

OREGON BULLETIN

Supplements the 2017 Oregon Administrative Rules Compilation

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Secretary of State
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INFORMATION ABOUT ADMINISTRATIVE RULES

General Information

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

Background on Oregon Administrative Rules

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

OAR Citations

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

Understanding an Administrative Rule’s “History”

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

Locating Current Versions of Administrative Rules

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

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

Locating Administrative Rule Publications

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

Filing Administrative Rules and Notices

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

Administrative Rules Coordinators and Delegation of Signing Authority

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

Publication Authority

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

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

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EXECUTIVE ORDERS

EXECUTIVE ORDER NO. 17 - 01

STATE AGENCY EMPLOYEE WELLNESS

Every day, Oregonians face the risks of deadly and costly chronic conditions, including heart disease, stroke, diabetes, asthma, arthritis, and cancer. State employees are not immune to these risks. These chronic conditions are often preventable. As one of the largest employers in Oregon, state government recognizes that employers can provide a workplace environment that supports health and well-being.

State employees are state government's most valuable resource. State employees provide Oregonians with essential services, including protecting and preserving Oregon's natural resources, maintaining and improving the state highway system, supporting families and children, and ensuring public safety. Healthy, empowered and engaged employees are integral to the effective delivery of state services. They are also critical assets at home, with their own families. Parents and caregivers are an important influence on their family members and play a key role in modeling and teaching healthy habits. By supporting the health and well-being of state employees, the State of Oregon can also help families be healthier.

Comprehensive and coordinated worksite wellness efforts have been shown to increase employee health and well-being. By improving health and well-being of state employees, state agencies will be better able to serve Oregonians and to accomplish their missions by improving productivity and slowing increases in health care costs.

In order for state employees to take charge of their own health, they need comprehensive benefits, such as those provided by the Public Employees' Benefit Board, and supportive workplaces. A supportive workplace has structures, systems, and policies in place to promote and support health and wellness. State agencies are responsible for developing, implementing, and evaluating workplace wellness related efforts.

NOW THEREFORE, IT IS HEREBY DIRECTED AND ORDERED:

1. The Public Employees' Benefit Board (PEBB) shall appoint a state Wellness Manager. The Wellness Manager shall facilitate the Coordinating Council, as referenced in paragraph 2(a) of this order; assist with the development and implementation of the Coordinating Council's communications plan; and provide training and technical assistance on evidence-based worksite wellness to agency wellness committees. The Wellness Manager shall be the Council's liaison with PEBB, the Oregon

Health Authority (OHA) Public Health Division, the Department of Administrative Services (DAS), state agency leaders, and the Governor's Office. The Wellness Manager shall develop a system for accountability and evaluation and will be responsible for compiling data and reporting on progress to the Coordinating Council, PEBB, OHA Public Health Division, DAS, agency leaders, and the Governor's Office.

2. Within 240 days after this order is signed, DAS in conjunction with PEBB shall establish a policy to develop and implement an infrastructure for continued and sustainable employee wellness. The policy shall:

(a) Establish a Coordinating Council to provide guidance to agencies, PEBB, and the Governor's Office on evidence-based worksite wellness. The Coordinating Council shall be comprised of agency leaders, including leadership from the OHA Public Health Division, PEBB, DAS, the Governor's Office, and union representatives, including at least two representatives from each of the two largest unions and a representative from a smaller labor union.

The council shall consist of at least 15 individuals in order to ensure broad representation. The Coordinating Council will develop and implement a state employee communications plan addressing the primary drivers of increased health care costs, including tobacco use, poor nutrition, lack of physical activity and employee stress and depression.

(b) Address how PEBB-covered employers that are not state agencies, including Oregon Public Universities or local governments, may participate in actions described in this order and request technical assistance from the Wellness Manager.

(c) Allow the state Wellness Manager, in conjunction with the Coordinating Council, to recommend statewide policies to DAS that support agency health and wellness.

(d) Require state agencies to complete a wellness plan, as outlined in paragraph 3, and report on implementation progress.

3. State agencies shall complete a two-year agency wellness plan detailing the agency's objectives and activities to assess and improve employee health in accordance with the policy adopted by DAS and PEBB in paragraph 2 of this order. The wellness plan shall be reviewed by the Coordinating Council and the state Wellness Manager. The initial wellness plan shall be completed within one year of the date this order is signed. Agencies shall update wellness plans every two years and report on implementation progress to the Wellness Manager as required in the DAS policy implementing this order.

Done at Salem, Oregon, this 25th day of January, 2017.

/s/ Kate Brown
Kate Brown
GOVERNOR

ATTEST

/s/ Dennis Richardson
Dennis Richardson
SECRETARY OF STATE

EXECUTIVE ORDER NO. 17 - 02

DETERMINATION OF STATE OF EMERGENCY IN OREGON DUE TO A SEVERE WINTER STORM THAT INCLUDES HEAVY SNOW AND ICE ACCUMULATION, HIGH WINDS, FLOODING, AND LANDSLIDES.

Pursuant to ORS 401.165, I find a potential threat to life, safety, property, and significant damage to infrastructure exists due to severe winter storms occurring statewide that has caused and continues to cause a natural disaster throughout the state. Beginning January 11, 2017, and continuing, these severe storms are causing heavy snow and ice accumulation, high winds, flooding, landslides, and erosion at various locations throughout the state, resulting in critical transportation failures, loss of power and communications capabilities, and evacuations and sheltering needs.

NOW THEREFORE, IT IS HEREBY DIRECTED AND ORDERED:

1. The Office of Emergency Management (OEM) shall activate the State's Emergency Operations Plan and Emergency Coordination Center, and shall coordinate access to and use of personnel and equipment of all state agencies necessary to assess, alleviate, respond to, mitigate or recover from conditions caused by this emergency. OEM shall coordinate all essential protective measures in support of identified disaster areas to protect lives, property, and the environment.

EXECUTIVE ORDERS

2. OEM shall work with neighboring states where needed to ensure coordinated response and mitigation actions.

3. The Oregon Department of Transportation, Oregon State Police, Oregon Public Utility Commission, and Oregon National Guard shall provide any assistance that is deemed necessary to assist in the response to this emergency and to provide all necessary support to statewide response, recovery, and mitigation efforts. All other state agencies shall be prepared to assist as requested by OEM.

4. This state of emergency shall exist for thirty days unless terminated sooner by the governor.

This order was made by verbal proclamation at 2:51 pm the 11th day of January, 2017, and signed this 25th day of January, 2017.

/s/ Kate Brown
Kate Brown
GOVERNOR

ATTEST

/s/ Dennis Richardson
Dennis Richardson
SECRETARY OF STATE

OTHER NOTICES

PUBLIC NOTICE AGREEMENT SIGNED WITH PORT OF PORTLAND FOR MCBRIDE SLOUGH CLEANUP

PROJECT LOCATION: 8000 block, NE Alderwood Rd., Portland, OR

ACTION: The Oregon Department of Environmental Quality entered into a Consent Judgment with the Port of Portland on Dec. 14, 2016. Under the judgment, the Port will design and perform a remedial action in McBride Slough in northeast Portland.

HIGHLIGHTS: McBride Slough originates near the southeast corner of Portland International Airport and flows under Alderwood Road. McBride Slough water drains to the main stem of Columbia Slough east of Alderwood Road. In 2011, Multnomah County Drainage District collected and analyzed sediments in McBride Slough as a part of evaluating sediment removal for stormwater conveyance. Elevated concentrations of polychlorinated biphenyls, also known as PCBs, polyaromatic hydrocarbons, metals and pesticides were detected in the sediment, the majority of which likely resulted from historical stormwater runoff from the Portland International Airport, which makes up most of the drainage basin to the McBride Slough. DEQ approved emergency dredging by the Multnomah County Drainage District for flood control in 2011 with the understanding that the Port would conduct follow-up evaluation and cleanup of side-cast dredge material and residual sediment contamination. The Port performed a stormwater source control evaluation and sediment investigation in 2012-2013 and completed a Feasibility Study in February 2015.

Following a 30-day public comment period, DEQ issued a Record of Decision in July 2015, selecting the following remedial actions:

- Excavation and off-site disposal of contaminated sediment to the extent required for effective stormwater management.
- Inspection and repair of unstable McBride Slough banks and replanting of banks with native plants as warranted.
- Placement of activated carbon over the new sediment surface and sediment adjacent to the maintenance dredge area to reduce bioavailability of residual contamination.
- Confirmation sampling and long-term monitoring to evaluate the effectiveness of the remedial action.

In Sept. 2016, a 30-day public comment period was held to review the Consent Judgment. No comments were received. Under the Consent Judgment, the Port will design and implement the remedy.

FOR MORE INFORMATION: To view the Consent Judgment, site summary information and other documents in the DEQ Environmental Cleanup Site Information database, go to: <http://www.deq.state.or.us/lq/ECSI/ecsi.htm>, select "Search complete ECSI database", then enter ECSI#5676 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled ECSI #5676 in the Site ID/Info column. Alternatively, you may go directly to the database website for this page at: <http://www.deq.state.or.us/Webdocs/Forms/Output/FPController.ashx?SourceIdType=11&SourceId=5676&Screen=Load>

To find information about requesting a review of DEQ project files, go to: <http://www.deq.state.or.us/records/recordsRequestFAQ.htm>

To access the review application form, go to: <http://www.deq.state.or.us/records/RecordRequests.htm>

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

THE NEXT STEPS: The Port is preparing remedial design documents and completing permitting procedures with a goal to carry out the action in summer 2018.

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 TOSCO/UNOCAL BULK PLANT 0531

COMMENTS DUE: 5 p.m., Friday March 3, 2017

PROJECT LOCATION: 1893 Roseburg Rd., Myrtle Point, Oregon

PROPOSAL: The Oregon Department of Environmental Quality proposes to issue a conditional No Further Action determination. DEQ is accepting comments from the public on its proposed decision.

HIGHLIGHTS: Historic spills of gasoline and diesel fuel contaminated soil and groundwater at this site, and along a drainage ditch west of the site. Several phases of environmental investigations were completed since 1997. DEQ reviewed the results and prepared a Staff Memorandum supporting a No Further Action recommendation. The contaminant concentrations in soil and groundwater remaining at the site are not likely to pose a threat to human health and the environment, with certain conditions. DEQ proposes to place restrictive covenants on future redevelopment of the site.

HOW TO COMMENT: Send comments to DEQ Project Manager Teresa Danovich at 165 E. 7th Avenue, Suite 100, Eugene, OR 97401 or danovich.teresa.m@deq.state.or.us. For more information contact the project manager at 541-686-7839.

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

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

To access site summary information and other documents in the DEQ Leaking Underground Storage Tank Cleanup database, go to <http://www.deq.state.or.us/lq/tanks/lust/LustPublicLookup.asp>, then enter 06-06-0615 in the Number boxes and click "Lookup" at the bottom of the page. Next, click the link labeled 06-06-0615 in the Log Number column. If you do not have web access and want to review the project file in person, contact LeeAnn Gates at 541-687-7357 or Jessica Clawson at 541-687-7344 for a file review appointment.

THE NEXT STEP: DEQ will consider all public comments received by the close of the comment period before making a final decision regarding the proposed action.

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.

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 rule-making 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 Architect Examiners
Chapter 806

Rule Caption: Oregon State Board of Architect Examiners 2017-19 Budget

Date:	Time:	Location:
2-28-17	9 a.m.	205 Liberty St. NE, Suite A Salem, OR

Hearing Officer: Maria Brown

Stat. Auth.: ORS 671.125, 182.462

Stats. Implemented: ORS 671.125, 182.462

Proposed Amendments: 806-001-0003

Last Date for Comment: 2-28-17, Close of Business

Summary: Oregon State Board of Architect Examiners 2017-19 Budget.

Rules Coordinator: Maria Brown

Address: Board of Architect Examiners, 205 Liberty St. NE, Suite A, Salem, OR 97301

Telephone: (503) 763-0662

.....
Board of Chiropractic Examiners
Chapter 811

Rule Caption: 811-035-0001 Definitions - Adds "good moral character"

Date:	Time:	Location:
3-23-17	1 p.m.	Morrow Crane Bldg. 3218 Pringle Rd SE Salem, OR 97302

Hearing Officer: Jason Young DC

Stat. Auth.: 684

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

Proposed Amendments: 811-035-0001

Last Date for Comment: 3-23-17, 5 p.m.

Summary: Proposed amendment adds a definition of "good moral character."

Rules Coordinator: Kelly J. Beringer

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

Telephone: (503) 373-1573

.....
Board of Nursing
Chapter 851

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

Date:	Time:	Location:
2-16-17	9 a.m.	17938 SW Upper Boones Ferry Rd. Portland, OR 97224

Hearing Officer: Colin Hunter, Board President

Stat. Auth.: ORS 678.150, ORS 678.245, ORS 678.285, ORS 678.111

Stats. Implemented: OS 678.380, ORS 678.150

Proposed Amendments: 851-050-0001

Last Date for Comment: 2-16-17, Close of Hearing

Summary: 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

Address: Board of Nursing, 17938 SW Upper Boones Ferry Rd., Portland, OR 97224

Telephone: (971) 673-0638

.....
Rule Caption: Regarding Primary Source Verification of CRNA certification.

Date:	Time:	Location:
2-16-17	9 a.m.	17938 SW Upper Boones Ferry Rd. Portland, OR 97224

Hearing Officer: Colin Hunter, Board President

Stat. Auth.: ORS 678.150, ORS 678.245, ORS 678.285, ORS 678.111

Stats. Implemented: ORS 678.380, 678.150

Proposed Amendments: 851-052-0020, 851-052-0030

Last Date for Comment: 2-16-17, Close of Hearing

Summary: This amendment to the rules will require CRNA applicants to provide "primary source verification" of their national certification on initial and renewal CRNA applications for licensing.

This change will assist with 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

Address: Board of Nursing, 17938 SW Upper Boones Ferry Rd., Portland, OR 97224

Telephone: (971) 673-0638

.....
Board of Pharmacy
Chapter 855

Rule Caption: Division 043, Dispensing Practitioner Drug Outlet Rules

Date:	Time:	Location:
3-7-17	9:30 a.m.	800 NE Oregon St. Portland, OR 97232 Conference Rm. 1E

Hearing Officer: Staff

Stat. Auth.: ORS 689.205 & 291.055

Stats. Implemented: ORS 689.155, 689.305

Proposed Adoptions: 855-043-0505, 855-043-0515, 855-043-0520, 855-043-0525, 855-043-0530; 855-043-0535; 855-043-0540; 855-043-0545; 855-043-0550; 855-043-0555; 855-043-0560

Proposed Amendments: 855-110-0007

Last Date for Comment: 3-7-17, 4:30 p.m.

NOTICES OF PROPOSED RULEMAKING

Summary: The Board proposes these revised Division 043 rules for a second time after incorporating various edits made to address comments and input received during the public comment period in November 2016, with the goal to register the large volume Dispensing Practitioner Drug Outlets (DPDO).

These rules are specific to the dispensing of FDA approved human drugs. The rules exclude the dispensing of homeopathic and natural thyroid products.

Prescription drug dispensing has changed significantly in the last 5 years with increased access outside the pharmacy model. The process is also more sophisticated around the access to drugs, compounded drugs, supply and the chain of custody; i.e. how drugs are acquired, stored, labeled, when they expire etc. The Board of Pharmacy is charged with the regulation of the practice of pharmacy, as well as the risks and public safety related to the distribution of prescription drugs. Practitioner Dispensing Drug Outlets are not currently regulated or inspected as all other dispensing locations. The Board wants to facilitate and ensure safe dispensing practices occur for the public.

These rules are intended to describe the Board's registration and compliance expectations for a practitioner who has been granted dispensing privileges from their licensing board and engages in drug dispensing from their practice location. A practitioner who engages in dispensing certain FDA-approved human prescription drug therapies greater than a 72 hours' supply or any medication refill will be required to register their dispensing site as a drug outlet with the Board as a Dispensing Practitioner Drug Outlet (DPDO).

The rule identifies: (1) purpose (2) registration criteria and requirements (3) policies and procedures, (4) security (5) drug acquisitions (6) drug storage (7) labeling (8) dispensing and drug delivery (9) disposal of drugs (10) recordkeeping and (11) inspections.

The Board plans a "soft-launch" implementation and enforcement of these rules and, as always, plans to approach regulation per its "Compliance through Education" axiom. This means that the Board intends to educate practitioners over the next 18-24 months with the goal to have qualified outlets registered and in compliance with these rules.

The Board also proposes a fee in Division 110.

Rules Coordinator: Karen MacLean

Address: Board of Pharmacy, 800 NE Oregon St., # 150, Portland, OR 97232

Telephone: (971) 673-0001

.....
**Department of Agriculture
Chapter 603**

Rule Caption: Amends livestock importation rules for clarification and for harmonization with national standards.

Stat. Auth.: 596.341

Stats. Implemented: 596.020

Proposed Amendments: 603-011-0255

Last Date for Comment: 3-15-17, 5 p.m.

Summary: The CAN brand import requirement for cattle of Canadian origin was established as a sequel to the Bovine Spongiform Encephalopathy (BSE) detection in Washington in December 2003. That animal was a dairy cow that was born in Canada. She was shipped to a dairy in Washington state and eventually culled from the dairy herd. Routine BSE slaughter surveillance detected the disease. At that time our livestock industries wanted, and needed, a permanent means of identification for traceability of Canadian origin animals. Over the years stringent BSE safeguards have been put in place in Canada and the USA. Safeguards to prevent BSE have been very effective.

The US Department of Agriculture (USDA) maintains stringent animal identification requirements for animals imported into this country, including Canada. Current USDA identification requirements of all Canadian origin cattle includes a CAN brand located on the hip area or a CAN tattoo inside the left ear as well as an official eartag. Current Oregon import requirements for cattle of Canadian

origin do not allow for the CAN tattoo option. A significant number of high quality Canadian cattle are imported into Oregon for genetic improvement purposes. The hot brand requirement results in an scar that many dairy and beef cattle producers would like to avoid, especially for those animals with exhibition potential. Amending Oregon's livestock importation rule to harmonize with USDA requirements would provide a welcomed identification option for many Oregon cattle producers and still maintain traceability.

Rules Coordinator: Sue Gooch

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

Telephone: (503) 986-4583

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

Rule Caption: Clarifying Certain Processes for Contested Cases

Date:	Time:	Location:
2-21-17	9:30 a.m.	1535 Edgewater St. NW Salem, OR 97304

Hearing Officer: Staff

Stat. Auth.: ORS 183.341, 455.117, 455.127, 455.720

Stats. Implemented: ORS 183.341, 455.117, 455.125, 455.127, 455.129, 455.720

Proposed Adoptions: Rules in 918-001

Proposed Amendments: Rules in 918-001

Last Date for Comment: 2-24-17, 5 p.m.

Summary: These proposed rules are intended to clarify certain procedural aspects of the contested case hearing process and ensure that licensees provide accurate contact information. The proposed rules also require cooperation with investigations and allow an enforcement action to be taken against the license of owners of businesses that have been assessed civil penalties or have had action taken against their business or other businesses that they are associated with.

Rules Coordinator: Holly A. Tucker

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

Telephone: (503) 378-5331

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

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

Date:	Time:	Location:
2-16-17	10 a.m.	Rm. F, Labor & Industries Bldg 350 Winter St NE Salem OR

Hearing Officer: Fred Bruyns

Stat. Auth.: ORS 656.248, 656.726(4)

Stats. Implemented: ORS 656.248, 656.799

Proposed Amendments: Rules in 436-009, 436-010

Last Date for Comment: 2-22-17, Close of Business

Summary: The public may also listen to the hearing or testify by telephone:

Dial-in number is 1-213-787-0529; Access code is 9221262#.

The agency proposes to amend 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;

NOTICES OF PROPOSED RULEMAKING

- Clarify that insurers must pay for the implant at 110 percent of the ASC's actual cost when an ambulatory surgery center's cost for an implant is \$100 or more;

- 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 reimbursement request, 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 proposes to amend 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

Address: Department of Consumer and Business Services, Workers' Compensation Division, PO Box 14480, Salem, OR 97309-0405

Telephone: (503) 947-7717

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**Department of 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.

Date:
2-23-17

Time:
4:30 p.m.

Location:
Cousin's Country Inn
Banquet Rm. 2114 W. 6th St. NE
The Dalles, OR 97058

Hearing Officer: Jason Sierman

Stat. Auth.: ORS 469.470 and 469.501

Stats. Implemented: ORS 469.350, 469.501 and 469.503

Proposed Amendments: 345-021-0010, 345-022-0000, 345-022-0060

Last Date for Comment: 2-23-17, Close of Hearing

Summary: **This is a re-scheduled date and time for the rulemaking hearing that was originally scheduled to take place at 10am on December 16, 2016. The original rulemaking hearing was cancelled due to an inclement weather event.**

The proposed 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 proposed amendment to OAR 345-022-0060 is needed to ensure 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 proposed 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 proposed 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 that is proposed in this rule-making.

- The proposed 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 proposed 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 exception. The only exception is that the proposed rules would still 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 or minimization rules at OAR 635-140-0025(2)(a) and (b). While ODFW is developing guidance on sage-grouse indirect impact distances, the distances are not established in statute or rule and are subject to change. Therefore, 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 in indirect impact distances, 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. The proposed limited exception to the balancing authority exclusion is intended to acknowledge that uncertainty 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 but either cannot, or there is no reasonable way to, satisfy the sage-grouse rules for avoidance and minimization of indirect impacts.

The proposed amendment to OAR 345-021-0010(1)(q) to remove the requirement for an applicant to identify federally listed threatened and endangered species in Exhibit Q of a site certificate application would ensure the application requirements are 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.

NOTICES OF PROPOSED RULEMAKING

EFSC requests public comment on these draft rules. A call-in number is available for the public hearing. Please see the Oregon Department of Energy website for hearing details and other materials: <http://www.oregon.gov/energy/Siting/Pages/council-rulemaking.aspx>

Rules Coordinator: Jason Sierman

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

Telephone: (503) 373-2127

Rule Caption: Reorganization of Div. 27 and rewrite of rules governing requests for amendments to site certificates.

Date:	Time:	Location:
2-24-17	10:30 a.m.	Cousins' Country Inn Banquet Rm. 2114 W. 6th St. NE The Dalles, OR 97058

Hearing Officer: Jason Sierman

Stat. Auth.: ORS 469.405, 469.470 and 469.501

Stats. Implemented: ORS 469.350, 469.501 and 469.503

Proposed Adoptions: 345-027-0051, 345-027-0053, 345-027-0055, 345-027-0057, 345-027-0059, 345-027-0063, 345-027-0065, 345-027-0067, 345-027-0069, 345-027-0071

Proposed Amendments: 345-015-0014, 345-015-0016, 345-015-0080, 345-015-0083, 345-027-0011, 345-027-0050, 345-027-0060, 345-027-0090, 345-027-0100

Proposed Repeals: 345-027-0070, 345-027-0080

Proposed Renumberings: 345-027-0020 to 345-025-0006, 345-027-0023 to 345-025-0010, 345-027-0028 to 345-025-0016

Proposed Ren. & Amends: 345-027-0000 to 345-027-0013, 345-027-0030 to 345-027-0085

Last Date for Comment: 2-24-17, Close of Hearing

Summary: The ultimate goals of the proposed rules are to enhance the opportunity for public participation while minimizing increases in review time. This rulemaking is not intended to alter the substantive aspects of how the Council's rules and standards apply to the Council's review of a request for an amendment to a site certificate. The scope of this rulemaking is intended to be strictly procedural in nature and effect.

The proposed rules would provide a standard, generally applicable, one-size-fits-most process that the Council would use to review most types of changes proposed by energy facility site certificate holders in a request for amendment (RFA). The idea of having most types of proposed changes reviewed through a standard process is not new and is in keeping with how existing rules are written. Existing rules provide three Council review processes: a standard, one-size-fits-most process; a transfer process; and an expedited process. The proposed rules provide for only two processes: a standard, one-size-fits-most process and a transfer process. Ultimately, the proposed rules amount to a wholesale re-write of the existing rules governing the Council's processes for reviewing RFAs.

