017	860-032-0660	11-22-2016	Renumber	1-1-2017
851-052-0010	3-1-2017	Amend	4-1-2017	860-032-0670	11-22-2016	Renumber	1-1-2017
851-052-0020	3-1-2017	Amend	4-1-2017	860-033-0005	12-2-2016	Amend(T)	1-1-2017
851-052-0030	3-1-2017	Amend	4-1-2017	860-033-0030	12-2-2016	Amend(T)	1-1-2017
851-052-0040	3-1-2017	Amend	4-1-2017	860-033-0046	12-2-2016	Amend(T)	1-1-2017
851-052-0050	3-1-2017	Adopt	4-1-2017	860-033-0050	12-2-2016	Amend(T)	1-1-2017
851-052-0060	3-1-2017	Adopt	4-1-2017	860-036-0001	1-24-2017	Repeal	3-1-2017
851-052-0100	3-1-2017	Amend	4-1-2017	860-036-0005	1-24-2017	Repeal	3-1-2017
852-005-0005	7-1-2017	Amend	3-1-2017	860-036-0010	1-24-2017	Repeal	3-1-2017
852-005-0005	7-1-2017	Amend	4-1-2017	860-036-0015	1-24-2017	Repeal	3-1-2017
852-010-0080	2-14-2017	Amend	3-1-2017	860-036-0020	1-24-2017	Repeal	3-1-2017
852-010-0080	3-14-2017	Amend	4-1-2017	860-036-0025	1-24-2017	Repeal	3-1-2017
852-020-0045	2-14-2017	Amend	3-1-2017	860-036-0030	1-24-2017	Repeal	3-1-2017
852-020-0045	3-14-2017	Amend	4-1-2017	860-036-0035	1-24-2017	Repeal	3-1-2017
852-050-0001	2-14-2017	Amend	3-1-2017	860-036-0040	1-24-2017	Repeal	3-1-2017
852-050-0001	3-14-2017	Amend	4-1-2017	860-036-0045	1-24-2017	Repeal	3-1-2017
852-050-0025	2-14-2017	Amend	3-1-2017	860-036-0050	1-24-2017	Repeal	3-1-2017
852-050-0025	3-14-2017	Amend	4-1-2017	860-036-0055	1-24-2017	Repeal	3-1-2017
852-060-0025	2-14-2017	Amend	3-1-2017	860-036-0060	1-24-2017	Repeal	3-1-2017
852-060-0025	3-14-2017	Amend	4-1-2017	860-036-0065	1-24-2017	Repeal	3-1-2017
852-070-0010	2-14-2017	Amend	3-1-2017	860-036-0070	1-24-2017	Repeal	3-1-2017
852-070-0010	3-14-2017	Amend	4-1-2017	860-036-0075	1-24-2017	Repeal	3-1-2017
855-007-0060	2-23-2017	Amend	4-1-2017	860-036-0080	1-24-2017	Repeal	3-1-2017
855-019-0120	12-14-2016	Amend	1-1-2017	860-036-0085	1-24-2017	Repeal	3-1-2017
855-019-0123	2-23-2017	Adopt	4-1-2017	860-036-0095	1-24-2017	Repeal	3-1-2017
855-019-0450	12-14-2016	Adopt	1-1-2017	860-036-0097	1-24-2017	Repeal	3-1-2017
855-019-0450(T)	12-14-2016	Repeal	1-1-2017	860-036-0105	1-24-2017	Repeal	3-1-2017
855-019-0455	12-14-2016	Adopt	1-1-2017	860-036-0110	1-24-2017	Repeal	3-1-2017
855-019-0455(T)	12-14-2016	Repeal	1-1-2017	860-036-0115	1-24-2017	Repeal	3-1-2017
855-019-0460	12-14-2016	Adopt	1-1-2017	860-036-0120	1-24-2017	Repeal	3-1-2017
855-019-0460(T)	12-14-2016	Repeal	1-1-2017	860-036-0125	1-24-2017	Repeal	3-1-2017
855-041-1001	2-23-2017	Amend	4-1-2017	860-036-0130	1-24-2017	Repeal	3-1-2017
855-041-1010	2-23-2017	Amend	4-1-2017	860-036-0135	1-24-2017	Repeal	3-1-2017
855-041-1036	2-23-2017	Amend	4-1-2017	860-036-0140	1-24-2017	Repeal	3-1-2017
855-041-1045	2-23-2017	Amend	4-1-2017	860-036-0205	1-24-2017	Repeal	3-1-2017
855-041-1046	2-23-2017	Adopt	4-1-2017	860-036-0210	1-24-2017	Repeal	3-1-2017
855-041-2340	12-14-2016	Adopt	1-1-2017	860-036-0215	1-24-2017	Repeal	3-1-2017