The procedural steps of the proposed rules would provide a new standard amendment process that would function quite differently than the steps of the existing standard amendment process. This new standard amendment process borrows some steps from the existing review process for site certificate applications, including adding steps for completeness determination, a draft proposed order, and a public hearing on the draft proposed order.

The new standard process would be applicable to the same types of changes proposed by site certificate holders as those in which the existing standard amendment process applies. In other words, all types of proposed changes that require an RFA under existing rules would also require an RFA under the proposed rules, and transfers of site certificate holders or transfers in ownership of site certificate holders would continue to be reviewed through the transfer review rules of 345-027-0100.

In addition to the new steps being proposed, the proposed rules also require an amendment to the site certificate for changes proposing to add any quantity of area to the site boundary. This differs

from the existing amendment process, where existing rules only require an amendment for a proposed change that adds area to the site boundary if adding area, or if some other change proposed in the same request for amendment to add area, triggers any of the thresholds under existing rule 345-027-0050(1). Staff's rationale for requiring an amendment to the site certificate for changes proposing to add area to the site boundary is that adding new area carries a relatively high likelihood of impacts to the resources the Council's rules and standards are designed to protect. Also, compared to other types of proposed changes, adding area to the site boundary increases the likelihood that new neighboring property owners could be affected by the proposed change.

During the public comment period for this rulemaking, EFSC staff anticipates it may receive comments that raise questions and ideas about how the proposed rules could possibly be revised to allow certificate holders to add area to site boundaries without going through the standard review process. EFSC staff also anticipates it may receive comments that raise questions and ideas about how the proposed rules could possibly be revised to allow EFSC to review, under special circumstances, an RFA in an expedited and/or emergency manner rather than the standard review process being proposed. Because EFSC staff considers these two issues (how rules allow for area to be added to site boundaries and how RFAs can receive expedited/emergency reviews) to be within the scope of this rulemaking notice, EFSC could revise the proposed rules and/or adopt new rules to address these issues as part of this rulemaking.

The major steps of the new standard amendment process being proposed in this rulemaking are summarized briefly in the following paragraphs:

Pre-Amendment Conference (PAC)

Proposed rules codify how a voluntary PAC is available to certificate holders for most types of proposed changes. Council staff has always been available for consultation to assist a certificate holder before submission of a request for amendment, but people may not have been aware of this option due to it not being written in rule. One exception to the voluntary nature of the PAC is that the proposed rules would require the certificate holder to participate in a mandatory PAC with staff before submitting an RFA for a change proposing to add area to the site boundary. For all other types of proposed changes, the PAC is voluntary.

Preliminary Amendment Request (pRFA)

Proposed rules require all RFAs be deemed a preliminary request for amendment (pRFA) until staff determines that the certificate holder has submitted all the information necessary for staff to complete its review of the RFA.

Determination of Completeness (DOC)

Proposed rules add an explicit stage in the amendment review process for staff to determine whether the pRFA contains adequate information for the Council to make findings or impose conditions on all applicable Council standards. This step is consistent with how staff currently processes RFAs, but officially codifying staff's practice in rule would ensure staff has a sufficient period of time to determine whether it needs additional information from the certificate holder in order to prepare a draft proposed order (DPO) (see next paragraph for more discussion on the DPO).

Draft Proposed Order (DPO)

The proposed rules require staff to issue a DPO containing staff's written analysis of how the certificate holder's RFA demonstrated compliance with all applicable laws and Council standards. The DPO would be the first written document reflecting staff's analysis and draft recommendations issued to the public. In contrast, under the existing process, the first written document reflecting staff's analysis and recommendations issued to the public is a proposed order (PO). Adding this step would allow the Council more flexibility to make changes in response to comments received during the public comment period.

Public Comment and Hearing on the DPO

NOTICES OF PROPOSED RULEMAKING

In the existing amendment process, upon receipt of an RFA, staff solicits comments on the RFA from the public and reviewing agencies. After receiving comments on the RFA, staff reviews all the timely comments it receives, then completes its analysis of how the RFA complies with all applicable laws and Council standards, and then issues its analysis and recommendations in a PO. Once a PO is issued, staff solicits a second round of comments and solicits requests for contested case on the PO.

The proposed rules consolidate the two existing comment periods into a single round of comments after the issuance of the DPO. Rather than taking comments on a potentially incomplete RFA and in the absence of staff's analysis and recommendations, taking comments after a DPO allows for comments to be based on a complete RFA and staff's initial analysis and conclusions of facts and law as to whether the certificate holder has demonstrated compliance with all applicable laws and Council standards.

The proposed rules also provide for a mandatory public hearing on the DPO. The hearing would increase the public's opportunity to participate in the review of an RFA by instituting an automatic time and place for people to provide oral comments. To ensure the Council hears all testimony directly, the DPO hearing for an RFA would always be conducted by the Council itself rather than by an appointed hearing's officer.

A feature of the proposed DPO hearing and comment period is for it to function as a "raise it or waive it" opportunity for people to engage in the amendment review process. As such, any person who does not properly raise an issue in a comment on the record of the DPO would not be eligible to raise new issues later in the process and would not be able to participate in a contested case on any issues. In the existing amendment review process, after the PO is issued, any person can provide comment on any issue and any person can request a contested case on any issue.

Proposed Order (PO)

Before issuing a Proposed Order (PO), staff would consider all oral and written comments received on the record of the DPO. Because the recommendations in the DPO may change in response to comments received on the DPO, the PO may or may not include the same recommendations to the Council that were made in the DPO.

As discussed above, the proposed rules would not include a comment period on the PO. However, with the addition of the DPO and the mandatory public hearing on the DPO, the public and the certificate holder would have more opportunity for participation than what the existing amendment review process provides.

Requests for Contested Case (CC)

Proposed rules require requests for CC on the PO be limited to those persons who previously commented on the record of the DPO hearing and limited to only those issues a prior commenter previously raised on the record of the DPO hearing. The public comment period and the public hearing on the DPO, therefore, would function as a "raise it or waive it" opportunity for the public and the certificate holder to raise issues and preserve their ability to participate further in the review process.

Council Considers CC Requests

Proposed rules would not make any changes to how the Council considers and evaluates CC requests to determine whether to grant a CC for a RFA. The existing amendment process does not include an automatic CC. Instead, any person may request a CC proceeding on the PO for an RFA. Requests for CC are then considered by the Council to determine if any requests meet the threshold criteria necessary for the Council to grant a CC. To grant a request for a CC, the Council must find that the request raises a significant issue of fact or law that may affect the Council's determination that the facility, with the change proposed by the amendment, meets the applicable laws or Council standards. Proposed rules clarify the language describing this Council's CC determination process, but proposed rules make no substantive changes to how this process functions in existing rules.

Under proposed rules, if the Council finds that the CC request was properly raised on the record of the DPO hearing, and the CC request meets the threshold determination described above, a CC would be conducted as described in the existing Council rules. Proposed rules would not make any substantive changes to how the CC would be conducted. If the Council finds that the CC request was not properly raised on the record of the DPO hearing, or if the CC request does not meet the threshold determination described above, the Council would review the proposed order and make a final decision on the amendment request. Proposed rules would not make any substantive changes to how the Council makes its final decision when there is not a CC.

Council's Final Decision and Scope of Review

Proposed rules clarify the existing rules stating how the Council makes its final decision and what the Council's scope of review is for the various types of amendments (i.e. under existing rules, the Council's scope of review for RFA's proposing to add new area to a site boundary differs from the scope of review for an RFA proposing to extend construction deadlines). These changes are necessary to clarify existing rule language, and to ensure consistency and compatibility with the other rule changes being proposed.

The Council requests public comment on these proposed rules. The Council also requests public comment on whether other options should be considered for achieving the substantive goals of the proposed rules while reducing the negative economic impact of the proposed rules on business. A call-in number is available for the public hearing. Please see the Oregon Department of Energy website for hearing details and other materials: <http://www.oregon.gov/energy/Siting/Pages/council-rulemaking.aspx>

Rules Coordinator: Jason Sierman

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

Telephone: (503) 373-2127

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Department of Environmental Quality Chapter 340

Rule Caption: North Fork Smith River Outstanding Resource Waters Designation

Date:	Time:	Location:
2-21-17	3 p.m.	DEQ Headquarters, 3rd Fl. 700 NE Multnomah St. Portland, OR 97232
2-22-17	6 p.m.	Best Western Harbor Inn 16008 Boat Basin Rd. Brookings, OR 97415

Hearing Officer: Debra SturdevantPam Blake

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

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

Proposed Amendments: 340-041-0004, 340-041-0305

Last Date for Comment: 2-28-17, 4 p.m.

Summary: The proposed amendments are to DEQ's antidegradation rule at OAR 340-041-0004. The amendments designate the North Fork Smith River and its tributaries and associated wetlands as Outstanding Resource Waters. The proposed amendments revise the basin-specific criteria for the South Coast Basin at OAR 340-041-0300 to require that:

- 1) The North Fork Smith River and all of its tributaries and wetlands are Outstanding Resource Waters;
- 2) The high water quality, ecological values, and existing and designated uses of these waters shall be maintained;
- 3) DEQ shall not allow new or expanded National Pollutant Discharge Elimination System permitted discharges to these waters, upstream waters, or tributaries to these waters;
- 4) No activities shall be allowed that would degrade the water quality, ecological characteristics or values of these waters;
- 5) Exceptions may be made to respond to public emergencies or for restoration or enhancement of water quality or ecological values.

Rules Coordinator: Meyer Goldstein

NOTICES OF PROPOSED RULEMAKING

Address: Department of Environmental Quality, 811 SW Sixth Ave.,
Portland, OR 97204
Telephone: (503) 229-6478

.....
Department of Fish and Wildlife
Chapter 635

Rule Caption: Oregon State List of Threatened and Endangered Species Amended.

Date:	Time:	Location:
3-17-17	8 a.m.	Benton County Fairgrounds Guerber Hall 110 SW 53rd St. Corvallis, OR 97333

Hearing Officer: Oregon Fish & Wildlife Commission
Stat. Auth.: ORS 496.004, 496.171, 496.172, 496.182, 496.192, 498.026

Stats. Implemented: ORS 496.004, 496.171, 496.172, 496.182, 496.192, 498.026

Proposed Amendments: 635-100-0125

Last Date for Comment: 3-17-17, Close of Hearing

Summary: Rule amendments remove Borax Lake Chub (*Gila boraxobius*) and Foskett Spring Speckled Dace (*Rhinichthys osculus ssp.*) from the Oregon State List of Threatened and Endangered Species.

Rules Coordinator: Michelle Tate

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

Telephone: (503) 947-6044

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Rule Caption: Limited Landowner Preference Tags for Mule Deer

Date:	Time:	Location:
3-17-17	8 a.m.	Benton County Fairgrounds 110 SW 53rd St. Corvallis, OR 97333

Hearing Officer: ODFW Commission

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.151 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.151 & 496.162

Proposed Amendments: Rules in 635-075

Last Date for Comment: 3-17-17, Close of Hearing

Summary: Change the formula used to allocate Landowner Preference tags for mule deer in Wildlife Management Units where the mule deer population is below the population Management Objective.

Rules Coordinator: Michelle Tate

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

Telephone: (503) 947-6044

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Rule Caption: Rename the River Ranch Parcel of the Lower Deschutes Wildlife Area to "Woosley Tract"

Date:	Time:	Location:
3-17-17	8 a.m.	Benton County Fairgrounds 110 SW 53rd St. Corvallis, OR 97333

Hearing Officer: ODFW Commission

Stat. Auth.: ORS 496.012, 496.138, 496.146, & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146, & 496.162
Proposed Amendments: 635-008-0123

Last Date for Comment: 3-17-17, Close of Hearing

Summary: Rename the River Ranch parcel of the Lower Deschutes Wildlife Area to the "Woosley Tract" in recognition of the contributions of Chuck and Gail Woosley.

Rules Coordinator: Michelle Tate

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

Telephone: (503) 947-6044

Rule Caption: Warm Springs Tribe Hunting
Date: 3-17-17
Time: 8 a.m.
Location: Benton County Fairgrounds
110 SW 53rd St.
Corvallis, OR 97333

Hearing Officer: ODFW Commission
Stat. Auth.: 496.138, ORS 496.146, ORS 496.162

Stats. Implemented: 496.012, 496.138, ORS 496.162

Proposed Adoptions: 635-043-0160

Last Date for Comment: 3-17-17, Close of Hearing

Summary: Rules regarding take of big game, game bird and furbearer species by the Confederated Tribes of the Warm Springs.

Rules Coordinator: Michelle Tate

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

Telephone: (503) 947-6044

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Department of Human Services,
Self-Sufficiency Programs
Chapter 461

Rule Caption: Amending rules relating to public and medical assistance programs

Date:	Time:	Location:
2-21-17	11 a.m.	500 Summer St. NE, Rm. 255 Salem, OR 97301

Hearing Officer: DHS Staff

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.087, 411.404, 411.706, 411.816, 412.006, 412.014, 412.024, 412.049, 412.124, 413.085, 414.231, 416.340, 416.350

Stats. Implemented: ORS 93.969, 125.495, 411.060, 411.070, 411.087, 411.404, 411.620, 411.630, 411.706, 411.708, 411.795, 411.816, 412.006, 412.014, 412.024, 412.049, 412.124, 413.085, 414.231, 416.310, 416.350

Proposed Amendments: 461-120-0330, 461-135-0835, 461-145-0530

Last Date for Comment: 2-28-17, 5 p.m.

Summary: OAR 461-120-0330 about the requirement to pursue assets is being amended to clarify the manner in which individuals must begin drawing from retirement or pension accounts when eligible to do so. The previous amendment to this rule (adopted on July 1, 2016) was not specific enough and could be interpreted to allow individuals to take \$1.00 per month or quarter payments, for example.

OAR 461-135-0835 about limits on estate claims is being amended to remove the word "probate" from the definition of "probate estate" to bring the rule in line with ORS 416.350 which directs recovery against the "estate" of a spouse of the Medicaid recipient under certain circumstances.

OAR 461-145-0530 about tax refunds is being amended in its entirety to state how tax refunds are treated (as income or a resource) when determining financial eligibility for public and medical assistance programs depending on the type of refund and date of receipt.

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

The Department requests public comment on whether other options should be considered for achieving the substantive goals of the rules while reducing the negative economic impact of the rules on business. Rule text showing edits for the rules described above is available at http://www.dhs.state.or.us/policy/selfsufficiency/ar_proposed.htm.

Rules Coordinator: Kris Skaro

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

Telephone: (503) 945-6067

NOTICES OF PROPOSED RULEMAKING

Department of State Lands Chapter 141

Rule Caption: Establish a Removal-Fill General Permit for Certain Activities Promoting Waterway-Floodplain Connectivity

Date:	Time:	Location:
2-22-17	4 p.m.	Dept. of Forestry DRJ Conf. Rm. 415 Patterson Bridge Rd. John Day, OR
2-23-17	4 p.m.	Harney County Courthouse Basement Mtg. Rm. 450 N Buena Vista Burns, OR

Hearing Officer: Heidi Hartman

Stat. Auth.: ORS Chapter 183 - regarding administrative procedures and rules of state agencies ORS 196.817 - regarding the Department's authority to create a removal-fill general permit by rule or order

Stats. Implemented: ORS 196.600-ORS 196.990

Proposed Adoptions: 141-093-0285, 141-093-0290, 141-093-0295, 141-093-0300, 141-093-0305, 141-093-0310, 141-093-0315, 141-093-0320

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

Summary: This rule would establish a General Permit for certain restoration activities ("beaver dam analogues" and "restoration check dams") that promote connectivity between incised waterways and their floodplains. This rulemaking reflects the Department's interest reducing regulatory barriers for landowners and conservation interests that seek to voluntarily improve conditions within incised waterways to promote reconnection with their historic floodplains and that may simultaneously improve the economic capacity of adjacent lands. The Department proposes this General Permit as a 10-year pilot to assess the efficacy of the rule in promoting that interest.

Rules Coordinator: Sabrina L. Foward

Address: Department of State Lands, 775 Summer St. NE, Suite 100, Salem, OR 97301-1279

Telephone: (503) 986-5236

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

Rule Caption: Extending the Class C Third Party Testing Pilot Program

Stat. Auth.: ORS 184.616, 184.619, 802.010 and 802.600

Other Auth.: None

Stats. Implemented: ORS 802.600

Proposed Amendments: 735-061-0210

Last Date for Comment: 2-21-17, 4 p.m.

Summary: DMV wishes to continue a pilot for a Class C Third Party Testing Program and OAR 735-061-0210 contains a specific ending date.

This proposed rule amendment was filed as an emergency rule on October 31, 2016 as the pilot program was scheduled to end at that time.

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

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Rule Caption: Early Renewal of Driver Licenses and Identification Cards

Stat. Auth.: ORS 184.616, 184.619, 802.010, 802.012, 807.021, 807.022 and 807.040

Other Auth.: None

Stats. Implemented: ORS 802.012, 802.540, 807.021, 807.022, 807.040-807.060, 807.100, 807.150 & 807.400

Proposed Amendments: 735-062-0090

Last Date for Comment: 2-21-17, 4 p.m.

Summary: OAR 735-062-0090 currently allows a person to renew a driver license or identification card 14 months prior to expiration. DMV established the 14-month time period in 2010 to allow flexibility for persons who may work or travel out-of-state for extended periods and give them a reasonable amount of time to appear in person to renew a driver license or identification card. DMV proposes to reduce that period to 12 months to comply with a policy of the U.S. Department of Transportation, Federal Motor Carrier Safety Administration, allowing states to renew a Commercial Driver License (CDL) up to one year in advance of the expiration date of the current CDL. This rule amendment will also conform the renewal period to the requirements in ORS 807.150(1)(a) and 807.400(9), addressing renewal of driver licenses and identification cards.

This proposed rule amendment was filed as an emergency rule on October 19, 2016, as major changes to the issuance of CDL and commercial learner driver permits were made effective on September 26, 2016, and this change in the renewal was inadvertently overlooked.

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

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Economic Recovery Review Council Chapter 966

Rule Caption: Relating to the designation of a new Regionally Significant Industrial Area.

Stat. Auth.: ORS 197.723

Stats. Implemented: ORS 197.723

Proposed Adoptions: 966-100-0900

Last Date for Comment: 2-23-17, 5 p.m.

Summary: The Economic Recovery Review Council approved the South Coast Industrial Area as a Regionally Significant Industrial Area (RISA) on October 28, 2016. The RISA 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

Address: Economic Recovery Review Council, 775 Summer St. NE, Suite 200, Salem, OR 97301

Telephone: (503) 986-0036

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Oregon Department of Education Chapter 581

Rule Caption: School Capital Matching Program

Stat. Auth.: Section 2 and 5, ch 783, OL 2015 (Enrolled Senate Bill 447)

Stats. Implemented: Section 5, ch 783, OL 2015 (Enrolled Senate Bill 447)

Proposed Amendments: 581-027-0005, 581-027-0010, 581-027-0015, 581-027-0020, 581-027-0025, 581-0027-0030, 581-027-0035, 581-027-0040, 581-027-0045, 581-027-0050

Last Date for Comment: 2-23-17, 9 a.m.

Summary: 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

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

Telephone: (503) 947-5651

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

Rule Caption: Amending Prior Authorization Approval Criteria Guide

NOTICES OF PROPOSED RULEMAKING

Date: 2-15-17
Time: 10:30 a.m.
Location: 500 Summer St. NE
Salem, OR 97301
Rm. 137B

Hearing Officer: Sandy Cafourek

Stat. Auth.: ORS 413.032, 413.042, 414.065, 414.325, 414.330–414.414, 414.312, 414.316

Stats. Implemented: ORS 414.065, 414.325, 414.334, 414.361, 414.369, 414.371, 414.353, 414.354

Proposed Amendments: 410-121-0040

Proposed Repeals: 410-121-0040(T)

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

Summary: The Pharmaceutical Services program administrative rules (Division 121) govern Division payments for services provided to certain clients. The Division needs to amend rules as follows: The Authority is amending 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

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

Telephone: (503) 945-6430

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Rule Caption: Amending PDL September 29, 2016, DUR/P&T Action

Date: 2-15-17
Time: 10:30 a.m.
Location: 500 Summer St. NE
Salem, OR 97301
Rm. 137B

Hearing Officer: Sandy Cafourek

Stat. Auth.: ORS 413.032, 413.042, 414.065, 414.325, 414.330 to 414.414, 414.312, and 414.316

Stats. Implemented: ORS 414.065, 414.325, 414.334, 414.361, 414.369, 414.371, 414.353, & 414.354

Proposed Amendments: 410-121-0030

Proposed Repeals: 410-121-0030(T)

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

Summary: The Pharmaceutical Services Program administrative rules (Division 121) govern Division payments for services provided to certain clients. The Division needs to amend rules as follows:

410-121-0030:

Preferred:

Epipen™

Epipen Jr.™

Zepatier™

Epclusa™

Savaysa™

Granix™

Aristada™

Non-Preferred:

Musinex™

Imitrex™

Solvaldi™

Lantus™

Lantus Solostar™

Saizen™

Norditropin Flexpro™

Lovenox™

Ganasa™

Tovias™

Vigamox™

Travatan Z™

Daytrana™

Combivent Respimat™

Proair HFA™

Proventil HFA™
Pulmicort Flexhaler™
Flovent Diskus™
Flovent HFA™
Symbicort™
Tracleer™
Renagel™
Strattera™

Clerical: Various clerical changes were made to system class, drug and form names.

Rules Coordinator: Sandy Cafourek

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

Telephone: (503) 945-6430

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Rule Caption: Prioritized List Effective 1/1/17, Including Modifications to Biennial Changes January 1, 2016–December 31, 2017

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065 & 414.727

Proposed Amendments: 410-141-0520

Proposed Repeals: OAR 410-141-0520(T)

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

Summary: The OHP program administrative rules govern the Division's payments for services provided to clients. The Authority needs to temporarily 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

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

Telephone: (503) 945-6430

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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

Date: 2-21-17
Time: 9 a.m.
Location: 725 Summer St. NE
Conf. Rm. 124A
Salem OR 97301

Hearing Officer: Sandy McDonnell

Stat. Auth.: ORS 456.515 to 456.720

Stats. Implemented: ORS 456.559(1)(f)

Proposed Adoptions: 813-135-0010, 813-135-0020, 813-135-0030, 813-135-0040, 813-135-0050, 813-135-0060

Proposed Repeals: 813-135-0010(T), 813-135-0020(T), 813-135-0030(T), 813-135-0040(T), 813-135-0050(T), 813-135-0060(T)

Last Date for Comment: 3-7-17, 5 p.m.

Summary: 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 rental units for low-income households through the allocation of proceeds from Article XI-Q General Obligation Bonds.

Rules Coordinator: Sandy McDonnell

Address: Oregon Housing and Community Services Department, 725 Summer St. NE, Suite B, Salem, OR 97301-1266

Telephone: (503) 986-2012

NOTICES OF PROPOSED RULEMAKING

Oregon Medical Board Chapter 847

Rule Caption: Visiting Physician privileges for out-of-state physicians acting as expert witnesses

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.060, 677.085, 677.132, 677.190, 677.265

Proposed Amendments: 847-010-0066

Last Date for Comment: 2-28-17, Close of Business

Summary: The proposed rule amendment specifies that physicians who are actively licensed and in good standing in another state or country may be approved as a visiting physician for the purpose of acting as an expert witness for up to 30 days per year. Physicians who serve as an expert witness for more than 30 days in Oregon in a year or who will not act under the supervision of an actively licensed Oregon physician in good standing must apply for a full active license or a locum tenens license.

Rules Coordinator: Nicole Krishnaswami

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

Telephone: (971) 673-2667

Oregon Patient Safety Commission Chapter 325

Rule Caption: Updates the Patient Safety Commission 2015-2017 biennial budget by amending OAR 325-005-0015.

Date:	Time:	Location:
2-15-17	10 a.m.	2501 SW 1st Ave, Suite 200 Portland, OR 97201

Hearing Officer: Whitney Hill

Stat. Auth.: ORS 442.820-442.835

Other Auth.: Section 9, Chapter 686, Oregon Laws 2003

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

Proposed Amendments: 325-005-0015

Last Date for Comment: 2-15-17, Close of Business

Summary: 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 by amending OAR 325-005-0015.

Rules Coordinator: Melissa Parkerton

Address: Oregon Patient Safety Commission, PO Box 285, Portland, OR 97204

Telephone: (503) 224-5034

Oregon Public Employees Retirement System Chapter 459

Rule Caption: Establish additional criteria for disability definitions and eligibility.

Date:	Time:	Location:
2-22-17	2 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 183.310-183.550, 183.600-183.690, 238.320-238.345, 238A.235

Proposed Adoptions: 459-076-0040

Proposed Amendments: 459-015-0001, 459-015-0010, 459-015-0020, 459-015-0025, 459-015-0040, 459-015-0050, 459-076-0001, 459-076-0010, 459-076-0020, 459-076-0025, 459-076-0050

Last Date for Comment: 3-1-17, 5 p.m.

Summary: Establish additional criteria for disability definitions and eligibility; Modify rules regarding disability to update and add definitions; update specialist requirements; address effect of unemployment benefits in determining disability eligibility; clarify when PERS may request evaluations or exams; add physical capacity to

independent evaluations; clarify periodic review standard; clarify burden of proof for OPSRP disability.

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 and updates public records request rule; housekeeping edits

Date:	Time:	Location:
2-16-17	9:30 a.m.	Oregon State Lottery Headquarters 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 192.440

Proposed Amendments: 177-010-0100

Last Date for Comment: 2-16-17, 10 a.m.

Summary: The Oregon Lottery has filed a Notice of Proposed Rule-making Hearing to amend the above referenced administrative rule to update the provisions of its public records request rule. Other amendments are housekeeping edits.

Rules Coordinator: Mark W. Hohlt

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

Telephone: (503) 540-1417

Oregon State Treasury Chapter 170

Rule Caption: Create new rules for the Oregon Retirement Savings Plan

Date:	Time:	Location:
2-15-17	10 a.m.	Oregon State Treasury - Tigard, 16290 SW Upper Boones Ferry Rd. Tigard, OR

Hearing Officer: Staff

Stat. Auth.: ORS 178.200-178.245

Stats. Implemented: ORS 178.215

Proposed Adoptions: Rules in 170-080

Last Date for Comment: 2-22-17, Close of Business

Summary: Creates new rules for the Oregon Retirement Savings Plan.

The comment period for these rules was extended to February 2017 to accommodate both a weather-related cancellation of the December hearing and provide interested parties with additional opportunities to offer comment on the revised draft rules.

Interested parties are welcome to attend in person or call-in to the hearing. The call-in information will be posted on the Oregon State Treasury Retirement Savings Plan website (<http://www.oregon.gov/treasury/ORSP/Pages/ORSP-Rulemaking.aspx>) in advance of the hearing. We request interested parties wishing to call-in and provide oral comment to contact Kim Olson, OST Rules Coordinator, in advance of the hearing. The Rules Coordinator will enter the interested party into a queue so we can accept comments from both those in the room and on the phone in an orderly fashion.

Rules Coordinator: Kimberly Olson

Address: Oregon State Treasury, 350 Winter St. NE, Suite 100, Salem, OR 97301

Telephone: (503) 378-3562

Rule Caption: Modifies qualification requirements and application procedures related to the Oregon School Bond Guaranty Program.

Stat. Auth.: ORS 328.321-328.356

Stats. Implemented: ORS 328.321-328.356

NOTICES OF PROPOSED RULEMAKING

Proposed Amendments: 170-063-0000

Last Date for Comment: 2-22-17, Close of Business

Summary: (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

Address: Oregon State Treasury, 350 Winter St. NE, Suite 100, Salem, OR 97301

Telephone: (503) 378-3562

Rule Caption: Modifies advance and current forward refunding rule requirements and updates Municipal Advisor requirements.

Stat. Auth.: ORS 287A.365

Stats. Implemented: ORS 287A.360-287A.380

Proposed Amendments: 170-062-0000

Last Date for Comment: 2-22-17, Close of Business

Summary: 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

Address: Oregon State Treasury, 350 Winter St. NE, Suite 100, Salem, OR 97301

Telephone: (503) 378-3562

Physical Therapist Licensing Board Chapter 848

Rule Caption: Amend current rule budget to reflect 2017–2019 Board approved expenditures.

Date:	Time:	Location:
3-2-17	8 a.m.	Portland State Office Bldg. 800 NE Oregon St., Ste. 445 Portland, OR

Hearing Officer: James D. Heider

Stat. Auth.: ORS 182.462

Stats. Implemented: ORS 182.462

Proposed Amendments: 848-005-0010

Last Date for Comment: 3-2-17, 10 a.m.

Summary: 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

Address: Physical Therapist Licensing Board, 800 NE Oregon St, Suite 407, Portland, OR 97232

Telephone: (971) 673-0203

Secretary of State, Elections Division Chapter 165

Rule Caption: Adopts Revisions to the 2016 Campaign Finance Manual

Stat. Auth.: ORS 246.150, ORS 260.156, ORS 260.200

Stats. Implemented: OSRS 260.005, 260.007, 260.035, 260.037, 260.038, 260.039, 260.041, 260.042, 260.043, 260.044, 260.045, 260.046, 260.049, 260.054, 260.055, 260.056, 260.057, 260.076, 260.078, 260.083, 260.085, 260.102, 260.112, 260.118, 260.145, 260.232 and 260.995

Proposed Amendments: 165-012-0005

Last Date for Comment: 2-24-17, 5 p.m.

Summary: This proposed amendment revises the 2016 Campaign finance Manual by updating the filing deadline for candidates required to disclose transactions under ORS 260.043(3)(c) and the filing deadlines for 2017 under ORS 260.044, properly referencing a transaction subtype, “Personal Expenditure Balance Adjustment,” clarifying standards related to independent expenditure communications and identifying who is eligible to file initial asset transactions. Additionally, this amendment incorporates non-substantive grammatical changes.

To request a copy of the draft amendments to the 2016 Campaign Finance Manual please contact Summer Davis, Compliance Specialist, phone 503-986-1518 or e-mail summer.s.davis@state.or.us.

Rules Coordinator: Brenda Bayes

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

Telephone: (503) 986-1518

ADMINISTRATIVE RULES

Board of Accountancy Chapter 801

Rule Caption: Division wide changes with emphasis on retired and inactive statutes.

Adm. Order No.: BOA 1-2017

Filed with Sec. of State: 1-4-2017

Certified to be Effective: 1-4-17

Notice Publication Date: 10-1-2016

Rules Amended: 801-001-0005, 801-001-0035, 801-005-0010, 801-010-0060, 801-010-0065, 801-010-0080, 801-010-0110, 801-010-0115, 801-010-0120, 801-010-0130, 801-010-0340, 801-010-0345, 801-020-0690, 801-020-0700, 801-030-0005, 801-030-0020, 801-040-0020, 801-040-0030, 801-040-0050, 801-050-0020, 801-050-0040

Rules Repealed: 801-040-0090

Subject: The revisions touch every aspect (and Division) of the Board's rules, including - but not limited to - a special focus in Division 010 on the boundaries of what is (and is not) permissible work activity if licensed with an inactive or retired status license. In addition, the changes in Division 030 rules include adding individual licensees to the 45-day reporting requirement for lawsuits that currently only applies to registered firms, while clarifying the scope for what types of civil or regulatory actions, lawsuit or arbitration firms and individuals must report. In Division 050, the proposed rules no longer permit that firms can opt-out of reporting peer review results to the Facilitated State Board Access web site, as part of a national movement toward more uniform rules on peer review oversight

Rules Coordinator: Kimberly Fast—(503) 378-2268

801-001-0005

Model Rules of Procedure

Pursuant to ORS 183.341, the Oregon Board of Accountancy adopts the Attorney General's Uniform and Model Rules of Procedure in effect on January 1, 2017.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or Board of Accountancy.]

Stat. Auth.: ORS 670.310 & 673.410

Stats. Implemented: ORS 183.341

Hist.: AB 20A, f. 1-17-72, ef. 2-1-72; AB 25, f. 9-15-72, ef. 10-1-72; 1AB 33, f. 11-6-73, ef. 11-25-73; 1AB 38, f. & ef. 2-10-76; 1AB 3-1978, f. & ef. 3-23-78; 1AB 1-1980, f. & ef. 2-26-80; 1AB 1-1982, f. & ef. 1-8-82; AB 5-1988, f. & cert. ef. 10-31-88; AB 6-1991, f. & cert. ef. 12-18-91; AB 3-1994, f. & cert. ef. 8-10-94; AB 1-1-96, f. & cert. ef. 1-29-96; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 2-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 1-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 2-2003, f. 12-23-03, cert. ef. 1-1-04; BOA 2-2014, f. 12-15-14, cert. ef. 1-8-15; BOA 1-2017, f. & cert. ef. 1-4-17

801-001-0035

Professional Standards

The professional standards, interpretations, rulings and rules designated and adopted by the Board in OAR Chapter 801 are those in effect as of January 1, 2017.

Stat. Auth.: ORS 183.332 & 673.410

Stats. Implemented: ORS 183.337 & 673.410

Hist.: BOA 2-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 2-2005, f. 2-24-05 cert. ef. 3-1-05; BOA 5-2005, f. 11-22-05, cert. ef. 1-1-06; BOA 1-2006, f. 12-22-06, cert. ef. 1-1-07; BOA 1-2007, f. 12-27-07 cert. ef. 1-1-08; BOA 1-2008, f. 12-30-08, cert. ef. 1-1-09; BOA 1-2009, f. 12-15-09 cert. ef. 1-1-2010; BOA 1-2010, f. 12-15-10, cert. ef. 1-1-11; BOA 1-2011, f. 12-28-11, cert. ef. 1-1-12; BOA 1-2013, f. & cert. ef. 1-8-13; BOA 1-2014, f. 2-14-14, cert. ef. 3-1-14; BOA 2-2014, f. 12-15-14, cert. ef. 1-8-15; BOA 2-2015(Temp), f. 12-30-15, cert. ef. 1-1-16 thru 6-28-16; BOA 1-2016, f. & cert. ef. 6-28-16; BOA 1-2017, f. & cert. ef. 1-4-17

801-005-0010

Definitions

As used in OAR Chapter 801, the following terms or abbreviations have the following meanings, unless otherwise defined therein:

(1) Active means a license issued by the Oregon Board of Accountancy to an individual who has met the requirements to hold a CPA or PA license, maintains the license and is in good standing.

(2) AICPA means American Institute of Certified Public Accountants.

(3) Applicant means a person applying for a license to practice public accountancy.

(4) Attestation Services means the following professional services required to be performed under the following standards:

(a) Any audit or other engagement for which performance standards are included in the Statements on Auditing Standards (SAS), International Standards on Auditing (ISA), or other internationally recognized auditing standards.

(b) Any review of a financial statement for which performance standards are included in the Statement on Standards for Accounting and Review Services (SSARS);

(c) Any examination of prospective financial information for which performance standards are included in the Standards for Attest Engagements (SSAE);

(d) Any examination, review or agreed upon procedures engagement other than an examination described in paragraph (c) of this subsection for which performance standards are included in the Statements on Standards for Attestation Engagements (SSAE); and

(e) Any engagement for which performance standards are included in the Auditing Standards of the Public Company Accounting Oversight Board in the United States (PCAOB)

(f) The statements on standards specified in subsections (a) through (d) of this definition are those developed by the AICPA.

(5) Business organization means any form of business organization authorized by law, including but not limited to a proprietorship, partnership, corporation, limited liability company, limited liability partnership or professional corporation.

(6) CPA or Certified Public Accountant means a person who has a certificate of certified public accountant issued under ORS 673.040.

(7) CPA Exam means the Uniform Certified Public Accountant Examination.

(8) CPE means continuing professional education.

(9) Candidate means a person applying for the CPA Exam.

(10) Censure means an official written expression of reprimand, by Board action, to a licensee for specified conduct.

(11) Certificate means a certificate of certified public accountant issued under ORS 673.040.

(12) Client means a person or entity who agrees with a licensee, or employer of a licensee to receive any professional service from the licensee or employer of licensee.

(13) Commission means a fee calculated as a percentage of the total value of the sale of a product or service that is paid or received in the form of money or other valuable consideration.

(14) Compilation Services means a professional service required to be performed in accordance with the Statement on Standards for Accounting and Review Services (SSARS) in which the person performing the services presents a financial statement that:

(a) Is based on the representation of the owner or management of the company for which the statement is presented; and

(b) Does not include assurances by the person that the representations in the financial statement conform to generally accepted accounting principles.

(15) Contingent fee means a fee established for the performance of any professional service and directly or indirectly paid to a licensee pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service. A fee is not contingent if the fee:

(a) Is fixed by courts or other public authorities; or

(b) In tax matters, is determined based on the results of judicial proceedings or the findings of governmental agencies.

(16) Enterprise means any person or entity, whether organized for profit or not, for which a licensee provides public accounting services.

(17) Expired means a license that has not been renewed after six years from the close of the last license period for which the license was active, inactive or retired. An expired license may be restored only if the Board determines that there is good cause to do so.

(18) Fees include commissions, contingent fees and referral fees.

(19) Financial statements means the presentation of financial data, including accompanying notes, that is derived from accounting records and intended to communicate an entity's economic resources or obligations or the changes therein, at a specific point in time, and/or the results of operations for a specific period of time, presented in accordance with generally accepted accounting principles or a comprehensive basis of accounting other than generally accepted accounting principles. Financial presentations included in tax returns are not financial statements. Incidental financial data included in management advisory services reports to support recommendations to a client are not financial statements. The method of preparation (for example, manual or computer preparation) is not relevant to the definition of a financial statement.

(20) Firm means a business organization as defined in ORS 673.010 that is engaged in the practice of public accountancy and is required to be registered with the Board.

ADMINISTRATIVE RULES

(21) First time candidate means a candidate for the CPA exam who is sitting for the exam for the first time in Oregon.

(22) Generally Accepted Accounting Principles means accounting principles or standards generally accepted in the United States, including but not limited to Statements of Financial Accounting Standards and interpretations thereof, as published by the Financial Accounting Standards Board, and Statements of Governmental Accounting Standards and interpretations thereof, as published by the Government Accounting Standards Board and the International Financial Reporting Standards (IFRS) as issued by the International Accounting Standards Board (IASB).

(23) Generally Accepted Auditing Standards means the Generally Accepted Auditing Standards including but not limited to those standards adopted by the American Institute of Certified Public Accountants, together with interpretations thereof, as set forth in Statements on Auditing Standards issued by the AICPA, and for federal audits, the Single Audit Act and related U.S. Office of Management and Budget Circulars published by the Government Accountability Office, and International Standards on Auditing (ISAs) issued by International Federation of Accountants (IFAC) through the International Auditing and Assurance Standards Board (IAASB).

(24) Holding out as a CPA or PA means to assume or use by oral or written communication the titles or designations "certified public accountant" or "public accountant" or the abbreviations "CPA" or "PA", or any number or other title, sign, card, device or use of any internet domain or e-mail name, tending to indicate that the person holds a certificate or license in good standing issued under the authority of ORS 673 as a certified public accountant or a public accountant.

(25) Inactive status means a license status granted by the Board to a licensee:

(a) Whose license is not expired, suspended revoked or in retired status and;

(b) Who has met and agreed to all conditions and requirements set out in OAR 801-010-0120 relating to inactive status licensure.

(26) In good standing means the status of a holder of a license or firm registration issued by any jurisdiction that is not suspended, revoked, expired, resigned or lapsed. The good standing status of a licensee or registered firm will not be affected by the lapse of a license issued in another jurisdiction provided that the licensee holds an active, inactive or retired license to practice public accountancy in the State of Oregon.

(27) Jurisdiction means the licensing authority for the practice of public accountancy in any state, U.S. Territory or foreign country.

(28) Lapsed means a license status that is not renewed within 60-days of the close of a license period.

(a) A person in lapsed status may not:

(A) Practice public accounting in a business organization required to be registered with the Board under ORS 673.160;

(B) Practice as a sole practitioner; or

(C) Perform or offer to perform for a client services involving the use of accounting or auditing skills, including but not limited to issuance of reports on financial statements, management advisory, financial advisory or consulting services, preparation of tax returns or the furnishing of advice on tax matters.

(b) A person in lapsed status must not hold out in any form or manner that they are a CPA or PA.

(c) A lapsed license may be reinstated to active status only prior to becoming expired.

(29) License means:

(a) A certificate, permit or registration, or a license issued under ORS 673.100, enabling the holder thereof to practice public accountancy in this state; or

(b) A certificate, permit, registration or other authorization issued by a jurisdiction outside this state enabling the holder thereof to practice public accountancy in that jurisdiction.

(30) Licensee means the holder of a license as defined in these rules.

(31) Material participation means participation that is regular, continuous and substantial.

(32) Manager means a manager of a limited liability company.

(33) Member means a member of a limited liability company.

(34) NASBA means National Association of State Boards of Accountancy.

(35) Non-licensee owner means a person who does not hold a certificate, license or permit as a certified public accountant or public accountant in Oregon or in any other jurisdiction.

(36) PA or Public Accountant means a person who is the holder of a license issued under ORS 673.100.

(37) Peer Review means a study, appraisal or review of one or more aspects of the public accountancy work of a holder of a license under ORS 673.150 or of a registered business organization that performs attestation services or compilation services that is conducted by a CPA who holds an active license issued by any state or a public accountant licensed under 673.100 who was required to pass the audit section of the Uniform CPA Exam as a requirement for licensing. The peer reviewer must also be independent of the license holder or registered business organization being reviewed.

(38) Permit means a license to practice public accountancy issued under ORS 673.150.

(39) Practice of public accountancy means performance of or any offer to perform one or more services for a client or potential client, including the performance of such services while in the employ of another person by a licensee, professional services of accounting, tax, personal financial planning, litigation support services, and those professional services for which standards are promulgated. These standards include Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC), Statements of Financial Accounting Standards, Statements on Auditing Standards, Statements on Standards for Accounting and Review Services, Statements on Standards for Consulting Services, Statements of Governmental Accounting Standards, International Financial Reporting Standards, International Accounting Standards, International Standards on Auditing, Statements on Standards for Attestation Engagements, and Statements on Standards for Valuation Services.

(40) Principal Place of Business means the office location designated by a person for purposes of substantial equivalency and reciprocity.

(41) Professional means arising out of or related to the specialized knowledge or skills associated with certified public accountants and public accountants.

(42) Professional services means any services performed or offered to be performed by a licensee for a client or potential client in the course of the practice of public accountancy.

(43) Regional Accreditation means the college or university is accredited by one of the six regional accrediting associations or by another accrediting body that is recognized by the Board.

(44) Referral fee means a referral fee that includes, but is not limited to, a rebate, preference, discount or any item of value, whether in the form of money or otherwise, given or received by a certified public accountant, public accountant or firm, to or from any third party, directly or indirectly, in exchange for the purchase of any product or service, unless made in the ordinary course of business.

(45) Registration means the authority issued under ORS 673.160 to a business organization to practice public accountancy in this state.

(46) Report. "Report", when used with reference to attestation services or compilation services means an opinion or other form of language that states or implies assurance as to the reliability of the attested information or the compiled financial statements and that also includes or is accompanied by any statement or implication that the person or firm issuing the report has special knowledge or competence in public accountancy. Such a statement or implication of special knowledge or competence may arise from use by the issuer of the report of names or titles indicating that the issuer is a public accountancy professional or organization or may arise from the language of the report itself.

(a) The term "report" includes any form of language that:

(A) Disclaims an opinion when the form of language implies any positive assurance as to the reliability of the attested information or the compiled financial statements referred to or of the special knowledge or competence on the part of the person or firm issuing the language;

(B) Implies any positive assurance as to the reliability of the attested information or compiled financial statements referred to or of the special knowledge or competence on the part of the person or firm issuing the language; or

(C) Relates to the affairs of a person and that is conventionally used by licensees in reports or financial statements.

(b) Language Not Constituting a Report: The following statement, signed by a person who does not hold a license issued under ORS 673.150, shall not constitute a report under ORS 673.320 so long as the statement is not accompanied by any wording indicating the person is an accountant or auditor or other language prohibited by ORS 673.020, 673.030, 673.310 or 673.320: "The accompanying balance sheet (or . . .) of XYZ Company as of (date) and the related statements of income (or retained earnings or cash flows) for the year then ended have been prepared by me (us). The information presented in these financial statements is the representation of management (owners)."

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(47) Retired means a license status conferred by the Board upon a licensee who:

(a) At any age, has held an active license in good standing, to practice public accountancy in Oregon for a combined period of not less than 20 years, or

(b) Has reached 65 years of age, and

(c) Has met and agreed to all conditions and requirements set out in OAR 801-010-0120 relating to retired status licensure.

(48) Returning candidate means a person who has received grades for any section of the Uniform CPA exam who applies to sit for any part of the CPA exam in Oregon.

(49) Single Audit Act means the Single Audit Act with the Single Audit Act Amendments of 1996, as published by the United States Government Accountability Office, Office of Management and Budget.

(50) Standards for Accounting and Review Services means the Statements on Standards for Accounting and Review Services published by the AICPA.

(51) Standards for board approved peer review programs means the Standards for Performing and Reporting on Peer Reviews published by the AICPA.

(52) Statements on Standards for Attestation Engagements means the statements by that name issued by the AICPA.

(53) State means any state, territory or insular possession of the United States, and the District of Columbia.

(54) Substantial equivalency means:

(a) An individual holds a valid license as a certified public accountant from another state that requires an individual, as a condition of licensure as a certified public accountant to:

(A) Complete at least 150 semester hours of college education and obtain a baccalaureate or higher degree conferred by a college or university;

(B) Achieve a passing grade on the Uniform Certified Public Accountant Examination; and

(C) Possess at least one year of experience, verified by a licensee, providing any type of service or advice involving the use of accounting, attestation, compilation, management advisory, financial advisory, tax or related consulting skills, obtained through public practice or government, industry or academic work; or

(b) An individual has the qualifications specified in paragraph (a) of this subsection and holds a valid license as a certified public accountant from another state that does not require an individual to have the qualifications specified in paragraph (1) of this subsection as a condition of licensure as a certified public accountant.

(55) Uniform Accountancy Act (UAA) is a model bill and set of regulations designed by the AICPA and NASBA to provide a uniform approach to regulation of the accounting profession, provisions of which may or may not be adopted by state boards of accountancy.

(56)(a) Working papers include but are not limited to all statements, records, schedules, general ledgers, journals, trial balances and depreciation schedules made by the licensee incident to or in the course of rendering services to a client or former client. Working papers are and shall remain the property of the licensee in the absence of an express agreement to the contrary between the licensee and client.

(b) In addition to the requirements specified in paragraph above, attest documentation shall include, but not be limited to, the following:

(A) The objectives, scope and methodology, including any sampling criteria used;

(B) Documentation of the work performed to support significant conclusions and judgments, including descriptions of transactions and records examined that would enable a reviewer with relevant knowledge and experience, having no previous connection with the attest engagement, to examine the same transactions and records; and

(C) Evidence of any supervisory review of the work performed.