855-041-2340(T)	12-14-2016	Repeal	1-1-2017	860-036-0220	1-24-2017	Repeal	3-1-2017
855-041-4100	2-23-2017	Amend	4-1-2017	860-036-0225	1-24-2017	Repeal	3-1-2017
855-041-4120	2-23-2017	Amend	4-1-2017	860-036-0230	1-24-2017	Repeal	3-1-2017
855-041-5005	2-23-2017	Amend	4-1-2017	860-036-0235	1-24-2017	Repeal	3-1-2017
855-044-0001	2-23-2017	Amend	4-1-2017	860-036-0240	1-24-2017	Repeal	3-1-2017
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855-080-0021	12-14-2016	Amend	1-1-2017	860-036-0250	1-24-2017	Repeal	3-1-2017
855-080-0105	2-23-2017	Amend	4-1-2017	860-036-0301	1-24-2017	Repeal	3-1-2017
856-030-0040	11-22-2016	Amend	1-1-2017	860-036-0305	1-24-2017	Repeal	3-1-2017
858-010-0034	2-16-2017	Amend	4-1-2017	860-036-0310	1-24-2017	Repeal	3-1-2017
859-010-0005	11-18-2016	Amend	1-1-2017	860-036-0315	1-24-2017	Repeal	3-1-2017
859-510-0005	12-13-2016	Amend	1-1-2017	860-036-0320	1-24-2017	Repeal	3-1-2017

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860-036-1830	1-24-2017	Adopt	3-1-2017	877-020-0012	1-23-2017	Amend	3-1-2017
860-036-1840	1-24-2017	Adopt	3-1-2017	918-098-1305	1-19-2017	Amend(T)	3-1-2017
860-036-1850	1-24-2017	Adopt	3-1-2017	918-098-1325	1-19-2017	Amend(T)	3-1-2017
860-036-1900	1-24-2017	Adopt	3-1-2017	918-282-0465	2-1-2017	Adopt(T)	3-1-2017
860-036-1910	1-24-2017	Adopt	3-1-2017	918-282-0470	2-1-2017	Adopt(T)	3-1-2017
860-036-1920	1-24-2017	Adopt	3-1-2017	918-282-0475	2-1-2017	Adopt(T)	3-1-2017
860-036-1930	1-24-2017	Adopt	3-1-2017	918-308-0000	1-1-2017	Amend	2-1-2017
860-036-1940	1-24-2017	Adopt	3-1-2017	918-308-0010	1-1-2017	Amend	2-1-2017
860-036-1950	1-24-2017	Adopt	3-1-2017	918-308-0160	1-1-2017	Amend	2-1-2017
860-036-2000	1-24-2017	Adopt	3-1-2017	918-500-0450	1-19-2017	Amend(T)	3-1-2017
860-036-2010	1-24-2017	Adopt	3-1-2017	918-525-0000	1-19-2017	Amend(T)	3-1-2017
860-036-2020	1-24-2017	Adopt	3-1-2017	918-525-0005	1-19-2017	Amend(T)	3-1-2017
860-036-2030	1-24-2017	Adopt	3-1-2017	918-525-0015	1-19-2017	Amend(T)	3-1-2017
860-036-2100	1-24-2017	Adopt	3-1-2017	918-525-0020	1-19-2017	Amend(T)	3-1-2017
860-036-2110	1-24-2017	Adopt	3-1-2017	918-525-0035	1-19-2017	Amend(T)	3-1-2017
860-036-2120	1-24-2017	Adopt	3-1-2017	918-525-0040	1-19-2017	Amend(T)	3-1-2017
860-036-2130	1-24-2017	Adopt	3-1-2017	918-525-0042	1-19-2017	Amend(T)	3-1-2017
860-036-2140	1-24-2017	Adopt	3-1-2017	918-525-0045	1-19-2017	Suspend	3-1-2017
860-036-2150	1-24-2017	Adopt	3-1-2017	918-525-0055	1-19-2017	Suspend	3-1-2017
860-036-2160	1-24-2017	Adopt	3-1-2017	918-525-0060	1-19-2017	Amend(T)	3-1-2017
860-036-2170	1-24-2017	Adopt	3-1-2017	918-525-0065	1-19-2017	Amend(T)	3-1-2017
860-036-2200	1-24-2017	Adopt	3-1-2017	918-525-0070	1-19-2017	Amend(T)	3-1-2017
860-036-2210	1-24-2017	Adopt	3-1-2017	918-525-0080	1-19-2017	Amend(T)	3-1-2017
860-036-2220	1-24-2017	Adopt	3-1-2017	918-525-0090	1-19-2017	Amend(T)	3-1-2017
860-036-2230	1-24-2017	Adopt	3-1-2017	918-525-0100	1-19-2017	Amend(T)	3-1-2017