(57) Valid means a certified public accountant or a public accountant license, municipal roster authority, firm registration or chartered accountant certificate that is in active status and in good standing with the appropriate licensing authority. A license in active status is one that is not revoked, suspended, subject to probation, lapsed, inactive, retired or expired.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 670.310

Stats. Implemented: ORS 670.310

Hist.: IAB 2-1982, f. & ef. 10-15-86 AB 1-1989, f. & cert. ef. 1-25-89; AB 2-1990, f. & cert. ef. 4-9-90; AB 1-1992, f. & cert. ef. 2-18-92; AB 1-1993, f. 1-14-93, cert. ef. 1-15-93; AB 6-1993(Temp), f. 11-2-93, cert. ef. 11-4-93; AB 1-1994, f. & cert. ef. 1-21-94; AB 4-1994, f. & cert. ef. 9-27-94; AB 5-1994, f. & cert. ef. 11-10-94; AB 2-1995, f. & cert. ef. 3-22-95; AB 3-1995, f. & cert. ef. 5-19-95; AB 4-1995, f. & cert. ef. 8-8-95; AB 1-1996, f. & cert. ef. 1-29-96; AB 2-1996, f. & cert. ef. 9-25-96; AB 2-1997, f. & cert. ef. 3-10-97; BOA 1-1998, f. & cert. ef. 1-26-98; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 6-1999, f. 12-21-99, cert. ef.

1-1-00; BOA 3-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 2-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 3-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 3-2005, f. 2-24-05 cert. ef. 3-1-05; BOA 6-2005, f. 11-22-05, cert. ef. 1-1-06; BOA 5-2006, f. 12-22-06, cert. ef. 1-1-07; BOA 2-2009, f. 12-15-09, cert. ef. 1-1-10; BOA 2-2010, f. 12-15-10, cert. ef. 1-1-11; BOA 2-2011, f. 12-28-11, cert. ef. 1-1-12; BOA 2-2014, f. 12-15-14, cert. ef. 1-8-15; BOA 1-2015, f. 9-30-15, cert. ef. 10-1-15; BOA 1-2017, f. & cert. ef. 1-4-17

801-010-0060

Credit for Uniform CPA Examination Sections

(1) Exam section requirements.

(a) A candidate may sit for any of the four sections of the computer-based CPA exam individually and in any order. A candidate who fails to pass any section of the exam may retake that section; however, a candidate may not retake a failed section more than once in any testing window.

(b) Candidates who are eligible under ORS 673.050(2) (2001 Edition) to take the CPA exam as a public accountant candidate are required to take and pass the following three sections of the CPA exam: Financial Accounting and Reporting, Regulation, and Business Environment & Concepts.

(2) Credit for CPA exam sections.

(a) Passing Grade. The passing grade for all sections of the exam is 75

(b) Credit for Computer Based CPA Exam., A candidate may take the required exam sections individually and in any order. Credit for any exam section(s) passed are valid for eighteen (18) months from the actual date the candidate took that section(s), without having to attain a minimum score on any failed section and without regard to whether the candidate has taken other exam sections provided that:

(A) Candidates must pass all four sections of the CPA exam within a rolling eighteen month period, which begins on the date of the first section is passed;

(B) Upon passing any CPA exam section, the passing date of that section is the date the candidate took the section; and

(C) Candidates who do not pass all sections of the CPA exam within the rolling eighteen month period lose credit for any section passed outside the eighteen month period and that section must be retaken.

(c) The Board may extend the period for conditional credit for an exam section upon demonstration by the candidate that the credit was lost because of circumstances beyond the candidate's control.

(d) The time limitations for a candidate to complete all sections of the CPA exam may be extended by the Board because of illness, accident or other exigent circumstance, and shall be extended during the time a candidate is in active military service.

(3) Transfer of CPA exam scores from other jurisdictions. The Board allows the transfer of CPA exam scores and may grant credit to a candidate who has successfully completed any section of the CPA exam in another jurisdiction if the Board determines that:

(a) The examination for which credit is requested is the Uniform Certified Public Accountant Examination;

(b) The candidate received a grade of 75 or higher in the section passed; and

(c) A candidate who first sat for the CPA exam after January 1, 2000, and met the 150 hour educational requirement at the time the section was taken and passed for which grades are requested to be transferred. Candidates must provide the Board with official transcripts to verify the educational requirements have been met.

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

Stat. Auth.: ORS 670.310 & 673.410

Stats. Implemented: ORS 673.050, 673.060 & 673.075

Hist.: IAB 12, f. 3-30-65; IAB 14, f. 8-15-68; IAB 16, f. 1-30-70, ef. 2-25-70; IAB 19, f. 10-22-71, ef. 11-15-71; IAB 21, f. 3-2-72, ef. 3-15-72; IAB 30, f. 9-18-73, ef. 10-1-73; IAB 35, f. 10-29-74, ef. 11-25-74; IAB 36, f. 1-28-75, ef. 2-25-75; IAB 40, f. & ef. 5-5-76; IAB 41, f. & ef. 12-2-76; IAB 43, f. & ef. 3-31-77; IAB 2-1978, f. & ef. 3-21-78; IAB 11-1978, f. & ef. 12-1-78; IAB 3-1979, f. & ef. 12-21-79; IAB 2-1980, f. & ef. 4-8-80; IAB 3-1980, f. 10-23-80, ef. 12-1-80; IAB 5-1981, f. & ef. 7-27-81; IAB 6-1981, f. & ef. 7-27-81; IAB 3-1982, f. & ef. 4-20-82; IAB 2-1984, f. & ef. 5-21-84; IAB 3-1984, f. 12-19-84, ef. 1-1-85; AB 4-1991, f. & cert. ef. 7-1-91; AB 1-1994, f. & cert. ef. 1-21-94; AB 3-1994, f. & cert. ef. 8-10-94; AB 4-1994, f. & cert. ef. 9-27-94; AB 5-1995, f. & cert. ef. 8-22-95; BOA 5-1998, f. & cert. ef. 7-9-98; BOA 6-1999, f. & cert. ef. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 4-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 4-2004, f. 12-30-04, cert. ef. 1-1-05; BOA 3-2009, f. 12-15-09, cert. ef. 1-1-10; BOA 3-2010, f. 12-15-10, cert. ef. 1-1-11; BOA 2-2014, f. 12-15-14, cert. ef. 1-8-15; BOA 1-2017, f. & cert. ef. 1-4-17

801-010-0065

Qualifications for Licensure

(1) Requirements. Applicants for the license of Certified Public Accountant must meet the following requirements:

(a) Complete and pass all sections of the CPA exam

(b) Complete and pass an ethics exam that has been adopted by the Board; and

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(c) Have a minimum of 12 months of full-time employment or a total of 2,000 hours of part-time employment;

(A) One hundred sixty seven (167) hours of part-time experience is equivalent to one month.

(d) Applicants for the CPA license must obtain the experience competencies as described in sections (2) through (4) of this rule and a minimum of 12 months full-time employment or a total of 2,000 hours of equivalent part-time employment.

(2) Experience Requirements:

(a) "Supervisor licensee" is a person who qualifies under this rule as a supervisor for the purpose of verifying the experience requirement of an applicant for a CPA license under OAR 801-010-0065 or the experience requirement of an applicant for a public accountant license under 801-010-0100.

(b)(A) To qualify as a supervisor licensee the person providing supervision must hold an active CPA license issued by any state or a PA license issued under ORS 673.100 during the period of supervision and for at least five of the past seven years immediately prior to such supervision.

(B) Notwithstanding subset (2)(b) above, a public accountant (PA) may not act as a supervising licensee or verify an applicant's experience relating to attestation services.

(c) A licensee who provides direct supervision over an applicant must act as supervisor licensee and shall certify to the Board whether or not the applicant has gained qualifying experience under this rule.

(d)(A) "Direct supervision" as used in this rule means that there is a regular and meaningful interaction between the supervisor licensee and the person being supervised in terms of planning, coordinating, guiding, inspecting, controlling, and evaluating activities, and having authority over the employee being supervised.

(B) A licensee acting as a consultant or independent contractor to the applicant's employer will not meet the requirement of direct supervision.

(e) The experience required under ORS 673.040 consists of activities generally performed by Oregon licensed CPAs and PAs engaged in public practice. Typical public practice experience includes attestation services, tax return preparation, financial advisory services and/or compliance and internal control evaluation. Experience obtained while performing financial advisory services or tax advisory services must be performed while employed at a public accounting firm.

(3) Experience portfolio. The applicant must develop a portfolio that demonstrates to the satisfaction of the Board that the applicant has achieved each of the following competencies, together with the supervisory licensee verification.

(a) Understanding of the Code of Professional Conduct promulgated and adopted by the Board;

(b) Ability to assess the achievement of a client's objectives by demonstrating knowledge of various business organizations, understanding of the objectives and goals of business entities, ability to develop and analyze performance measures and critical success factors, and understanding of the economic and regulatory trends that affect the environment of a business entity.

(c) Experience in preparing working papers that include sufficient relevant data to support the analysis and conclusions required by the applicant's work.

(d) Understanding transaction streams and information systems, including the ability to understand how individual transactions aggregate at the organizational level, to infer how transactions impact the organization as a whole, and to evaluate the integrity and reliability of various client information systems, including relevant computer aspects.

(e) Skills in risk assessment and verification demonstrated by a sufficient understanding of accounting and other information systems to:

(A) Assess the risk of misstatement in an information system;

(B) Obtain sufficient relevant data based on the risk of misstatement and the nature of the engagement to determine the appropriateness of underlying data in terms of its completeness, existence and occurrence, valuation and allocation, rights and obligations, presentation and disclosures.

(f) Skills in decision making, problem solving, critical analytical thinking including the ability to evaluate and interpret sufficient relevant data in a variety of engagements and settings. For example, the candidate must evaluate a client's cash flow, profitability, liquidity, solvency, operating cycle, achievement of management's plans, accomplishment of service efforts and systems reliability.

(g) Ability to express scope of work, findings and conclusions including the ability to determine the appropriateness of reports on financial statements, system reliability, or reports expressing scope of work, findings and conclusions.

(4) Qualifying experience. An applicant must demonstrate to the satisfaction of the Board that the portfolio of experience submitted is of sufficient quality and diversity to meet the requirements of this rule. Qualifying experience may be obtained in the following categories:

(a) Attest Experience that demonstrates the competencies prescribed in section (3) of this rule must be obtained while the applicant is:

(A) Employed in public practice on the staff of a certified public accountant or a firm of certified public accountants;

(B) Employed in an organization where employment is equivalent to that described in paragraph (4)(a)(A) of this rule if a peer review is conducted or if such employment is with audit agencies, internal audit departments or other organizations where a peer review is conducted and the audit agency, internal audit department, or other organization is independent of the entity.

(C) Experience under this subsection must include:

(i) Conducting attest-oriented functions where third party reliance is an objective of the report;

(ii) Preparing opinions in accordance with professional standards;

(iii) Preparing financial statements with footnotes to generally accepted accounting principles or other comprehensive bases of accounting; and

(iv) Accounting and review services.

(D) "Third party reliance" as used in this rule means:

(i) Actual third party reliance, such as takes place with respect to the reader of financial statements upon which an audit opinion has been rendered by a public accountant licensed in Oregon or a certified public accountant;

(ii) Audits performed by government agencies, including tax authorities, on organizations which are not subject to management control by the auditing agency; or

(iii) Financial audits performed by independent working groups where the purpose of the audit is reliance by the board of directors on the fairness of the presentation of internally generated financial statements in accordance with generally accepted accounting principles or other comprehensive bases of accounting.

(E) Attest experience will be evaluated on a case-by-case basis to ensure that experience meets the criteria of subsections (3)(a) through (g).

(b) Tax Experience that demonstrates the competencies prescribed in section (3) of this rule must be obtained while the applicant is:

(A) Employed in public practice on the staff of a public accountant, a certified public accountant or a firm of public accountants or certified public accountants;

(B) Engaged in employment that is equivalent to that described in paragraph (4)(b)(A) of this rule.

(C) Tax experience related to subsection (3)(a) of this rule will include the practice of tax with integrity, objectivity, independence, professional judgment, due professional care and professional skepticism.

(D) Tax experience related to subsection (3)(b) of this rule will be in the context of federal and state tax law, federal and state tax regulation, judicial precedence and other technical tax sources applied to a variety of taxable and nontaxable business entities, non-business entities, individuals, families, estates and trusts.

(E) Tax experience related to subsection (3)(c) of this rule will be in the context of records that are clearly organized, complete, cross-referenced and with adequate documentation and support for positions taken or proposed within the context of federal and state tax law, federal and state tax regulations, judicial precedence and other technical tax sources.

(F) Tax experience related to subsection (3)(d) of this rule will be in the context of the application of tax law to various types of transactions both individually and in the aggregate and both actual and proposed.

(G) Tax experience related to subsection (3)(e) of this rule will be in the context of the evaluation of the reasonableness of data provided by clients and the sufficiency and adequacy of the data to support reasonable tax positions and conclusions.

(H) Tax experience related to subsection (3)(f) of this rule will be in the context of identifying tax issues, researching technical guidance, choosing appropriate courses of action and proposing solutions.

(I) Tax experience related to subsection (3)(g) of this rule will be in the context of researching and preparing supporting documents for technical tax positions.

(J) Tax experience will be evaluated on a case-by-case basis to ensure that experience meets criteria of subsections (3)(a) through (g).

(c) Industry accountancy. Experience that demonstrates the competencies described in section (3) of this rule may also be obtained while the applicant is employed under the direct supervision of a public accountant or certified public accountant as provided under this rule.

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(A) Industry experience related to subsection (3)(a) of this rule, will include the practice of accountancy with integrity, objectivity, independence, professional judgment, due professional care and professional skepticism.

(B) Industry experience related to subsection (3)(b) of this rule, will be in the context of assessing the objectives and goals, performance measures, critical success factors and the economic and regulatory trends affecting the applicant's company and industry.

(C) Industry experience related to subsection (3)(c) will be in the context of documenting an analysis of a financial accountancy issue affecting the applicant's company from the collection and summarization of financial data to the identification of alternative conclusions such that others of equal training and experience can trace information to source data and draw similar conclusions.

(D) Industry experience related to subsection (3)(d) of this rule will be in the context of evaluating an accounting system within the applicant's company, performing internal control and substantive testing (analytical procedures, technical research and conclusion), and providing a written conclusion on the reasonableness of the procedures conducted, specific controls that were missing or ineffective, and the measures taken to corroborate data accuracy and conclusions drawn.

(E) Industry experience related to subsection (3)(e) of this rule will be in the context of evaluating risks of misstated financial data within the applicant's company and performing tests to substantiate data accuracy.

(F) Industry experience related to subsection (3)(f) of this rule will be in the context of identifying significant data trends and the impact of the trends on the applicant's company on both a short and long term basis.

(G) Industry experience related to subsection (3)(g) of this rule will be in the context of both written and oral presentation of financial information and related accounting conventions within the applicant's company that include the significance of the financial information, applicable accounting rules and consideration of alternatives and conclusions drawn.

(d) Experience, other than experience described in subsections (4)(a), (b), and (c) of this rule will be evaluated by the Board on a case-by-case basis to ensure that experience meets the criteria of subsections (3)(a) through (g).

(5) Submitting applications to the Board.

(a) An applicant's file must be complete in every particular within three months of the date of application or the file will be closed and the license fee will be refunded. The application fee is not refundable.

(b) An applicant's file may be included on the agenda of any meeting of the Board if the file is complete in every particular no less than seven days prior to the date of a scheduled Board meeting.

Stat. Auth.: ORS 670.310 & 673.410

Stats. Implemented: ORS 673.040

Hist.: 1AB 3-1984, f. 12-19-84, ef. 1-1-85; AB 2-1988, f. 3-31-88, cert. ef. 3-30-88; AB 7-1989, f. & cert. ef. 9-11-89; AB 1-1991, f. & cert. ef. 1-2-91; AB 4-1991, f. & cert. ef. 7-1-91; AB 2-1993, f. 1-14-93, cert. ef. 1-15-93; AB 4-1994, f. & cert. ef. 9-27-94; AB 1-1995, f. & cert. ef. 1-25-95; AB 5-1995, f. & cert. ef. 8-22-95; AB 3-1997, f. & cert. ef. 6-5-97; BOA 1-1998, f. & cert. ef. 1-26-98; BOA 3-1998, f. & cert. ef. 6-16-98; BOA 5-1998, f. & cert. ef. 7-9-98; BOA 9-1998, f. & cert. ef. 11-10-98; BOA 1-1999, f. & cert. ef. 1-20-99; BOA 3-1999, f. & cert. ef. 3-26-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2000, f. 8-30-00, cert. ef. 9-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 4-2004, f. 12-30-04, cert. ef. 1-1-05; BOA 2-2006, f. 12-22-06, cert. ef. 1-1-07; BOA 3-2010, f. 12-15-10, cert. ef. 1-1-11; BOA 3-2011, f. 12-28-11, cert. ef. 1-1-12; BOA 2-2014, f. 12-15-14, cert. ef. 1-8-15; BOA 1-2015, f. 9-30-15, cert. ef. 10-1-15; BOA 1-2017, f. & cert. ef. 1-4-17

801-010-0080

Holders of Certificates or License in Other States, US Territories or Foreign Countries

(1) Substantial equivalency. An individual whose principal place of business is not in this state, who has an active license in good standing as a certified public accountant issued by another jurisdiction, and who meets the standards of substantial equivalency as defined in ORS 673.010(21) and OAR 801-005-0010(48), may practice public accountancy in this state.

(2) Applications by reciprocity. Individuals who wish to establish a principal place of business in this state are required to obtain a CPA license under this section prior to practicing as a CPA in this state.

(a) The applicant must complete an application and certify that:

(A) The applicant holds an active license to practice public accountancy in good standing as a certified public accountant issued by another jurisdiction whose requirements are substantially equivalent to Oregon as defined in Section 23 of the Uniform Accountancy Act.

(b) Applications based on an active CPA license that is in good standing, but that do not meet the requirements of subsections (2)(A) of this rule, are eligible under this subsection if the applicant demonstrates to the satisfaction of the Board that the applicant:

(A) Held an active CPA license to practice public accountancy, issued by another jurisdiction that is in good standing at the time of application;

(B) Has four years of public accounting experience or the equivalent thereof, after completing the CPA exam and during the ten year period immediately preceding the application. Four years means 48 months of full-time employment or equivalent 8,000 hours of part-time employment.

(3) Reciprocity application requirements. Applicants under section (2) of this rule must:

(a) Submit an application on a form provided by the Board;

(b) Pay the fees specified in OAR 801-010-0010;

(c) Provide a written statement from the jurisdiction on which the application is based confirming that the applicant:

(A) Is in good standing in that jurisdiction;

(B) Has not been disciplined for violations of that jurisdiction's standards of conduct or practice;

(C) Has no pending actions alleging violations of that jurisdiction's standards of conduct of practice; and

(D) Is in compliance with continuing education requirements of the licensing jurisdiction, and

(E) Has taken and passed an ethics exam.

(4) Verification of National Qualification Appraisal Service comparable licensing standards. The Board reviews the licensing requirements of other jurisdictions as needed to verify substantial equivalency eligibility. The Board may use information developed by NASBA to make this determination.

Stat. Auth.: ORS 670.310, 673.410 & 673.153

Stats. Implemented: ORS 673.040 & 673.153

Hist.: 1AB 14, f. 8-15-68; 1AB 22, f. 3-2-72, ef. 3-15-72; 1AB 34, f. 1-29-74, ef. 2-25-74; 1AB 3-1982, f. & ef. 4-20-82; 1AB 1-1986, f. & ef. 10-1-86; AB 5-1990, f. & cert. ef. 8-16-90; AB 5-1993, f. & cert. ef. 8-16-93; AB 1-1994, f. & cert. ef. 1-21-94; AB 4-1994, f. & cert. ef. 9-27-94; AB 1-1997, f. & cert. ef. 1-28-97; AB 4-1997, f. & cert. ef. 7-25-97; BOA 5-1998, f. & cert. ef. 7-9-98; BOA 9-1998, f. & cert. ef. 11-10-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 4-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 7-2005, f. 11-22-05, cert. ef. 1-1-06; BOA 2-2006, f. 12-22-06, cert. ef. 1-1-07; BOA 3-2009, f. 12-15-09, cert. ef. 1-1-10; BOA 3-2010, f. 12-15-10, cert. ef. 1-1-11; BOA 3-2011, f. 12-28-11, cert. ef. 1-1-12; BOA 2-2014, f. 12-15-14, cert. ef. 1-8-15; BOA 1-2017, f. & cert. ef. 1-4-17

801-010-0110

Renewal of License

(1) Unless properly renewed, licenses issued under ORS 673.150 that end in even numbers expire on June 30 of even-numbered years and licenses that end in odd numbers expire on June 30 of odd-numbered years. To renew an active, inactive or retired license, the license holder must:

(a) Submit the current renewal form published by the Board, fully completed and postmarked or received no later than June 30 of the year in which the license expires. Applications that are postmarked by the US Postal Service or other delivery service, electronically stamped by fax machine or submitted by an online process managed by the Board after June 30 must include a late fee described in OAR 801-010-0010;

(b) Pay the renewal fee specified in OAR 801-010-0010, and

(c) If applying for renewal of an active or inactive license, provide evidence that the applicant has satisfied continuing education.

(d) Submit the late fee described in OAR 801-010-0010, if the renewal application is postmarked by the US Post Office or other delivery service after June 30.

(2) A licensee that does not renew by June 30 of the year in which the license expires shall not hold out as a CPA or PA and practice public accounting until the license is renewed.

(3) The Board will pro-rate a licensee's first renewal fee in six month increments, depending on the date of issuance.

(4) The Board may waive the renewal fee if an initial CPA/PA license is issued in May or June of the year in which the license is due for renewal.

Stat. Auth.: ORS 670.310 & 673.410

Stats. Implemented: ORS 673.150

Hist.: 1AB 4-1981, f. & ef. 6-17-81; AB 3-1991, f. & cert. ef. 4-10-91; AB 4-1991, f. & cert. ef. 7-1-91; AB 5-1993, f. & cert. ef. 8-16-93; AB 3-1994, f. & cert. ef. 8-10-94; AB 4-1994, f. & cert. ef. 9-27-94; AB 1-1995, f. & cert. ef. 1-25-95; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 4-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 2-2006, f. 12-22-06, cert. ef. 1-1-07; BOA 3-2010, f. 12-15-10, cert. ef. 1-1-11; BOA 2-2014, f. 12-15-14, cert. ef. 1-8-15; BOA 1-2017, f. & cert. ef. 1-4-17

801-010-0115

Resignation of License by Licensee

(1) Resigning licenses that are not the subject of pending complaints or Board investigations. A certified public accountant or public accountant may resign and surrender a license issued under ORS 673.040, 673.100 and 673.150, by submitting a written resignation, together with the original cer-

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tificate or license issued to the Board office. All resignations are effective upon the Board's receipt of the written resignation and certificate. In the event that a person wishes to reapply for a license to practice public accountancy after such a resignation, the person will be required to meet all requirements of ORS Chapter 673 and OAR chapter 801.

(2) Resigning licensees that are the subject of pending complaints or Board investigation. If a licensee or a registered firm with which a licensee is affiliated is the subject of a complaint filed with the Board or a Board investigation, or if disciplinary proceedings are pending against a licensee, the resignation by such licensee shall be treated as and deemed to be a revocation for cause. A resignation under this section is not effective unless and until approved by the Board. A licensee who resigns under this section may be required to provide written notification to all clients of the effective date of resignation and provide the Board with a list of the clients notified. A licensee may also be required to secure advance approval by the Board of any written notice of resignation to clients under this section. The Board may refuse to accept a resignation under this provision if the written resignation does not include a written acknowledgment by the resigning licensee of the following:

(a) That the licensee is required to return the CPA or PA wall certificate and wallet license card to the Board;

(b) That the licensee has knowledge of any pending investigation or disciplinary proceedings and does not wish to contest or defend the matter;

(c) If required by the Board, that the licensee has provided written notice of resignation under this section to all clients and informed all clients of where client records and work papers will be stored and of the clients' right to secure copies of all such records and work papers at no cost to the client.

(d) Unless otherwise expressly provided by the Board in writing, that a resignation under this section will be treated as a revocation for cause and reflected accordingly in Board records and communications.

(e) That the licensee agrees to comply with any and all terms or conditions imposed by the Board.

(f) That the licensee understands that, in the event the licensee submits a subsequent application to be licensed to practice public accountancy, the licensee shall not be entitled to a reconsideration or re-examination of the facts, complaints, or instances of misconduct upon which investigations or disciplinary proceedings were pending at the time of the resignation;

(g) That upon any subsequent application to practice public accountancy, the licensee must meet all requirements of ORS Chapter 673 and OAR chapter 801 and that reinstatement of a license following resignation under this provision is discretionary with the Board.

(3) Requirements upon resignation. Upon resignation, a former licensee is required to:

(a) Surrender the CPA certificate or PA license to the Board;

(b) Take all reasonable steps to avoid foreseeable harm to any client, including but not limited to providing written notice of resignation under this section to all clients and inform all clients of where client records and work papers will be stored and of the clients' right to secure copies of all such records and work papers at no cost to the client;

(c) Maintain client records for a period of at least six years, or return such records to the client; and

(d) Continue to comply with the requirements of OAR Chapter 801 Division 030 pertaining to confidential information and client records.

(e) For the purpose of subsection (b) above and unless otherwise required by the Board, a resigning licensee of a registered firm is required to give written notice to only those firm clients for which the resigning licensee was the sole or primary CPA on an engagement, an engagement leader, or the client relationship manager.

(4) Unless otherwise ordered by the Board, any pending investigation or disciplinary proceeding shall be closed upon acceptance of the licensee's resignation under subsection (2) above.

(5) Formal acceptance by the Board of a resignation is not required unless the licensee is currently or has been the subject of a complaint or disciplinary investigation.

Stat. Auth.: ORS 670.310 & 673.410

Stats. Implemented: ORS 673.410

Hist.: AB 2-1996, f. & cert. ef. 9-25-96; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 4-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 2-2008, f. 12-30-08, cert. ef. 1-1-09; BOA 3-2010, f. 12-15-10, cert. ef. 1-1-11; BOA 3-2011, f. 12-28-11, cert. ef. 1-1-12; BOA 1-2017, f. & cert. ef. 1-4-17

801-010-0120

Inactive Status and Retired Status

(1) Inactive Status:

(a) An application for inactive license status must be made on a form provided by the Board and must be accompanied by a fee prescribed by OAR 801-010-0010.

(b) The licensee applying for inactive status must certify to the Board that:

(A) The licensee holds a license issued under ORS 673.150 that is not lapsed, expired, retired, revoked or suspended;

(B) The licensee is not employed in a public accounting firm;

(C) The licensee is not a sole practitioner; and

(D) Except as expressly authorized in writing by the Board or provided for in this rule, the licensee does not perform or offer to perform for compensation or remuneration in Oregon or for an Oregon client, services involving the use of accounting or attestation skills, including but not limited to issuance of reports on financial statements, management advisory, financial advisory or consulting services, preparation of tax returns or the furnishing of advice on tax or tax planning matters.

(2) Renewal and CPE Requirements. A licensee who is granted inactive status must:

(a) Obtain 32 hours of qualified continuing professional education during a two-year renewal period;

(A) A maximum of 8 hours may be in non-technical subjects

(B) A maximum of 8 hours may be carried-forward to the next renewal period.

(b) Must renew on or before June 30

(A) Licensees with a license number that is even will renew in even numbered years;

(B) Licensees with a license number that is odd will renew in odd numbered years.

(c) Renewal applications that are postmarked by the US Postal Service or other delivery service, electronically stamped by fax machine or submitted by an online process managed by the Board after June 30 must include a late fee described in OAR 801-010-0010.

(3) An inactive licensee may be employed by a governmental unit or private industry employer in which accounting skills are used or required; provided, however, that an inactive licensee may not be employed by more than a single governmental entity or private industry employer at any one time. For purpose of this provision, affiliated entities under common control may be considered a single employer.

(4) Inactive Licensees' Use of CPA or PA Designation. A licensee who is granted inactive status shall not use the CPA or PA designation unless the word "Inactive" is used in conjunction with the designation, such as "CPA Inactive" and is listed in the same font size.

(5) To the extent applicable, an inactive licensee is subject to the Code of Professional Standards and Conduct set forth in OAR Chapter 801, Division 030.

(6) Retired Status:

(a) An application for retired license status must be made on a form provided by the Board and must be accompanied by a fee prescribed by OAR 801-010-0010.

(A) A retired status licensee is not required to obtain or report any CPE.

(b) The licensee applying for retired status must certify to the Board that:

(A) The licensee meets the age or experience requirements for retired status as set forth in OAR 801-005-0010(47);

(B) The licensee holds a license issued under ORS 673.150 that is not lapsed, expired, revoked or suspended.

(C) The licensee does not perform any accounting services for which professional standards have been established or adopted for either direct or indirect compensation or remuneration;

(D) The licensee is not employed in a public accounting firm for either direct or indirect compensation or remuneration;

(E) The licensee does not perform or offer to perform in Oregon or for an Oregon client, financial advisory, tax planning or financial consulting services.

(7) Upon prior approval of the Board, a retired licensee may for compensation, provide services or engage in business activities in which the licensee's accounting skills may be utilized so long as the activity or service performed is not subject to any established or adopted professional standard or rule. The Board may, in its discretion, attach reasonable conditions to its approval under this section.

(8) Retired Licensee's Use of CPA or PA Designation. A licensee who is granted retired status shall not use the CPA or PA designation unless the word "Retired" is used in conjunction with the designation, such as "CPA Retired," and is listed in the same font size.

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(9) To the extent applicable, a retired licensee is subject to the Code of Professional Conduct set forth in OAR Chapter 801, Division 030.

(10) A licensee in retired status will be permitted to reinstate to active or inactive status in accordance with the provisions in OAR 801-010-0130(7) and 801-010-0130(8)

(11) A licensee in retired status who was licensed by the Board in that status prior to January 1, 2017, must come into compliance with the standards established in this section no later than December 31, 2017.

(12) Ability of Inactive and Retired Status Licensees to Serve as Trustee of a Trust or a Court Appointed Receiver, Trustee, Guardian, Conservator, or Personal Representative of an Estate. Notwithstanding the limitations set forth above, inactive and retired status licensees may serve as a trustee for a trust, or as a court appointed receiver, trustee, guardian, conservator, or personal representative/executor of an estate; provided, however, the licensee must comply with all fiduciary duties and responsibilities of the position, may not perform attestation work for the entity or individual for which the service is provided, and may not work as a court appointed trustee, receiver, guardian or conservator, or in other fiduciary positions for hire.

Stat. Auth.: ORS 670.310 & 673.220

Stats. Implemented: ORS 673.220

Hist.: 1AB 2-1986, f. & ef. 10-15-86; AB 5-1989, f. & cert. ef. 8-2-89; AB 4-1991, f. & cert. ef. 7-1-91; AB 1-1994, f. & cert. ef. 1-21-94; AB 4-1994, f. & cert. ef. 9-27-94; AB 2-1995, f. & cert. ef. 3-22-95; AB 2-1996, f. & cert. ef. 9-25-96; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2009, f. 12-15-09, cert. ef. 1-1-10; BOA 3-2010, f. 12-15-10, cert. ef. 1-1-11; BOA 2-2014, f. 12-15-14, cert. ef. 1-8-15; BOA 1-2017, f. & cert. ef. 1-4-17

801-010-0130

Reinstatement Requirements: Lapsed, Suspended, Retired or Inactive to Active Status

(1) Lapsed licenses. Licenses that are not properly renewed shall lapse. Lapsed licenses may be reinstated to active, inactive or retired status. To reinstate to active status an individual must:

(a) Provide a detailed written description of the business and professional activities of the individual during the period of lapse, and indicate whether the individual was holding out as a CPA or PA during the period of lapse;

(b) Submit an application for reinstatement on a form provided by the Board;

(c) Submit payment of the application fee and the active renewal fee for each renewal period that the license was lapsed;

(d) Complete and report the appropriate CPE hours described in this rule, plus a penalty of an additional 16 CPE hours;

(e) Complete and report four (4) CPE hours in professional conduct and ethics; and

(f) Submit evidence that the CPE hours submitted for reinstatement meet the requirements for CPE credit under these rules.

(2) Holders of licenses that are lapsed less than two years must:

(a) Complete and report 80 CPE hours (plus the 16 penalty hours per OAR 801-010-130(1)(d)), which shall be completed within the 12 month period immediately preceding the date of application for reinstatement;

(b) Complete and report four CPE hours in professional conduct and ethics; and

(c) Comply with CPE requirements under these rules for the period following reinstatement until the next renewal date on a pro rata basis, to be calculated at the rate of 3-1/3 hours per month, including the month of reinstatement, from the date of reinstatement to the end of the renewal period in which reinstatement occurs.

(3) Holders of licenses that are lapsed more than two and less than six years must:

(a) Complete and report 160 CPE hours (plus the 16 penalty hours per OAR 801-010-130(1)(d)), which shall be completed within the 12 month period immediately preceding the date of application for reinstatement;

(b) Comply with CPE requirements under these rules for the period following reinstatement until the next renewal date on a pro rata basis, to be calculated at the rate of 3-1/3 hours per month, including the month of reinstatement, from the date of reinstatement to the end of the renewal period in which reinstatement occurs; and

(c) Complete and report four CPE hours in professional conduct and ethics.

(d) In lieu of meeting the CPE requirements described in this section, the holder of a lapsed license may elect to take and pass the CPA exam within the five years immediately preceding the date of application for reinstatement. A person who elects this option must meet the requirements of OAR 801-010-0060.

(4) Reinstatement from Lapsed Status to Inactive Status: A person who is lapsed may apply to reinstate the license to inactive status by:

(a) Paying the application and the inactive renewal fee for the renewal period in which the application is submitted;

(b) Meet the CPE requirements for reinstatement

(c) Complete and submit 32 hours plus an 8-hour penalty (40 hours) of CPE with proof of completion certificates that were taken within 12 months immediately preceding the date the reinstatement application is received at the Board office.

(5) Lapsed more than six years or three renewal periods:

(a) A license that is lapsed for more than three renewal periods will expire.

(b) An expired license may be restored only upon the Board's determination that there is good cause.

(6) Inactive Status licenses reinstating to Active Status. To reinstate a license from inactive status to active status, the holder of such license shall:

(a) Submit an application for reinstatement on a form provided by the Board together with payment of the application fee and active license fee;

(b) Provide a detailed written description of the business and professional activities of the individual during the period of inactive, and indicate whether the individual was holding out as a CPA or PA during the period of inactive;

(c) Complete and report CPE as provided by this rule.

(A) If Inactive for 2-years or less, inactive licensees are required to complete and report 80 CPE hours, which shall have been completed within the 12 month period immediately preceding the date of the application for reinstatement.

(B) If Inactive for more than 2-years, inactive licensees are required to complete and report 160 CPE hours, which shall be completed within the 12 month period immediately preceding the date of the application for reinstatement.

(d) Complete and report four (4) CPE hours in professional conduct and ethics.

(e) Credit will only be given for CPE taken while on inactive status for the two (2) renewal periods immediately preceding the date of the reinstatement application (maximum of 64 hours).

(7) Reinstatement from Retired Status to Inactive Status: A retired status licensee may apply to reinstate the license to inactive status by:

(a) Paying the application and the inactive renewal fees for the license period in which the application is submitted;

(b) Complete and submit 32 hours of CPE with proof of completion certificates that were taken within 12 months immediately preceding the date the reinstatement application is received at the Board office.

(8) Reinstatement from Retired Status to Active Status: A retired status licensee may apply to reinstate the license to active status by:

(a) Paying the application and the active renewal fees for the license period in which the application is submitted;

(b) Meet the CPE requirements for reinstatement as set forth in OAR 801-010-0140 (2) or (3) relating to reinstatement from lapsed status to active status, as applicable; provided, however that no penalty CPE hours shall be required.

(9) Reinstatement of Suspended licenses. To reinstate a license that is suspended under ORS 673.170, the holder of such license shall:

(a) Provide evidence of satisfaction or completion of all terms and conditions stated in the order suspending the license;

(b) Provide a detailed written description of the business and professional activities engaged in by the suspended licensee during the period of suspension and certify that the suspended licensee was not holding out or otherwise representing him/herself as a CPA or PA during the period of suspension;

(c) Submit an application for reinstatement on a form provided by the Board;

(d) Submit payment of the application fee and the active renewal fee for each renewal period that the licensed was suspended;

(e) Complete and report the appropriate CPE hours as follows:

(A) If the license has been suspended for less than two (2) years, 80 CPE hours, which shall be completed within the 12 month period immediately preceding the date of application for reinstatement; or

(B) If the license has been suspended for more than 2 years, 160 CPE hours, which shall be completed within the 12 month period immediately preceding the date of application; and

(C) Complete and report four (4) CPE hours in professional conduct and ethics.

(D) Compliance with CPE requirements under these rules for the period following reinstatement until the next renewal date will be determined

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on a pro rata basis, to be calculated at the rate of 3-1/3 hours per month, including the month of reinstatement, from the date of reinstatement to the end of the renewal period in which reinstatement occurs.

(f) The holder of a suspended license shall remain in suspended status until the holder's application for reinstatement has been approved by the Board.

(10) License holders in other jurisdictions. Licensees who hold an active license to practice public accountancy issued under the laws of another jurisdiction, whose principal place of business is in such other jurisdiction, and who wish to reinstate an Oregon license that has been lapsed for less than six years or inactive for more than two years shall:

(a) Submit evidence that the applicant holds an active license to practice public accountancy, in good standing, issued by another jurisdiction; and

(b) Submit payment of the reinstatement application fee stated in OAR 801-010-0010(2)(a) together with the renewal application fee stated in OAR 801-010-0010(3)(a).

(c) Upon reinstatement, licensee shall complete CPE requirements described in these rules on a pro rata basis, calculated at 3-1/3 hours per month, including the month of reinstatement until the end of the renewal period in which reinstatement occurs.

(11) 24 Hour Minimum annual CPE requirement for active status permits. Licensees whose licenses are reinstated under this rule to active status are required to meet the 24 hour minimum annual CPE requirement at the pro-rated calculation of two (2) CPE hours for each month, including the month of reinstatement, until June 30 of the year in which the licensee is reinstated.

Stat. Auth.: ORS 670.310 & 673.220
Stat. Implemented: ORS 673.220
Hist.: 1AB 2-1986, f. & ef. 10-15-86; AB 3-1994, f. & cert. ef. 8-10-94; AB 2-1995, f. & cert. ef. 3-22-95; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2010, f. 12-15-10, cert. ef. 1-1-11; BOA 3-2011, f. 12-28-11, cert. ef. 1-1-12; BOA 2-2014, f. 12-15-14, cert. ef. 1-8-15; BOA 1-2015, f. 9-30-15, cert. ef. 10-1-15; BOA 1-2017, f. & cert. ef. 1-4-17

801-010-0340

Non-CPA and Non-PA Ownership of Business Organizations

(1) Requirements of non-CPA or non-PA ownership. The ownership of a business organization, defined in ORS 673.010 and registered as a firm under ORS 673.160 and OAR 801-010-0345, that is lawfully engaged in the practice of public accountancy in this state may include owners who are not licensed as certified public accountants or public accountants if the following conditions are met:

(a) Licensed certified public accountants and public accountants shall, in the aggregate, directly or beneficially, hold ownership of more than half of the equity capital and a majority of voting rights;

(b) If the business organization has its principal place of business in this state and performs public accountancy services in this state, licensees under the provisions of ORS 673.150 or 673.100 shall, in the aggregate, directly or beneficially, hold ownership of more than half of the equity capital and a majority of voting rights;

(c) The business organization shall designate in writing a license holder under ORS 673.150 who shall be responsible for the management and registration of the business organization in this state;

(d) A license holder under ORS 673.150 shall have ultimate responsibility for each financial statement, review and/or attestation service engagement performed in this state;

(e) Non-licensee owners shall be material participants in the business of the firm or an entity affiliated with the firm;

(f) Non-licensee owners may be natural persons or legal entities provided that each ultimate beneficial owner of an equity interest in such entity shall be a natural person who materially participates in the business conducted by the firm.

(g) Non-licensee owners must not hold themselves out as certified public accountants or public accountants and must not have a license in Oregon or any other jurisdiction that has been suspended or revoked for disciplinary reasons.

(h) Inactive, suspended, revoked and retired licensees may not hold an ownership interest in a registered CPA or PA firm.

(i) Business organizations with non-CPA or non-PA ownership that are registered under OAR 801-010-0345 must comply with the requirements for peer review as provided in ORS 673.455 if such business organization performs attestation services, reviews or compilation services.

(j) For purposes of this rule, "material participation" means an activity that is regular, continuous and substantial.

(2) Registration. A business organization with non-licensee ownership that is registered in this state under OAR 801-010-0345 must certify at the

time of registration and at each renewal that the business organization is in compliance with the provisions of this rule.

(3) Request for extension. If the licensee ownership of a registered business organization whose principal place of business is in this state does not meet the requirements of section (1) of this rule because of a death or other unforeseen circumstance, the business organization may request an extension of 180 days, or until the next renewal period, whichever is longer, for the business organization to meet such requirement.

(4) CPA designation. A business organization, of which the majority ownership is held by individuals licensed as public accountants under ORS 673.100, must not use the term "CPA firm" or any similar name that would indicate that a majority of the owners of the firm hold CPA certificates issued under ORS 673.040.

Stat. Auth.: ORS 670.310, 673.410 & 673.160

Stat. Implemented: ORS 673.160

Hist.: 1AB 18, f. 11-25-70, ef. 12-25-70; 1AB 29, f. 4-25-73, ef. 5-15-73; 1AB 3-1982, f. & ef. 4-20-82; AB 5-1990, f. & cert. ef. 8-16-90; AB 4-1991, f. & cert. ef. 7-1-91; AB 4-1994, f. & cert. ef. 9-27-94; BOA 1-1998, f. & cert. ef. 1-26-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 2-2007, f. 12-27-07 cert. ef. 1-1-08; BOA 3-2010, f. 12-15-10, cert. ef. 1-1-11; BOA 3-2011, f. 12-28-11, cert. ef. 1-1-12; BOA 1-2015, f. 9-30-15, cert. ef. 10-1-15; BOA 1-2017, f. & cert. ef. 1-4-17

801-010-0345

Registration of Business Organizations

(1) Requirement to register as a firm. A business organization organized for the practice of public accountancy that is located in Oregon or serving Oregon clients, must register with the Board as a firm if the business organization:

(a) Uses the terms "certified public accountant," "CPA," "public accountant" or "PA," or any derivation of such terms;

(b) Holds out to clients or to the public that the business organization is in any way engaged in the practice of public accountancy;

(c) Holds out to clients or the public that it is comprised of more than one licensee; or

(d) Is located in Oregon and performs attestation, review or compilation services, as defined by these rules.

(2) Out of State Firms. Firms that are not located in Oregon but serve Oregon clients must comply with the registration requirements in (1) above if the firm performs any of the following services:

(a) An audit or other engagement for which performance standards are included in Statements on Auditing Standard (SAS)

(b) Examination of prospective financial information for which performance standards are included in the Statement on Standards for Attestation Engagements (SSAE)

(c) Engagements for which performance standards are included in the auditing standards of the Public Company Accounting Oversight Board (PCAOB)

(3) Out of State firms that are required to register under the criteria in (2) above, must provide to the Board the name and contact information for the person who is a license holder under ORS 673.150 or meets the substantial equivalency requirements of ORS 673.153, and that is responsible for supervising attestation services and signs or authorizes someone to sign the accountant's report on the financial statements on behalf of the business organization.

(4) Registration of sole proprietors. A business organization organized as a sole proprietorship, a professional corporation, a limited liability company or other form of business entity authorized by statute, and comprised of a single license holder under ORS 673.150, is required to register as a firm if the business organization engages in any attestation or compilation work.

(5) Application requirements.

(a) Application by a business organization to be registered as a firm to practice as Certified Public Accountant(s) or Public Accountant(s) must be made to the Board in writing on a form provided by the Board and shall be accompanied by the appropriate fee, stated in OAR 801-010-0010. In the event a registered firm changes its form of business to a different entity type, a new firm registration application must be completed. Registration applications and each renewal application must provide the following information in writing:

(A) Name of the firm;

(B) Identification by name and by certificate number of each CPA and PA in this state who is associated with, has an ownership interest in, or is employed by the business organization. Licensees who do not hold an Oregon license must provide the name and licensing information relating to jurisdiction in which they are licensed.

(C) The physical address of every office and branch office in this state;

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(D) Notice of every denial, revocation, practice restriction, limitation or probation, lapse or suspension of authority to perform any type of public accountancy services or other disciplinary action that is or has been issued by any jurisdiction against the firm or any Oregon licensee associated with the business organization;

(E) Notice of the initiation of any civil action, regulatory action, lawsuit or arbitration relating to the professional services of the business organization or any Oregon licensee affiliated with the business organization, including but not limited to claims for negligence, malpractice, breach or violation of the standard of care, breach of a fiduciary duty, securities violations, unlawful or unfair trade practices, fraud, dishonesty or misrepresentation;

(F) Notice of the resolution of any civil action, regulatory action, lawsuit or arbitration identified in subsection (E) above, regardless of whether the action was previously reported to the Board;

(G) Notice of any criminal investigation or action filed against the business organization or against any Oregon partner, owner or professional employee or agent of the business organization and notice of any conviction or other form of resolution or compromise against any Oregon partner, owner or professional employee or agent of the business organization. The term conviction under this rule includes the initial plea, verdict or finding of guilt, civil compromise, pleas of no contest or pronouncement of sentence by a trial court, regardless of whether a judgment of conviction has been entered, sentence imposed or an appeal of the conviction has been undertaken. The notice provided shall be signed by the person to whom the conviction or criminal action applies, and shall state the facts that constitute the reportable event and identify the event by the name of the agency or court, the title of the matter, the docket number and the date of occurrence of the event;

(H) A letter showing proof of enrollment in Peer Review and/or acceptance and/or completion letter and the peer review report of the firm's most recent peer review if the firm intends to perform attestation, review or compilation services in this state.

(I) Confirmation that the firm is registered as an active business organization with the Oregon Secretary of State Business Registry Office.

(6) Firms with non-CPA and non-PA ownership. In addition to the information required under section (5) of this rule, business organizations with non-CPA or non-PA owners that are required to register as a firm must provide the following information with the application for initial registration and with each registration renewal.

(a) The name of the firm and a list of the states in which the business organization is currently authorized to practice public accountancy;

(b) Evidence to the satisfaction of the Board that the business organization satisfies the requirements of OAR 801-010-0340;

(c) The physical address of every office maintained in this state;

(7) Issuance of firm registration. The Board shall, upon receipt of an application that satisfies all the requirements of these rules and payment of the registration fee, issue a certificate of registration, which shall remain in effect until December 31 of the odd-numbered year following the date of such registration. The business organization shall:

(a) Renew the firm registration on or before December 31 of each odd-numbered year by submitting a completed renewal form provided by the Board, together with the appropriate registration renewal fee. The Board may waive the renewal fee if an initial firm registration is issued in November or December of the year in which the registration is due for renewal.