860-036-2300	1-24-2017	Adopt	3-1-2017	918-525-0210	1-19-2017	Amend(T)	3-1-2017
860-036-2310	1-24-2017	Adopt	3-1-2017	918-525-0220	1-19-2017	Amend(T)	3-1-2017
860-036-2350	1-24-2017	Adopt	3-1-2017	918-525-0260	1-19-2017	Amend(T)	3-1-2017
860-036-2360	1-24-2017	Adopt	3-1-2017	918-525-0270	1-19-2017	Amend(T)	3-1-2017
860-036-2370	1-24-2017	Adopt	3-1-2017	918-525-0310	1-19-2017	Amend(T)	3-1-2017
860-036-2380	1-24-2017	Adopt	3-1-2017	918-525-0320	1-19-2017	Amend(T)	3-1-2017
860-036-2390	1-24-2017	Adopt	3-1-2017	918-525-0325	1-19-2017	Suspend	3-1-2017
860-036-2400	1-24-2017	Adopt	3-1-2017	918-525-0330	1-19-2017	Amend(T)	3-1-2017
860-036-2410	1-24-2017	Adopt	3-1-2017	918-525-0350	1-19-2017	Amend(T)	3-1-2017
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860-087-0030	11-22-2016	Adopt	1-1-2017	918-525-0420	1-19-2017	Amend(T)	3-1-2017
860-087-0040	11-22-2016	Adopt	1-1-2017	918-525-0430	1-19-2017	Amend(T)	3-1-2017
860-100-0001	11-22-2016	Adopt	1-1-2017	918-525-0440	1-19-2017	Amend(T)	3-1-2017
860-100-0005	11-22-2016	Adopt	1-1-2017	918-525-0450	1-19-2017	Amend(T)	3-1-2017
875-010-0031	12-12-2016	Suspend	1-1-2017	918-525-0460	1-19-2017	Suspend	3-1-2017
875-010-0045	12-12-2016	Amend(T)	1-1-2017	918-525-0510	1-19-2017	Amend(T)	3-1-2017
875-010-0045	12-13-2016	Amend	1-1-2017	918-525-0520	1-19-2017	Amend(T)	3-1-2017
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875-010-0045	1-12-2017	Amend	2-1-2017	918-530-0010	1-19-2017	Suspend	3-1-2017
875-010-0090	12-12-2016	Amend	1-1-2017	918-530-0020	1-19-2017	Suspend	3-1-2017
875-010-0090	1-12-2017	Amend	2-1-2017	918-530-0040	1-19-2017	Suspend	3-1-2017
875-015-0030	12-12-2016	Amend(T)	1-1-2017	918-530-0050	1-19-2017	Suspend	3-1-2017
875-030-0010	12-13-2016	Amend	1-1-2017	918-530-0060	1-19-2017	Suspend	3-1-2017
875-030-0010	1-12-2017	Amend	2-1-2017	918-530-0070	1-19-2017	Suspend	3-1-2017
875-030-0050	12-13-2016	Amend	1-1-2017	918-530-0080	1-19-2017	Suspend	3-1-2017
875-030-0050	1-12-2017	Amend	2-1-2017	918-530-0090	1-19-2017	Suspend	3-1-2017
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877-015-0108	1-23-2017	Amend	3-1-2017	918-530-0110	1-19-2017	Suspend	3-1-2017
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918-530-0340	1-19-2017	Suspend	3-1-2017				
918-550-0000	2-1-2017	Amend(T)	3-1-2017				
918-550-0010	2-1-2017	Amend(T)	3-1-2017				
918-550-0020	2-1-2017	Adopt(T)	3-1-2017				
918-550-0030	2-1-2017	Adopt(T)	3-1-2017				
918-550-0040	2-1-2017	Adopt(T)	3-1-2017				
918-550-0100	2-1-2017	Amend(T)	3-1-2017				
918-550-0120	2-1-2017	Amend(T)	3-1-2017				
918-550-0140	2-1-2017	Amend(T)	3-1-2017				
918-550-0160	2-1-2017	Suspend	3-1-2017				
918-550-0180	2-1-2017	Suspend	3-1-2017				
918-550-0200	2-1-2017	Amend(T)	3-1-2017				
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966-100-0900	3-14-2017	Adopt	4-1-2017				
976-002-0040	2-13-2017	Amend	3-1-2017				