(b) Business organizations subject to registration that fail to renew a registration by the end of the month following the close of the renewal period (January 31), will be terminated. Firms may be reinstated by submitting a reinstatement application together with the required renewal fee plus any applicable penalties to the Board office;

(c) Notify the Board in writing of any change in the firm name or the entity type within 30 days of such change. Firms that have an entity change must submit an initial firm registration application with the Board office;

(d) In addition to the notice that is required upon application and for each renewal of the firm registration under section (5) of this rule, business organizations are required to provide written notice to the Board within 45 calendar days of the initiation of and the resolution of any civil action, regulatory action, lawsuit or arbitration identified in OAR 801-010-0345(5)(a)(E) or within 10 calendar days of the initiation of and the resolution of any criminal investigation or action identified in OAR 801-010-0345(5)(a)(G);

(e) Display the letter of registration issued by the Board in a conspicuous place at the principal office of the firm. (f) An out of state firm that is

required to register in Oregon must notify the Board in writing within 30 days if the firm opens an office in Oregon.

(8) Form of Practice A licensee may practice public accountancy in a business organization as defined in ORS 673.010 that is organized in accordance with statutory provisions.

(a)(A) Non-CPA or non-PA ownership. A licensee may form a business organization with a non-licensee for the purpose of engaging in the practice of public accountancy in accordance with the provisions of ORS 673.160 and OAR 801-010-0340.

(B) Notwithstanding subsection (6)(a) of this rule, any certified public accountant or public accountant whose license to practice public accountancy has been suspended or revoked for disciplinary reasons in any jurisdiction, may not participate as a non-licensee owner in a business organization required to be registered under ORS 673.160.

(b) Branch offices.

(A) Every branch office located in this state shall be managed by a licensee holding a license issued under ORS 673.150 who shall be in residence at the branch office, on a full-time basis, during the time the branch office is open to the public. A licensee operating a branch office is responsible for managing the office, staff and services rendered to the public.

(B) The Board may, at its discretion, approve the operation of a branch office that does not meet the supervision requirements of paragraph A of this subsection. Licensees seeking approval under this paragraph shall submit in advance a written proposal describing how the licensee will provide adequate supervision of the branch office. The proposal shall specify the minimum number of hours each week that a named licensee will provide physical supervision at the branch office.

(C) Any licensee operating a branch office under approval authorized by paragraph (B) of this subsection shall notify the Board in writing of any deviation from an approved plan within 30 days of the deviation.

(D) The location of each branch office in Oregon shall be reported to the Board at the time of application for registration as a firm and with each renewal application, together with a statement that each branch office meets the requirements of OAR 801-010-0345(6)(b)

(c) Internet Practice. Licensees using the CPA or PA title to perform or solicit services via a website, are required to include information on the website naming the state(s) in which each CPA or PA is licensed to perform public accounting services, or provide a name and contact information for an individual who will respond within seven business days to inquiries regarding individual licensee information. Information required to be posted by this rule must be clearly visible and prominently displayed.

(9) Firm Names

(a) False and misleading firm names:

(A) A public accounting firm shall not offer or provide public accounting services using a firm name that is misleading as to the legal entity or organization of the firm, as to the owners or employees of the firm, or as to any matter restricted by section (4) of this rule.

(B) A firm name shall not include false or misleading language about the business organization of the firm, the nature of the services provided, and the number of licensees associated with or working for the firm or the identity of individual members of the firm. Except as provided in paragraphs (D) and (E) of this subsection, a firm name shall not include information about or indicate an association with, individuals who are not members of the firm.

(C) A firm name shall include words or abbreviations required by the laws under which the business organization is organized to identify the form of business organization or legal entity being used by the firm.

(D) A firm name may be composed of the names of one or more past partners, shareholders, owners, or members of the business organization or its successor, so long as the past partner, shareholder, owner or member:

(i) Is not actively engaged in the practice of public accountancy as a sole proprietor in the same market area, and

(ii) Approves in writing of the continued use of such name. Approval given by a licensee for the continued use of licensee's name may be withdrawn by the licensee, in writing and shall allow a reasonable period of time for the firm to withdraw such name.

(E) A partner, shareholder, owner or member surviving the death or withdrawal of all other partners, shareholders, owners or members may continue to practice under the firm name provided that the firm meets the requirements stated in this rule.

(b) Singular firm names. The use by a certified public accountant or public accountant in individual practice of the individual's full legal name in the singular form, followed by the title "Certified Public Accountant," "Public Accountant," "CPA" or "PA" is not misleading.

(c) Plural firm names.

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(A) The use by a firm of a plural title or designation, including words like “and company,” “associates” and “accountants,” is not misleading if, in addition to the names of persons included in the firm name, the firm has at least one additional partner, shareholder, owner or member, or employs at least one staff person (excluding independent contractors), who works a minimum of 20 hours per week, who is licensed to practice public accountancy under ORS 673.150, or under ORS 673.153 and whose permit is not revoked, suspended, lapsed, retired or inactive.

(B) A firm using a plural name that ceases to qualify for use of a firm name under (A) shall:

(i) Cease using the plural name and so notify the Board in writing; or

(ii) Notify the Board in writing within 30 days of non-compliance.

Such firm shall have 90 days in which to employ a licensed staff person as required under paragraph (A) of this subsection. The firm shall provide written notice to the Board when the firm has employed the required licensed staff person.

(C) A firm may file a written request for an additional 90-day extension to satisfy the requirements of (A).

(d) Assumed business names.

(A) A firm name that does not include the designations “PC”, “LLC”, “LP”, or “LLP” to indicate the form of legal entity through which the practice of public accountancy is being conducted, or that does not include the full legal name of every owner of such business organization, shall be filed as an assumed business name with the Corporations Division of the Office of the Secretary of State. A copy of the registration of the assumed business name shall be provided to the Board with the application for registration as a firm and with every renewal application.

(B) An assumed business name that is registered with the Corporate Division of the Office of the Secretary of State may be composed in whole or in part of initials. Such abbreviated firm name shall not spell a word or form an acronym that may be misleading to the public. Every assumed business name shall meet the requirements of paragraph (6)(a)(B) of this rule.

(e) Notice to Board. A business organization registered as a firm under ORS 673.160 shall provide the following information to the Board:

(A) List of the names and certificate or license numbers of all Oregon licensees employed by the firm at the time of application for registration as a firm and with every renewal application, and

(B) Written notice of any change of firm name, firm address, firm ownership, or change in the form of operating entity within 30 days of such change.

(C) Written notice of regulatory, civil actions or criminal investigations or actions identified in this rule within the time periods set forth in OAR 801-010-0345(7)(d).

Stat. Auth.: ORS 670.310, 673.410 & 673.160

Stats. Implemented: ; ORS 673.160

Hist.: AB 6-1993(Temp), f. 11-2-93, cert. ef. 11-4-93; AB 1-1994, f. & cert. ef. 1-21-94; BOA 2-1998, f. & cert. ef. 3-30-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 4-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 2-2006, f. 12-22-06, cert. ef. 1-1-07; BOA 2-2008, f. 12-30-08, cert. ef. 1-1-09; BOA 3-2009, f. 12-15-09, cert. ef. 1-1-10; BOA 3-2010, f. 12-15-10, cert. ef. 1-1-11; BOA 3-2011, f. 12-28-11, cert. ef. 1-1-12; BOA 2-2014, f. 12-15-14, cert. ef. 1-8-15; BOA 1-2015, f. 9-30-15, cert. ef. 10-1-15; BOA 1-2017, f. & cert. ef. 1-4-17

801-020-0690

Qualifications for Admission to Municipal Roster

(1) Eligibility. The following licensees are eligible to apply for admission to the municipal roster:

(a) Individuals holding an active CPA permit issued under ORS 673.150,

(b) Individuals holding an active PA license issued under ORS 673.100 prior to January 1, 2002,

(c) Individuals holding an active PA license issued under ORS 673.100 who were licensed after January 1, 2002 and who passed the audit section of the CPA Exam as a requirement of licensing, and

(d) Individuals with an active CPA license issued by another jurisdiction that is recognized by the Board and who have authority to practice public accountancy in Oregon under ORS 673.153.

(2) Application Requirements. Qualified applicants for admission to the municipal roster must meet the following requirements:

(a) The applicant must be a licensee in good standing with the Oregon Board or with the jurisdiction in which the applicant is licensed if a municipal-only authorization is sought through substantial equivalency;

(b) Every application shall be on a form provided by the Board and shall be accompanied by fee prescribed by OAR 801-010-0010; and

(c) The application, signed by the applicant, shall constitute an agreement between the applicant and the Board that the applicant will comply

with the provisions of the Municipal Audit Law, ORS 297.405 through 297.555, and OAR Chapter 801 Division 020.

(3) Grounds for Denial. In addition to the specific grounds stated in ORS 673.170(2), the Board may deny admission or reinstatement to the municipal roster if:

(a) The applicant has not complied with the requirements of OAR 801-020-0620;

(b) The applicant has committed any act or engaged in conduct that reflects adversely on the licensee’s fitness to practice public accountancy; or

(c)(A) The applicant has committed any act or engaged in conduct that would cause a reasonable person to have substantial doubts about the applicant’s honesty, fairness and respect for the rights of others or for any law.

(B) Any act or conduct that resulted in a criminal conviction, other than a crime described in ORS 673.170(2)(h) or (i), will not be used to deny admission to the municipal roster unless such act or conduct is rationally connected to the applicant’s fitness to practice public accountancy.

(4) Initial CPE Requirements. The applicant shall demonstrate to the satisfaction of the Board that, within the two year period immediately preceding the date of application to the municipal roster, the applicant completed 40 CPE hours of Level 1 (basic) or Level 2 (intermediate) education in the following subjects, including at least 4 hours in each subject:

(a) Audits of state and local governmental units;

(b) Governmental accounting and financial reporting standards;

(c) Generally Accepted Governmental Auditing Standards;

(d) Audits of federal programs including OMB Uniform Guidance and other authoritative sources. (e) Oregon Local Budget Law; and

(f) Minimum standards of audits and reviews of Oregon municipal corporations.

(5) CPE Credit. The 40 hours of education required for admission to the municipal roster may be included in the 80 hours of CPE required for renewal of the CPA/PA permit.

(6) Approval. When an application to the municipal roster is approved, the Board shall:

(a) Notify the applicant in writing that the application is approved;

(b) Enter the applicant’s name on the municipal roster; and

(c) Notify the Secretary of State that the applicant is authorized to conduct municipal audits.

Stat. Auth.: ORS 297.670, 297.680 & 297.740

Stats. Implemented: ORS 297.680

Hist.: AB 8, f. 8-17-54; 1AB 32, f. 9-18-73, ef. 10-1-73; AB 1-1988(Temp), f. 2-17-88, cert. ef. 2-22-88; AB 4-1988, f. & cert. ef. 10-28-88; AB 3-1992, f. & cert. ef. 2-18-92; AB 5-1992, f. & cert. ef. 8-10-92; AB 6-1993(Temp), f. 11-2-93, cert. ef. 11-4-93; AB 1-1994, f. & cert. ef. 1-21-94; AB 4-1994, f. & cert. ef. 9-27-94; AB 1-1996, f. & cert. ef. 1-29-96; AB 2-1997, f. & cert. ef. 3-10-97; BOA 5-1999, f. & cert. ef. 7-23-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 5-2000, f. 12-7-00, cert. ef. 1-1-01; BOA 4-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 5-2004, f. 12-30-04, cert. ef. 1-1-05; BOA 6-2006, f. 12-22-06, cert. ef. 1-1-07; BOA 4-2009, f. 12-15-09 cert. ef. 1-1-10; BOA 1-2015, f. 9-30-15, cert. ef. 10-1-15; BOA 1-2017, f. & cert. ef. 1-4-17

801-020-0700

Qualifications for Continuance on Roster

(1) Renewal. The renewal of authorization to conduct municipal audits is accomplished with the licensee’s biennial renewal. Licensees who wish to renew authorization to conduct municipal audits must include the following information with the biennial renewal application:

(a) A statement that the licensee wishes to renew authority to conduct municipal audits;

(b) Payment of the municipal auditor renewal fee described in OAR 801-010-0010; and

(c) A report of the correct number of CPE hours required for municipal auditors.

(2) Continuing CPE Requirement. Licensees admitted to the municipal roster are required to complete 24 hours of CPE in subjects directly related to the governmental environment and governmental auditing during each renewal period. The required number of CPE hours for renewal may include CPE programs of any level (basic, intermediate, advanced or updates). At least 16 of the 24 CPE hours required must be in one or more of the following subjects:

(a) Audits of state and local governmental units;

(b) Governmental accounting and financial reporting standards and updates;

(c) Generally Accepted Governmental Auditing Standards and updates;

(d) Single Audit Act and related circulars and supplements published by the Government Accountability Office, Office of Management and Budget;

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(e) Oregon Local Budget Law; or
(f) Minimum standards of audits and reviews of Oregon municipal corporations.

(3) Limitation. No more than 8 of the 24 required hours may be in courses relating to generally accepted auditing standards and procedures. Courses that make up the 8 hours described herein may include such topics as current developments in audit methodology, assessment of internal controls and statistical sampling.

(4) CPE credit. The 24 hours of CPE required for renewal of municipal audit authority may be included in the 80 hours of CPE required for renewal of the CPA/PA permit. During the first renewal period after appointment to the municipal roster, the 24 hour CPE requirement shall be prorated at one (1) CPE hour per month.

(5) The Board will pro-rate a licensee's first municipal auditor renewal fee in six month increments, depending on the date of issuance.

Stat. Auth.: ORS 297.670, 297.680 & 297.740

Stats. Implemented: ORS 297.680

Hist.: AB 4-1988, f. & cert. ef. 10-28-88; AB 4-1990, f. & cert. ef. 7-17-90; AB 3-1992, f. & cert. ef. 2-18-92; AB 4-1994, f. & cert. ef. 9-27-94; AB 2-1996, f. & cert. ef. 9-25-96; BOA 1-1998, f. & cert. ef. 1-26-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 5-2000, f. 12-7-00, cert. ef. 1-1-01; BOA 5-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 5-2004, f. 12-30-04, cert. ef. 1-1-05; BOA 1-2017, f. & cert. ef. 1-4-17

801-030-0005

Independence, Integrity, and Objectivity

(1) Independence. The Board adopts the Independence Rule established by the AICPA. The AICPA Interpretations and Ethics Rulings on Independence are adopted as non-exclusive guidance to licensees, prospective licensees, the Board and members of the public.

(a) Licensees who perform services that are subject to independence standards promulgated by other regulatory or professional standard setting bodies, agencies and organizations, including but not limited to the Securities and Exchange Commission, the General Accounting Office and the US Department of Labor, or other similarly recognized international bodies must also comply with those standards applicable to the services provided.

(2) Integrity and objectivity.

(a) In all aspects of public accounting and the practice of public accountancy, a licensee shall maintain objectivity and integrity and shall be free of conflicts of interest, and shall not knowingly misrepresent facts or subordinate the licensee's judgment to the judgment of others.

(b) In tax practice, however, a licensee may resolve doubt in favor of the client as long as there is reasonable support for the client's position.

(c) When accepting new employment or a new engagement, a licensee shall not use confidential client information in a manner that is adverse to a former client or employer. Confidential client information is any information communicated to or obtained by the licensee from a client or employer that relates to services rendered by the licensee to the client or employer.

(d) The Board adopts the Integrity and Objectivity Rules established by the AICPA. The AICPA Interpretations and definitions are adopted as a non-exclusive list to provide guidance to licensees, prospective licensees, the Board and members of the public.

(3) Commissions and referral fees. Certified public accountants, public accountants and firms in the practice of public accountancy are permitted to pay and receive commissions and referral fees subject to the requirements of ORS 673.345 and this rule.

(a) Notice to the Board. Licensees who receive or pay commissions or referral fees shall report this fact on the application for biennial renewal of the license.

(b) Related licensure/registration. Prior to accepting commissions, licensees shall acquire and maintain in good standing any license or registration required by another governmental or private standard-setting body for the purpose of receiving commissions. Examples of licensing requirements include, but are not limited to the following:

(A) Oregon Department of Consumer and Business Services,

(B) National Association of Securities Dealers,

(C) Oregon Real Estate Agency, and

(D) Oregon Appraiser Certification and Licensure Board.

(c) Prohibited commissions and referral fees. A certified public accountant, public accountant or firm engaged in the practice of public accountancy shall not recommend or refer to a client any product or service, or recommend or refer any product or service to be supplied by a client in exchange for the payment or acceptance of a commission or referral fee when the certified public accountant, public accountant or firm also performs any of the following listed services for that client:

(A) An audit, review or agreed-upon-procedures of a financial statement;

(B) An examination of prospective financial information; or

(C) A compilation of a financial statement if the compilation report does not disclose a lack of independence between the client and the certified public accountant.

(d) Application of prohibitions. The prohibitions in this rule apply:

(A) When the holder of a permit or any partner, officer, shareholder, member, manager or owner of the firm performs the services listed in this rule, and

(B) During the period in which the certified public accountant, public accountant or firm is engaged to perform any of the services listed in this rule, including the period(s) subject of the report and the period covered by any historical financial statements involved in the listed services.

(e) Disclosure requirements. A certified public accountant, public accountant or firm engaged in the practice of public accountancy who is not prohibited by this rule from paying or receiving a commission or referral fee, and who is paid or expects to be paid a commission or referral fee, shall disclose that fact to any client to whom the commission or referral fee relates.

(A) A copy of each disclosure shall be provided to the client prior to the time the product or service that is the basis of the fee is recommended, referred or sold, or prior to the time the client retains the licensee to whom the client has been referred and for which the fee or other valuable consideration will be paid.

(B) The copy of the disclosure shall be retained by the certified public accountant, public accountant or firm for a period of at least six years after the licensee performs any services for the client.

(C) In the event of continuing engagements or a series of related transactions involving similar products or services with the same client, one written disclosure may cover more than one recommendation, referral or sale so long as the disclosure is provided at least annually and is not misleading.

(D) Disclosures under this rule shall:

(i) Be in legible, clear and conspicuous writing, in no less than 12 point characters (if typed) and provided on a separate form that is acknowledged in writing by the client with the client's signature and date of acknowledgement;

(ii) State the amount of the commission or referral fee or the basis on which the payment will be calculated;

(iii) Identify the source of the payment and the relationship between the source of the payment and the person receiving the payment; and

(iv) Specify the services to be performed by the Licensee for the compensation to be received by the Licensee.

(f) Transactions not prohibited. This rule does not prohibit the following transactions:

(A) Payments for the purchase of all or a material part of, an accounting practice;

(B) Retirement payments to persons formerly engaged in the practice of public accountancy, or payments to the heirs or estates of such persons; or

(C) Payments, including incentive or bonus payments, to employees or members of an accounting firm as compensation for their services.

(g) Audit of disclosure requirements. Licensees are subject to audits conducted by the Board or its designee to determine licensee compliance with the provisions of this rule. Licensees shall, upon request, furnish to the Board copies of disclosure records required under this rule.

(4) Contingent fees. Certified public accountants, public accountants and firms in the practice of public accountancy may perform professional services for a client in exchange for a contingent fee subject to the requirements of ORS 673.345 and this rule.

(a) Notice to the Board. Licensees who receive contingent fees in exchange for professional services shall report this fact on the application for biennial renewal of the license.

(b) Prohibited contingent fees.

(A) A certified public accountant, public accountant or firm in the practice of public accountancy may not perform professional services for a client in exchange for a contingent fee when the certified public accountant, public accountant or firm also performs any of the following listed services for that client:

(i) An audit, review or agreed-upon-procedures of a financial statement;

(ii) A compilation of a financial statement if the compilation report does not disclose a lack of independence between the client and the licensee, or

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(iii) An examination of prospective financial information.

(B) A certified public accountant, public accountant or firm in the practice of public accountancy may not prepare an original or amended tax return or a claim for a tax refund for any client in exchange for a contingent fee.

(c) Application of prohibitions. The prohibitions stated in paragraph (4)(b)(A) of this rule apply during the period in which the licensee or the licensee's firm is engaged to perform any of the services listed in this rule and during any period covered by any historical or prospective financial statements involved with or related to such services.

(d) Requirement for written agreement. Every agreement to perform services in exchange for a contingent fee shall be in writing and shall be signed by the client.

(A) A copy of the agreement shall be provided to the client prior to the time the client retains the licensee for the service, or prior to the time that the service that is subject to the agreement is performed.

(B) Agreements under this rule shall:

(i) Be in legible, clear and conspicuous writing, in no less than 12 point characters (if typed);

(ii) Include the signatures of all parties and date of each signature; and

(iii) State the amount of the contingent fee or the basis on which the fee will be calculated;

(C) A copy of the agreement shall be retained by the certified public accountant, public accountant or firm for a period of at least six years after the licensee performs the disclosed services for the client.

(e) Contingent fee transactions not prohibited. Fees are not contingent if fixed by courts or other public authorities, or in tax matters if such fees are determined based on the results of judicial proceedings or the findings of governmental agencies.

(f) Audit of contingent fee agreements. Licensees are subject to audits conducted by the Board or its designee to determine licensee compliance with the provisions of this rule. Licensees shall, upon request, furnish to the Board copies of contingent fee agreements required under this rule.

(5) Improper use of CPA and PA designation.

(a) Non-public accounting business. Licensees engaged in a business or occupation other than the practice of public accountancy or performance of attestation services may use the "CPA" or "PA" designation in oral or other communications such as business cards, stationery or comparable forms if the use of the designation does not indicate in any way that the licensee is authorized to perform public accountancy or attestation services as part of the licensee's other business or occupation.

(b) Commissions or contingent fees. Licensees shall not engage in any activity for which the licensee receives commissions or contingent fees while holding out to the public as a CPA or PA, except as provided under sections (3) and (4) of this rule.

(c) Non-licensee owners.

(A) A non-licensee owner of a business organization registered in Oregon under the provisions of ORS 673.160(4) shall not use any name or title that indicates or suggests that such owner is a certified public accountant or public accountant. This does not preclude a non-licensee owner from using the title "principal," "partner," "officer," "member" or "shareholder" to describe the ownership interest in the business organization.

(B) A business organization that includes non-licensee owners shall not use a firm name that includes both the name of a non-licensee owner and the title or designation for "certified public accountant," "public accountant," or any other words or description that would imply that the non-licensee owner included in the firm name is authorized to provide public accounting services.

Stat. Auth.: ORS 670.310, 673.410 & OL 2001, Ch. 313

Stats. Implemented: ORS 673.160, 673.320, 673.345 & 673.445

Hist.: AB 1-1978, f. & ef. 1-11-78; AB 4-1994, f. & cert. ef. 9-27-94; AB 2-1995, f. & cert. ef. 3-22-95; AB 2-1996, f. & cert. ef. 9-25-96; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 1-2001(Temp), f. & cert. ef. 7-9-01 thru 1-1-02; BOA 5-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 6-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 9-2005, f. 11-22-05, cert. ef. 1-1-06; BOA 3-2006, f. 12-22-06, cert. ef. 1-1-07; BOA 2-2014, f. 12-15-14, cert. ef. 1-8-15; BOA 1-2017, f. & cert. ef. 1-4-17

801-030-0020

Other Responsibilities and Practices

(1) Professional misconduct.

(a) A licensee shall not commit any act or engage in any conduct that reflects adversely on the licensee's fitness to practice public accountancy.

(b) Professional misconduct may be established by reference to acts or conduct that would cause a reasonable person to have substantial doubts about the individual's honesty, fairness and respect for the rights of others or for the laws of the state and the Nation. The acts or conduct in question

must be rationally connected to the person's fitness to practice public accountancy.

(c) A licensee shall not act in a way that would cause the licensee to be disciplined for violation of laws or rules on ethics by a federal or state agency or by any jurisdiction for the practice of public accountancy.

(d) A licensee shall not engage in acts of gross negligence including, but not limited to:

(A) Failure to disclose a known material fact which is not disclosed in the financial statements, but disclosure of which is necessary to make the financial statements complete or not misleading, or

(B) Failure to report any known material misstatement which appears in the financial statements.

(2) Reporting requirements

(a) In addition to the reporting requirements on any application for initial registration or licensure, or application for renewal thereof, registered firms and Oregon licensees are required to provide written notice to the Board within 45 calendar days of the initiation of any regulatory or civil action, lawsuit, or arbitration relating to the professional services or business operations or practices of the registered firm or any Oregon licensee affiliated with the registered firm, including but not limited to claims for negligence, malpractice, breach or violation of the standard of care, breach of a fiduciary duty, securities violations, unlawful or unfair trade practices, fraud, dishonesty or misrepresentation. The reporting requirements under this provision also apply to the initiation of any regulatory action by an agency or entity that has issued a professional certification, license or other credential to a registered firm or Oregon licensee of the Board.

(b) In addition to the requirement in (2)(a), Oregon licensees and firms must provide written notice within 10 calendar days of the initiation of any criminal investigation or action against an Oregon licensee, a registered firm, or against any Oregon partner, owner or other professional employee or agent of the registered firm, and an additional notice within 10 calendar days of any conviction against a licensee, registered firm or any Oregon partner, owner or professional employee or agent of the registered firm. The term conviction under this rule includes the initial plea, verdict or finding of guilt, pleas of no contest or pronouncement of sentence by a trial court, regardless of whether a judgment of conviction has been entered, sentence imposed or an appeal of the conviction has been undertaken.

(c) The notices required by this rule shall be signed by the person or persons against whom the regulatory action, civil action and/or criminal investigation or action is raised. If the regulatory action, civil action or criminal investigation or action is against a registered firm only, the notice(s) must be signed by an authorized Oregon partner or owner of the firm.

(d) The notice required by this rule shall state the facts that constitute the reportable event(s) and identify the event by the name of the agency or court, the title of the matter, the docket number and the date of occurrence of the event, the name of any legal representatives involved, and, if available, copies of any regulatory notice, civil complaint or criminal charging document(s). (e) In addition to the notice and reporting requirements set forth in 2(a), (b) and (c) above, registered firms and Oregon licensees are required to provide written notice of the resolution of any and all actions to which the reporting requirements apply within 45 days of the resolution, whether or not the action was previously reported to the Board.

(f) The reporting requirements set forth in this rule may not be negated by the terms of a non-disclosure agreement or court protective order.

(3) Verification of experience for CPA or PA applicants.

(a) Licensees who supervise the work experience of CPA or PA applicants for the purpose of verifying the applicant's eligibility under ORS 673.040 shall provide to the Board an accurate and complete certificate of experience for the applicant. Licensees who provide any certificate of experience for an applicant shall not:

(A) Make any false or misleading statement as to material matters in any certificate of experience, or

(B) Commit any act that would unjustly jeopardize an applicant's ability to obtain a certificate in this or any other jurisdiction.

(4) Acting through others.

(a) A licensee shall not permit others to perform any acts on behalf of the licensee, either with or without compensation, which, if performed by the licensee would place the licensee in violation of the Code of Professional Conduct.

(b) A licensee shall not ratify, endorse, facilitate, solicit, plan or otherwise assist another licensee to violate any Board law or rule.

(c) A licensee is bound by the Board laws and rules notwithstanding that the licensee acted at the direction of another person.

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(A) A subordinate licensee does not violate this rule if the licensee acts in accordance with a supervisory licensee's reasonable resolution of an arguable question of professional duty.

(5) Public communications and advertising. A licensee shall not use or participate in the use of any form of public communication, including the use of internet domains, e-mail names, advertising or solicitation by direct personal communication, having reference to the licensee's professional services that contains a false, fraudulent, misleading, or deceptive statement or claim. A false, fraudulent, misleading, or deceptive statement or claim includes, but is not limited to, a statement or claim that:

- (a) Includes a misrepresentation of fact;
- (b) Is intended or likely to mislead or deceive because it fails to disclose relevant facts;
- (c) Is intended or likely to create false or unjustified expectations of favorable results;
- (d) Falsely states or implies educational or professional attainments or licensing recognition;
- (e) Falsely states or implies that the licensee has received formal recognition as a specialist in any aspect of the practice of public accountancy;
- (f) Falsely represents that professional services can or will be competently performed for a stated fee, or misrepresents fees for professional services by failing to disclose all variables affecting the fees that will in fact be charged; or

(g) Contains other representations or implications of fact that would cause a reasonable person to misunderstand or be deceived.

(6) Professional designations. A licensee shall not represent that the licensee is a member of any professional society, association, organization or an association of firms, or that the licensee has a correspondent relationship with another licensee unless the representation is true at the time it is made or published.

(7) Board communications and investigations.

(a) Communications from the Board to licensees shall be sent by first class mail or certified mail and addressed to the licensee at the last official address or the alternate address furnished to the Board by the licensee.

(b) Licensees who receive any Board communication requesting the licensee to provide a written response shall:

(A) Provide a written response to the Board within 21 days of the date the Board communication was mailed,

(B) Respond fully and truthfully to inquiries from and comply with all Board requests.

(c) The Board of Accountancy shall provide written notice to licensees of complaints filed against the licensee and of any Board investigation that affects the licensee. Licensees who receive notice of a complaint investigation:

(A) Shall cooperate fully with all Board investigations, including any request to appear to answer questions concerning such investigations, and

(B) Shall not engage in any conduct or activity that would hinder or obstruct a Board investigation.

(8) Business transactions with clients.

(a) Except for business transactions that occur in the ordinary course of business, licensees shall not enter into a business transaction with a client if the licensee and client have differing interests therein unless the client has consented in writing to the transaction after receiving full written disclosure of the differing interests from the licensee. Both written disclosure and client's written consent shall be made prior to the time the business transaction is accepted.

(b) A loan transaction between a licensee and a client does not require disclosure under this rule if the client is in the business of making loans of the type obtained by the licensee and the loan terms are not more favorable than loans extended to other persons of similar credit worthiness and the transaction is not prohibited by other professional standards.

(9) Notification of change of address, employer or assumed business name. Licensees are required to maintain a current record with the Board of the information described in this rule, and to provide written notice to the Board of any change in such information within 30 days of such change. Written notice required under this rule may be provided by US mail, private delivery service, fax transmittal, e-mail or personal delivery. The information required under this rule will not be accepted over the telephone:

(a) Licensee's current business and residential addresses. If the number of a post office box, mail drop or pick-up service is provided for either address, the licensee must also provide the physical address;

(b) The name and address of licensee's current employer; and

(c) Any assumed business name used by licensee, if licensee is conducting the practice of public accountancy under an assumed business name.

(10) Child support defaults. In accordance with ORS 25.750 to 25.783, the Board shall provide the Support Enforcement Division of the Department of Justice with certification and licensing information which may be electronically cross-matched with Support Enforcement Division's records for persons under order of judgment to pay monthly child support and who are in arrears according to 25.750(a), (b) and/or (c).

(a) The Board shall suspend a licensee's certificate or license and permit to practice upon notice from the Support Enforcement Division or the appropriate District Attorney that such licensee is in arrears of any judgment or order requiring the payment of child support and such payment is being enforced under the provisions of ORS 25.080.

(b) Pursuant to ORS 25.762 or 25.765, the Board shall notify the licensee of the action being taken and refer such licensee to the Support Enforcement Division or the District Attorney for resolution of the support payment issue.

(c) Upon notification by the Support Enforcement Division or District Attorney and receipt of a release notice that the conditions resulting in the action have been resolved, the Board shall reinstate the licensee's certificate or license and permit to practice upon compliance with any additional requirements for issuance, renewal or reinstatement.

(11) State tax defaults. In accordance with ORS 305.385, and upon request by the Department of Revenue (DOR), the Board shall provide DOR with license information for the purpose of determining whether a licensee has neglected or refused to file any tax return, or neglected or refused to pay any tax without filing a petition with DOR as stated in ORS 305.385(4)(a).

(a) The Board shall issue a notice of proposed action against a licensee who is identified by DOR under this rule. The licensee shall be provided with the opportunity for hearing as provided in ORS 183.310 to 183.550 for contested cases.

(b) Upon notification by DOR and receipt of a certificate issued by DOR that the certificate/license holder is in good standing with respect to any returns due and taxes payable to DOR as of the date of the certificate, the Board shall renew or reinstate the certificate or license and permit to practice upon compliance with any additional requirements of the Board for issuance, renewal or reinstatement.

(12) Continuing violation. A continuing violation is a violation of any provision of ORS 673.010 – 673.457 or OAR chapter 801 that remains in place ("continues") without additional conduct on the part of the violator. For example the continued existence of an office sign purporting to offer public accounting services by an unregistered firm would be a continuing violation. The Board shall provide written notice of the alleged continuing violation to the individual or firm. The duration of the violation prior to the date of notice from the Board shall be deemed a single violation, and each day of continuance after the date of notice from the Board is a separate violation and may be subject to a civil penalty.

(13) Non-Disclosure Agreement. "Non-disclosure agreement" means any written or oral agreement that inhibits any party to the agreement from reporting an alleged violation of ORS Chapter 673 or OAR chapter 801 to the Board, or that inhibits any party from cooperating with an investigation by the Board, an agency of any state, or an agency of the Federal government.

(a) Licensees shall not enter into, nor benefit directly or indirectly from, any non-disclosure agreement.

(b) Any licensee who is a party to a non-disclosure agreement and who receives written notice from the Board, an agency of any state, or an agency of the Federal government requesting information that is subject to the provisions of such non-disclosure agreement, shall provide a written release for information requested within 30 days of the date of notice.

Stat. Auth.: ORS 670.310 & 673.410

Stats. Implemented: ORS 673.160, 673.410 & 673.445

Hist.: AB 1-1978, f. & ef. 1-11-78; 1AB 1-1981, f. 1-6-81, ef. 6-1-81; 1AB 3-1981, f. & ef. 1-6-81; 1AB 2-1984, f. & ef. 5-21-84; 1AB 3-1986, f. & ef. 11-17-86; AB 3-1989, f. & cert. ef. 10-3-89; AB 6-1993(Temp), f. 11-2-93, cert. ef. 11-4-93; AB 1-1994, f. & cert. ef. 1-21-94; AB 3-1994, f. & cert. ef. 8-10-94; AB 4-1994, f. & cert. ef. 9-27-94; AB 3-1996, f. & cert. ef. 9-25-96; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 1-1999, f. & cert. ef. 1-20-99; BOA 5-1999, f. & cert. ef. 7-23-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 5-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 5-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 6-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 4-2005, f. & cert. ef. 8-12-05; BOA 9-2005, f. 11-22-05, cert. ef. 1-1-06; BOA 3-2006, f. 12-22-06, cert. ef. 1-1-07; BOA 3-2007, f. 12-27-07 cert. ef. 1-1-08; BOA 3-2008, f. 12-30-08, cert. ef. 1-1-09; BOA 5-2009, f. 12-15-09 cert. ef. 1-1-10; BOA 2-2014, f. 12-15-14, cert. ef. 1-8-15; BOA 1-2017, f. & cert. ef. 1-4-17

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801-040-0020

Controls and Reporting

(1) Reporting requirement. As a requirement for renewal of an active license, licensees are required to certify that the licensee has fulfilled the CPE requirement by signing the certification section on the renewal form. Licensees are required to report the following information for each CPE program listed on the renewal form:

- (2) CPE programs.
 - (a) Name of program sponsor;
 - (b) Program title or description of content;
 - (c) Type of CPE program, using designations provided on renewal form;
 - (d) For self-study programs, the program sponsor's Registry number;
 - (e) Date(s) attended or date of completion; and
 - (f) Number of hours claimed.

(3) Published articles and books. The CPE report must include the following information for publications to be eligible for CPE credit:

- (a) Name and address of the publisher;
- (b) Title of publication;
- (c) Description of content;
- (d) Dates of publication; and
- (e) Number of hours claimed.

Stat. Auth.: ORS 670.310, 673.040, 673.050 & 673.410

Stats. Implemented: ORS 673.165

Hist.: AB 1-1985, f. & ef. 3-21-85; AB 6-1992, f. & cert. ef. 8-10-92; AB 4-1994, f. & cert. ef. 9-27-94; BOA 2-1999, f. & cert. ef. 2-22-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 5-2000, f. 12-7-00, cert. ef. 1-1-01; BOA 7-2001, f. 12-31-01, cert. ef. 1-1-02; BOA 6-2004, f. 12-30-04, cert. ef. 1-1-05; BOA 4-2011, f. 12-28-11, cert. ef. 1-1-12; BOA 1-2017, f. & cert. ef. 1-4-17

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Programs that Qualify for CPE Credit

(1) Qualifying programs. In order to qualify for CPE credit under these rules, a CPE program must be a formal program of learning that contributes directly to the professional competence of the licensee. It is the obligation of each licensee to select a course of study that contributes to the licensee's professional competence in public accountancy. The licensee may take programs in a variety of topics that are relevant to the licensee's practice.

(2) Program requirements. CPE programs must meet the following requirements to qualify for CPE credit:

- (a) An outline of the program is prepared in advance and preserved;
- (b) The program is at least 25 minutes in length;
- (c) A record of attendance is maintained by the sponsor for a period of five (5) years; evidence of completion is provided to participating licensees;
- (d) The program is conducted by a qualified instructor whose background, training, education or experience qualifies the person to teach or lead a discussion on the subject matter of the particular program.

(3) Eligible programs. The following programs will qualify for CPE credit provided they also meet the requirements of section (2) of this rule:

- (a) Programs presented by national, state or local accounting organizations;
- (b) Programs offered by a firm to licensees;
- (c) Programs sponsored by organizations that provide professional educational programs on a regular basis;

(d) Accredited university or college courses are eligible for CPE credit at the rate of 15 CPE hours for each semester hour credit and 10 CPE hours for each quarter hour credit. University or college courses that do not earn college credit are eligible for one CPE hour for each classroom hour of learning;

(e) Distance learning programs offered by a regionally accredited university or college are eligible for CPE credit as described in subsection (3)(d), without meeting the requirement of NASBA National CPE Registry approval described in section (4) of this rule.

(f) Other programs may qualify for CPE credit if the program meets the requirements of section 2 of this rule.

(4) Individual study programs.

(a) Correspondence courses or other individual study programs do not qualify for CPE credit unless both the CPE sponsor and the specific CPE program are approved by the NASBA National CPE Registry. The sponsor registry number must be identified.

(5) Programs not eligible for CPE credit. The following programs do not qualify for CPE credit: (a) Courses taken to fulfill the requirements for licensure as a certified public accountant or public accountant;

(b) Ethics courses that were taken to fulfill the Ethics exam requirement for licensure; and

(c) CPA exam review or study courses.

Stat. Auth.: ORS 670.310, 673.040, 673.050 & 673.410

Stats. Implemented: ORS 673.165

Hist.: AB 1-1985, f. & ef. 3-21-85; AB 1-1994, f. & cert. ef. 1-21-94; AB 2-1996, f. & cert. ef. 9-25-96; BOA 1-1999, f. & cert. ef. 1-20-99; BOA 5-1999, f. & cert. ef. 7-23-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 5-2000, f. 12-7-00, cert. ef. 1-1-01; BOA 7-2001, f. 12-31-01, cert. ef. 1-1-02; BOA 6-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 6-2004, f. 12-30-04, cert. ef. 1-1-05; BOA 4-2007, f. 12-27-07 cert. ef. 1-1-08; BOA 1-2015, f. 9-30-15, cert. ef. 10-1-15; BOA 1-2017, f. & cert. ef. 1-4-17

801-040-0050

Credit Allowed and Evidence of Completion

(1) Credit hours. Eligible CPE credit is measured by program length, with one 25 minute period equal to one-half CPE credit.

(2) Evidence of completion. Licensees are required to document all CPE programs claimed for CPE credit and to provide the appropriate proof of completion for the number of qualifying CPE credits claimed for each program. Licensees must retain proof of completion for each CPE program reported for a period of 5 years after completion of the program.

(3) Group study programs.

(a) CPE credit is allowed for actual class hours attended.

(b) Evidence of completion includes a written course outline and certificate of completion or attendance record provided by each program sponsor. The evidence of completion must include the sponsor name, course title, date of attendance or date of completion, name of participating licensee, statement that the program and sponsor Registry number, if appropriate, and the number of CPE hours earned;

(4) Individual study programs.

(a) Individual study programs are eligible for CPE credit only if the program is offered by a NASBA CPE Registry approved sponsor and the program itself is Registry approved;

(b) CPE credit will be awarded in an amount equal to the average completion time determined by the NASBA CPE Registry approved sponsor.

(c) The date for which CPE credit is allowed is the completion date specified on the evidence of completion provided by the sponsor.

(d) Evidence of completion must include the name of the participating licensee, sponsor name, program title, date of completion, Instructor name, if applicable and number of NASBA CPE Registry CPE hours allowed.

(5) Lecturer, discussion leader or speaker.

(a) CPE credit for a lecture, training session or speaking engagement at which the licensee was an instructor, discussion leader or speaker is allowed provided that the lecture, training or engagement meets CPE requirements for the participants;

(b) CPE credit for a university or college course where the licensee was the faculty instructor is allowed, provided that the course is considered an upper division (300 or 400 level) or post-graduate course.

(c) One CPE hour is allowed for each 50 minute period completed as an instructor or discussion leader for the first presentation of the subject material if such activity increases the instructor's professional competence. CPE credit may be allowed for additional presentations if the substantive content of the program was substantially changed and the licensee provides evidence that such change required significant additional study or research;

(d) CPE credit for preparation time allowed for an instructor, discussion leader, or a speaker shall be calculated on the basis of two CPE hours of preparation for each hour of teaching;

(e) The maximum CPE credit allowed for preparation and teaching under this section and for published articles described in section (6) of this rule, combined, must not exceed one-half of the total number of CPE hours required for the renewal period;

(f) Evidence of completion includes a copy of the agenda or outline provided for each presentation, lecture or speaking engagement, stating the date of presentation and name of the sponsoring organization. For university courses taught, evidence of completion should include the course syllabus and outline for each class.

(6) Published articles.

(a) CPE credit may be allowed for authoring published articles or books, provided the work directly contributes to the professional competence of the licensee;

(b) CPE credit for authoring published articles or books is allowed as of the date of publication and is only allowed for the first publication of such writing. The number of CPE hours is based on the time spent creating the published article,

(c) Authorship of a published article does not contribute to the professional competence of the licensee unless the published article is suitable for a professional audience. Published articles may be reviewed on a case-

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by-case basis to determine whether such articles contribute to the licensee's professional competence

(d) The maximum credit for published articles and books allowed under this section and for preparation and teaching under section (5) of this rule, combined, is no more than one-half of the total CPE requirement for the renewal period.

(e) A licensee may request additional CPE credit for authoring a published article by submitting an explanation of the circumstances which justify greater credit than is otherwise allowed. The Board shall determine whether additional credit is justified.

(f) Evidence of completion includes a copy of the title page or other pages that show the title, date of publication and a description of the content for each article reported for CPE credit.

(7) Reviewing peer review reports for Board approved Peer Review Programs.

(a) Licensees who serve as volunteer members of the Review Acceptance Body or any other committee that reviews peer review reports on behalf of a board approved peer review program are allowed two hours of CPE credit per meeting attended, for a maximum of 16 hours for the renewal period.

(b) Evidence of completion includes proof of attendance, provided by the sponsor of the approved Peer Review Program, for each meeting attended.

(8) State Legislative Joint Ways and Means Committee members.

(a) Licensees who serve as members of the Oregon Joint Ways and Means Legislative Committee are allowed up to 16 hours of the total CPE requirement for the renewal period during which the licensee served on the legislative committee.

(b) Evidence of completion shall be a copy of the membership roster published during the legislative session indicating the specific section of the Joint Ways and Means sub-committee on which the licensee served.

(9) University and college courses.

(a) CPE credit allowed is described in OAR 801-040-0030.

(b) An official copy of the college transcript is evidence of completion for courses that earn college credit.

(c) An attendance schedule or sign-in sheet demonstrating the licensee's attendance and prepared and maintained by the college will provide evidence of completion for courses that do not earn college credit.

Stat. Auth.: ORS 670.310, 673.040, 673.050 & 673.410

Stats. Implemented: ORS 673.165

Hist.: AB 1-1985, f. & ef. 3-21-85; AB 5-1991, f. & cert. ef. 7-1-91; AB 7-1992, f. & cert. ef. 12-15-92; AB 4-1993, f. & cert. ef. 5-14-93; AB 4-1994, f. & cert. ef. 9-27-94; AB 5-1995, f. & cert. ef. 8-22-95; AB 4-1997, f. & cert. ef. 7-25-97; BOA 1-1998, f. & cert. ef. 1-26-98; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 2-1999, f. & cert. ef. 2-22-99; BOA 5-1999, f. & cert. ef. 7-23-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 1-2000, f. 3-22-00, cert. ef. 3-24-00; BOA 5-2000, f. 12-7-00, cert. ef. 1-1-01; BOA 7-2001, f. 12-31-01, cert. ef. 1-1-02; BOA 6-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 6-2004, f. 12-30-04, cert. ef. 1-1-05; BOA 4-2010, f. 12-15-10, cert. ef. 1-1-11; BOA 1-2015, f. 9-30-15, cert. ef. 10-1-15; BOA 1-2017, f. & cert. ef. 1-4-17

801-050-0020

Peer Review Enrollment and Participation in Peer Review Program

(1) Enrollment Requirement. Every firm that performs attest as defined by OAR 801-005-0010(3) or compilation as defined by 801-005-0010(13) services in Oregon or for Oregon clients, is required to participate in an approved peer review program as a condition of registration under ORS 673.160 and for each renewal thereof.

(2) Public accounting services subject to peer review. Attest and compilation services as defined in OAR 801-005-0010(3) and (13) that require participation in a peer review program.

(a) Firms that prepare financial statements which do not require reports under Statements on Standards for Accounting and Review Services and that perform no other attest or compilation services, are not required to participate in a peer review program; however, such engagements conducted by a firm that is otherwise required to participate in a peer review program shall be included in the selection of engagements subject to peer review.

(b) Individual licensees may participate in a peer review program through their firms. If the licensee has an individual practice apart from the firm in which the licensee performs attest or compilation services, the individual practice is also subject to the requirement to participate in a peer review program.

(c) Each firm that is required to participate in a peer review program under this rule shall enroll in an approved program before issuing a report on attest and compilation services as defined by OAR 801-005-0010(3) and (13). The firm must send proof of enrollment and the date for initial review to the Board before the report is issued. The schedule for the firm's peer review shall be established according to the program standards.

(d) Firms that do not have a physical location in this state, but nevertheless perform attest services in this state, are required to participate in a peer review program that is performed in accordance with the minimum standards for performing and reporting on peer reviews described in OAR 801-050-0080, and may be required to demonstrate that the out-of-state office(s) through which the services are being provided follows the same quality control policies and procedures established by the firm that has been subjected to peer review in the other state.

(3) Exemption from Enrollment Requirement. Firms that do not perform attest or compilation services as defined in OAR 801-005-0010(3) and (13) are not required to participate in a peer review program, and shall notify the Board of such exemption on the initial firm registration application and on each firm renewal application.

(4) Peer Review Participation. Every firm that is required to participate in a peer review program shall have a peer review in accordance with the peer review program standards.

(a) It is the responsibility of the firm to anticipate its needs for review services in sufficient time to enable the reviewer to complete the review by the assigned review date.

(b) Any firm that is rejected, dropped or terminated by a sponsor for any reason shall have 21 days to provide written notice to the Board of such termination or rejection, and to receive authorization from the Board to enroll in the program of another sponsor.

(c) In the event a firm is merged, otherwise combined, dissolved or separated, the sponsor shall determine which firm is considered the succeeding firm. The succeeding firm shall retain its peer review status and the review due date.

(d) A firm choosing to change to another sponsor may do so only if there is not an open active peer review and if the peer review is performed in accordance with the minimum standards for performing and reporting on peer reviews described in OAR 801-050-0080.

(e) With respect to firms that perform attest or compilation services in more than one state, the Board may accept a peer review based solely on work conducted outside this state if the peer review is performed in accordance with the minimum standards for performing and reporting on peer reviews described in OAR 801-050-0080.

(f) On request of the firm, the Board may specify that a peer review program that is administered by another state board of accountancy satisfies the requirements of OAR Chapter 801, Division 050 if the Board determines that the program substantially meets or exceeds the minimum standards described in this rule.

(g) Exceptions Firms may request an extension of time for completion of the peer review report from the Peer Review Sponsor. If a firm is granted an extension by the peer review program administrator, a copy of such extension must be sent to the Board office within 21-days of the date the extension was granted.

Stat. Auth.: ORS 673.455 & OL 2001, Ch. 638, Sec. 12

Stats. Implemented: ORS 673.455

Hist.: AB 2-1994, f. & cert. ef. 4-28-94; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 6-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 11-2005, f. 11-22-05, cert. ef. 12-15-05; BOA 7-2009, f. 12-15-09, cert. ef. 1-1-10; BOA 5-2011, f. 12-28-11, cert. ef. 1-1-12; BOA 1-2017, f. & cert. ef. 1-4-17

801-050-0040

Reporting Requirements

(1) Reporting Enrollment in Peer Review Program. Every firm is required to provide the following information in writing with every application for registration and renewal of registration:

(a) Certify whether the firm is or is not required to participate in a peer review program;

(b) If the firm is subject to the peer review requirement, provide the name of the sponsor of the approved peer review program in which the firm is enrolled, and the period covered by the firm's most recent peer review. If there is a change in the peer review program utilized as compared to the sponsor of the prior peer review program, provide the name of the sponsor of the approved peer review program in which the firm is currently enrolled, and the period covered by the firm's most recent peer review.

(c) A firm that has previously reported to the Board that it is not subject to the peer review requirement and that subsequently engages in the performance of attestation or compilation services as defined by OAR 801-005-0010(3) and (13), shall provide written notice of such change in status to the Board before issuing a report.

(2) Notice to Board. All firms are required to participate in the AICPA Facilitated State Board Access (FSBA) program. For all peer reviews scheduled on or after May 1, 2017, the firm must satisfy the document reporting requirements by allowing the sponsoring organization to provide

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the Board access to the documents via a secure website as detailed in section (3) of this rule.

(3) Documents required. The documents provided via a secured website, such as the AICPA Facilitated State Board Access (FSBA) website, must be provided within the time periods indicated below and include:

(a) The peer review report accepted by the sponsoring organization, within 30 days of acceptance;

(b) The firm's letter of response accepted by the sponsoring organization, if applicable, within 30 days of acceptance;

(c) The acceptance letter from the sponsoring organization, within 30 days of acceptance;

(d) Letter(s) accepting the documents signed by the firm with the understanding that the firm agrees to take any and all action required by the sponsoring organization, if applicable, within 30 days of the firm's execution of the letter; and

(e) Letter signed by the sponsoring organization notifying the firm that all required action has been appropriately completed, if applicable, within 30 days of the date of the letter indicating that the all required action has been completed.

(4) Upon request by the Board, the firm must provide:

(a) Other information the Board deems important to its understanding of the information submitted under this rule;

(b) Other information the firm deems important to the Board's understanding of the information submitted under this rule.

(5) Certification. Firms shall certify on the initial firm registration application and on each renewal application the result of the firm's most recent Peer Review.

(6) Verification. The Board may verify the certifications of peer review reports that firms provide on initial registration and renewal applications.

Stat. Auth.: ORS 673.455 & OL 2001, Ch. 638, Sec. 12

Stats. Implemented: ORS 673.455

Hist.: AB 2-1994, f. & cert. ef. 4-28-94; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 6-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 11-2005, f. 11-22-05, cert. ef. 12-15-05; BOA 7-2009, f. 12-15-09 cert. ef. 1-1-10; BOA 5-2011, f. 12-28-11, cert. ef. 1-1-12; BOA 1-2017, f. & cert. ef. 1-4-17

Board of Chiropractic Examiners Chapter 811

Rule Caption: Mostly "housekeeping", two fee changes, and definitions added

Adm. Order No.: BCE 1-2017

Filed with Sec. of State: 1-6-2017

Certified to be Effective: 1-6-17

Notice Publication Date: 11-1-2016

Rules Amended: 811-010-0005, 811-010-0015, 811-010-0025, 811-010-0040, 811-010-0066, 811-010-0071, 811-010-0084, 811-010-0090, 811-010-0093, 811-010-0095

Subject: 811-010-0005 Definitions - adds new definitions, including applicant, subject individual, good moral character, over-the-counter, and nutritional supplements, and prescription drug

811-010-0015 Filing Addresses - clarification and deadline identified

811-010-0025 Display of License - clarification

811-010-0040 Duty to Report - clarification

811-010-0066 Reciprocity - clarification and fee reduced

811-010-0071 Board Members - housekeeping, and per diem increased by \$45 (to 200/day)

811-010-0084 Fitness Determination ... - minor housekeeping

811-010-0090 Food and Drugs - housekeeping, and add a type of provider for use of oxygen education

811-010-0093 Guide to Policy and Practice Questions - update "last amended" date

811-010-0095 Peer Review - clarification to language and member duties

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

811-010-0005

Definitions

As used in OAR Chapter 811 unless otherwise required by context:

(1) "Applicant" or "Subject Individual"

(a) "Applicant" means a person applying for a license to practice chiropractic in this state, or applying for certification as a chiropractic assistant in this state.

(b) "Subject individual" means a person from whom the Board may require fingerprints for the purpose of enabling the Board of Chiropractic Examiners to request a state or nationwide criminal records check. Under this chapter, subject individual means applicants for doctor of chiropractic license, chiropractic assistant certification, and any licensee under investigation as ordered by the Board.

(2) "Chiropractic Physician" means a physician licensed to practice Chiropractic under the provisions of ORS 684.040.

(3) "Patient" means any person who is examined, treated, or otherwise provided chiropractic services whether or not the person has entered into a physician/patient relationship or has agreed to pay a fee for services.

(4) "Advertising" means any form of promotional (educational) information.

(5) "Food" means nutritive material taken into an organism for the growth, work, or repair and for maintaining the vital processes; anything that nourishes or sustains it.

(6) "Good moral character" means an applicant or subject individual who has not:

(a) Committed an offense or crime involving moral turpitude;

(b) Committed an act or crime involving dishonesty, fraud, deception, misrepresentation, gross negligence or incompetence;

(c) Had a professional license revoked or suspended by this state, a political subdivision of this state, or a regulatory board in another jurisdiction in or outside the United States, or voluntarily surrendered a professional license in lieu of disciplinary action;

(d) Displayed evidence of an existing and untreated drug, alcohol, or mind altering substance abuse or dependency;

(e) Been subject to academic probation, expulsion, and/or disciplinary action

(7) "Nutritional Supplement" means vitamins, minerals, herbs, meal supplements, sports nutrition products, natural food supplements, and other related products used to boost the nutritional content of the diet.

(8) "Over-the-counter" and "Nonprescription drugs" means substances which may be sold without a prescription and which are prepackaged for use by the consumer and labeled in accordance with the requirements of the statutes and regulations of this state and the federal government.

(9) "Prescription drug" or "legend drug" means a drug which is:

(a) Required by federal law, prior to being dispensed or delivered, to be labeled with either of the following statements:

(A) "Caution: Federal law prohibits dispensing without prescription";

or

(B) "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian"; or

(b) Required by any applicable federal or state law or regulation to be dispensed on prescription only or is restricted to use by appropriately licensed practitioners only.

Stat. Auth.: ORS 684

Stats. Implemented: ORS 684.150

Hist.: 2CE 3, f. 10-9-59; 2CE 5, f. & ef. 6-22-66; 2CE 6, f. 2-10-67, ef. 12-31-68; 2CE 7, f. 12-19-67; 2CE 9, f. 10-16-70; 2CE 11, f. 6-20-72, ef. 7-1-72; 2CE 1-1978, f. 6-16-78, ef. 7-1-78; CE 2-1992(Temp), f. 4-22-92, cert. ef. 4-27-92; CE 4-1992, f. & cert. ef. 9-29-92; BCE 1-2017, f. & cert. ef. 1-6-17

811-010-0015

Filing Addresses

Each licensee shall provide their current business and mailing addresses, including all practice locations with the Board. Licensees shall notify the Board in writing of any change giving both the old and the new addresses within 30 calendar days.

Stat. Auth.: ORS 684

Stats. Implemented: ORS 684.054

Hist.: 2CE 3, f. 10-9-59; 2CE 9, f. 10-16-70; 2CE 1-1978, f. 6-16-78, ef. 7-1-78; CE 3-1990, f. & cert. ef. 5-17-90; BCE 1-2017, f. & cert. ef. 1-6-17

811-010-0025

Display of License

A chiropractic physician shall display their license in a conspicuous location within their principal place of business or employment. Each licensee shall also display a current annual certificate of registration in a conspicuous place in any practice location.

Stat. Auth.: ORS 684

Stats. Implemented: ORS 684.155

Hist.: 2CE 3, f. 10-9-59; 2CE 9, f. 10-16-70; 2CE 1-1978, f. 6-16-78, ef. 7-1-78; BCE 3-2000, cert. ef. 8-23-00; BCE 1-2017, f. & cert. ef. 1-6-17

ADMINISTRATIVE RULES

811-010-0040

Duty to Report

(1) It shall be the duty of every licensee to file a complaint or notify the Board's Executive Director or designated staff of any perceived violation of law or rule.

(2) Any person who reports or provides factual information to the Board under this rule and who provides such information in good faith shall not be subject to suit for civil damages as a result thereof.

Stat. Auth.: ORS 684

Stats. Implemented: ORS 684.200

Hist.: 2CE 3, f. 10-9-59; 2CE 9, f. 10-16-70; 2CE 1-1978, f. 6-16-78, ef. 7-1-78; 2CE 6-1983, f. 11-22-83, ef. 12-1-83; CE 1-1993, f. 3-1-93, cert. ef. 4-1-93; BCE 1-2017, f. & cert. ef. 1-6-17

811-010-0066

Reciprocity

A person licensed to practice Chiropractic under the laws of another state or states for at least five years may apply for reciprocity with the Oregon Board of Chiropractic Examiners for a chiropractic license in Oregon. An application and \$100 fee shall be submitted and must be accompanied by all items required by ORS 684.040 (1) through (4), and the following:

(1) The applicant will present a certified transcript from the Board of Chiropractic Examiners in the state(s) where licensed equivalent to the Oregon Specifics Examination and a state or national examination in physiotherapy.

(2) The Board may also require successful completion of a state or national written and/or oral examination if no official transcript is available.

(3) The applicant will furnish a certified statement from the Board of Chiropractic Examiners in the state(s) where licensed, that the applicant is not the subject of any pending or past disciplinary actions in that state.

(4) Any applicant for reciprocity, licensed in another state prior to July 1, 1992, is not required to have passed the Part III examination given by the National Board of Chiropractic Examiners.

(5) Upon qualification for licensure, the applicant will submit the \$150 initial license fee.

Stat. Auth.: ORS 684

Stats. Implemented: ORS 684.040 & 684.060

Hist.: 2CE 3-1982, f. 7-1-82, ef. 8-1-82; 2CE 2-1983, f. 7-19-83, ef. 8-1-83; 2CE 2-1985, f. 11-13-85, ef. 12-1-85; CE 1-1993, f. 3-1-93, cert. ef. 4-1-93; CE 4-1997, f. & cert. ef. 11-3-97; BCE 3-2000, cert. ef. 8-23-00; BCE 2-2002, f. & cert. ef. 5-29-02; BCE 3-2015, f. 6-8-15, cert. ef. 7-1-15; BCE 1-2017, f. & cert. ef. 1-6-17

811-010-0071

Board Members

(1) Members of the State Board of Examiners during their terms as such shall maintain a position of strict neutrality.

(2) Board members shall receive a per diem of \$200 a day for board meetings, conference attendance and presentations.

Stat. Auth.: ORS 684

Stats. Implemented: ORS 684.150

Hist.: 2CE 9, f. 10-16-70; 2CE 1-1978, f. 6-16-78, ef. 7-1-78; BCE 1-1998, f. & cert. ef. 2-5-98; BCE 2-2009, f. & cert. ef. 12-22-09; BCE 1-2017, f. & cert. ef. 1-6-17

811-010-0084

Fitness Determinations for Licensure; State and Nationwide Criminal Background Checks

(1) The purpose of this rule is to provide for the reasonable screening of subject individuals in order to determine if they have a history of criminal behavior such that they are not fit to be granted a license or certificate, registration, permit in occupations, or professions covered by Oregon Laws 2005, chapter 730.

(2) These rules are to be applied when evaluating the criminal history of a subject individual and conducting fitness determinations based upon such history. The fact that a subject individual is approved does not guarantee the granting of a license, certification, registration, or permit.

(3) "Subject individual" means a person from whom the Board may require fingerprints for the purpose of enabling the Board of Chiropractic Examiners to request a state or nationwide criminal records check. Under this chapter, subject individual means applicants for doctor of chiropractic license, chiropractic assistant certification and any licensee under investigation as ordered by the Board.

(4) The Board may request that the Department of State Police conduct a Criminal History Check and a National Criminal History Check, using fingerprint identification, of subject individuals. The Board may conduct criminal records checks on subject individuals and any licensee/certificate holder under investigation through the Law Enforcement Data System maintained by the Department of State Police in accordance with rules adopted, and procedures established, by the Department of State

Police. Criminal history information obtained from the Law Enforcement Data System must be handled in accordance with applicable Oregon State Police requirements in ORS chapter 181 and OAR chapter 257, division 15.

(5) In order to conduct an Oregon and National Criminal History Check and fitness determination, the Board may require additional information from the subject individual as necessary, such as but not limited to, proof of identity; residential history; names used while living at each residence; or additional criminal, judicial, or other background information.

(6) The Board shall determine whether an applicant is fit to be granted a license or certification, based on the criminal records background check, on any false statements made by the individual regarding the criminal history of the individual, on any refusal to submit or consent to a criminal records check including fingerprint identification, and any other pertinent information obtained as part of an investigation. If a subject individual is determined to be unfit, then the individual may not be granted a license or certification. The Board may make a fitness determination conditional upon applicant's acceptance of probation, conditions, limitations, or other restrictions upon licensure.

(7) Except as otherwise provided in section 6 in making the fitness determination the Board shall consider:

(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 subject individual's present or proposed position, services, employment, license, certification or registration; and

(d) Intervening circumstances relevant to the responsibilities and circumstances of the position, services, employment, license, certification, registration or permit. Intervening circumstances include but are not limited to:

(A) The passage of time since the commission of the crime;

(B) The age of the subject individual at the time of the crime;

(C) The likelihood of a repetition of offenses or of the commission of another crime;

(D) The subsequent commission of another relevant crime;

(E) Whether the conviction was set aside and the legal effect of setting aside the conviction; and

(F) A recommendation of an employer.

(8) All background checks shall be requested to include available state and national data, unless obtaining one or the other is an acceptable alternative.

(9) Criminal offender information is confidential. Dissemination of information received under ORS 181A.195 is only to people with a demonstrated and legitimate need to know the information. The information is part of the investigation of an applicant, licensee and certificate holder and as such is confidential pursuant to ORS 676.175(1). All original fingerprint cards will be destroyed per ORS 181A.195

(10) The Board will permit the subject 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.

(11) The Board may consider any felony or misdemeanor conviction involving moral turpitude.

(12) If an applicant, licensee or certificate holder is determined not to be fit for a license and/or certificate, they are entitled to a contested case process pursuant to ORS 183.413-470. Challenges to the accuracy or completeness of information provided by the Department of State Police, Federal Bureau of Investigation and agencies reporting information must be made through the Department of State Police, Federal Bureau of Investigation or reporting agency and not through the contested case process pursuant to ORS 183.

(13) Request for Re-Evaluation Following Correction. If the subject individual successfully contests the accuracy or completeness of information provided by the Oregon State Police, the Federal Bureau of Investigation or other agency reporting information to the Board, the Board will conduct a new criminal history check and re-evaluate the criminal history upon submission of a new criminal history request form.

(14) If the subject individual discontinues the application or fails to cooperate with the criminal history check process then the application is considered incomplete.

Stat. Auth.: ORS 684

Stats. Implemented: ORS 684.100, 183

Hist.: BCE 1-2006(Temp), f. & cert. ef. 2-9-06 thru 8-1-06; BCE 4-2006, f. & cert. ef. 8-2-06; BCE 2-2016, f. & cert. ef. 6-6-16; BCE 1-2017, f. & cert. ef. 1-6-17

ADMINISTRATIVE RULES

811-010-0090

Food and Drugs

(1) The Chiropractic physician is prohibited by law from the administration or dispensation of prescription drugs or the writing of prescription therefor.

(2) The Chiropractic physician is specifically authorized to issue orders for, or procure anesthetics, and antiseptics; also opaque media for X-ray diagnosis as authorized by section (1) of ORS 684.025; also such other items that may fall within the provisions of the Chiropractic Act.

(3) A person has received training in the administration of emergency use of oxygen if the person has completed a course in emergency medical procedures that includes the use of emergency oxygen at a chiropractic college (or a qualified post graduate education provider), or otherwise can demonstrate familiarity with the protocols for emergency oxygen use.

Stat. Auth.: ORS 684

Stats. Implemented: ORS 684.015 & 684.025

Hist.: 2CE 3, f. 10-9-59; 2CE 9, f. 10-16-70; 2CE 1-1978, f. 6-16-78, ef. 7-1-78; BCE 3-2000, cert. ef. 8-23-00; BCE 1-2007, f. & cert. ef. 11-30-07; BCE 1-2017, f. & cert. ef. 1-6-17

811-010-0093

Guide to Policy and Practice Questions

The Board's Guide to Policy and Practice Questions, originally dated January 14, 1998, and last amended March 17, 2016, is hereby adopted.

[Publications referenced are available from the agency.]

Stat. Auth.: ORS 684

Stats. Implemented: ORS 684.010 & 684.155

Hist.: BCE 3-1998, f. & cert. ef. 8-4-98; BCE 3-2000, cert. ef. 8-23-00; BCE 1-2003, f. & cert. ef. 9-17-03; BCE 3-2006, f. & cert. ef. 3-27-06; BCE 1-2007, f. & cert. ef. 11-30-07; BCE 1-2013, f. & cert. ef. 6-6-13; BCE 1-2017, f. & cert. ef. 1-6-17

811-010-0095

Peer Review

(1) The Board of Chiropractic Examiners shall appoint and form committees for Peer Review in accordance with ORS 684.185.

(2) Definitions:

(a) "Peer review" means the evaluation of the efficacy and appropriateness of healthcare services provided to a patient based on: standards of care, skill and treatment which are recognized as being reasonable, prudent and acceptable under similar conditions and circumstances by Oregon chiropractors;(b) The current Oregon Practice and Utilization Guidelines may be used as a resource to assist the Board and peer review committee.

(c) A peer review committee is a committee of seven chiropractic physicians, licensed under ORS Chapter 684, who qualify under ORS 684.185(2). Each peer review committee may include non-voting alternate members appointed by the Board. Alternate members may participate in all capacities except for voting. The committee chair may appoint an alternate to temporarily replace an absent voting member. Four voting members present at any meeting shall constitute a quorum, and allow the peer review committee to carry out its business.

(3) Peer review will occur upon submission of a request for review by the Board.

(4) The peer review committee may request an interview with any person, including the chiropractic physician being reviewed and, when appropriate, may request the opinion of other healthcare providers for reviews involving a particular area of practice, or specialty.

(5)(a) Any member of the peer review committee may withdraw from any review which presents a perceived or actual conflict of interest for that member. Any member who cannot be impartial may be withdrawn from participation by the committee chair or the Board.

(b) The chiropractic physician being reviewed may protest the involvement of a specific committee member, or members, based on actual conflict of interest as determined by the committee chair or the Board. This protest shall be included in the committee's report.

(c) The chiropractic physician being reviewed may be accompanied by legal counsel.

(d) Failure to cooperate with, or appear before, the committee shall be reviewed by the Board and may result in disciplinary action.

(6) The peer review committee shall consider all information submitted to it by the Board. The committee shall also consider any written and/or oral comments made by the chiropractic physician being reviewed, the involved patient, or other witnesses. The committee shall meet, complete the review, and submit a written report to the Board. This report should be adopted by a majority of the voting committee members. The report shall include a brief statement of the facts of the case, any violation of rules or statutes pertaining to the practice of chiropractic and/or any deviation from accepted standards, along with any additional comments which might assist the Board in taking appropriate action.

(7) The members of the peer review committee shall be paid mileage and per diem at the state rate while performing their official duties.

Stat. Auth.: ORS 684

Stats. Implemented: ORS 684.185

Hist.: 2CE 1-1980, f. 1-16-80, ef. 2-1-80; CE 1-1988, f. & cert. ef. 5-17-88; CE 1-1991, f. & cert. ef. 10-21-91; CE 4-1997, f. & cert. ef. 11-3-97; BCE 2-2003, f. & cert. ef. 12-11-03; BCE 1-2017, f. & cert. ef. 1-6-17

Board of Examiners for Engineering and Land Surveying Chapter 820

Rule Caption: Amend rules related to registration and advertising or offering professional services; housekeeping

Adm. Order No.: BEELS 8-2016

Filed with Sec. of State: 12-29-2016

Certified to be Effective: 12-29-16

Notice Publication Date: 8-1-2016

Rules Amended: 820-010-0520, 820-010-0720, 820-025-0005

Subject: OAR 820-010-0520 - Housekeeping; the amended language no longer refers to a take-at-home examination and is consistent with the language in OAR 820-010-0635 as it relates to PDH units.

OAR 820-0010-0720 - The amended rule addresses "full-time" status and hours the registrant works and no longer references project offices. The amended language is consistent with the exception in ORS 672.060(9) and also addresses the rule's inapplicability to licensed Construction Contractors.

OAR 820-025-0005 - Housekeeping; the amended language is consistent with OAR 820-025-0010(3)(f).

Rules Coordinator: Jenn Gilbert—(503) 934-2107

820-010-0520

Registrants or Certificate Holders Not Qualified to Practice

Registrants or certificate holders who are delinquent, retired, inactive, suspended or revoked by the Board, are not authorized to engage in the professional practice of engineering, land surveying, photogrammetric mapping, or the professional activities of a certified water right examiner as defined in ORS Chapter 537 and OAR Chapter 690. Except as provided in section (2), registrants or certificate holders who are delinquent, retired, inactive, suspended or revoked may not hold out as professional engineers, professional land surveyors, professional photogrammetrists, or certified water right examiners.

(1) Delinquent registrants or certificate holders. Registrants or certificate holders become delinquent because they fail, within a period of five years from the renewal date, to renew their certificate of registration or to pay their renewal or delinquent fees, or satisfy the required PDH units. A delinquent registrant or certificate holder, who is not subject to suspension or revocation of registration, or PDH audit may return to active status:

(a) Upon application to the Board;

(b) By paying any delinquent renewal fee required by OAR 820-010-0305(3);

(c) By paying any biennial renewal fee required by OAR 820-010-0505; and

(d) By satisfying and submitting proof of completion on a form approved by the Board of all delinquent PDH units, at a rate of 15 PDH units per year delinquent.

(2) Delinquent registrants who are subject to suspension of registration must comply with all terms of the Final Order of Suspension of Registration issued against them and, if suspension of registration was not related to registration delinquency, must also comply with subsection (1) of this rule, in order to return to active status.

(3) Delinquent registrants who are subject to revocation of registration must reapply for registration and have complied with subsection (1) of this rule, in order for their registration applications to be considered.

(4) Retired registrants or certificate holders. Registrants or certificate holders may retire once they notify the Board that they are not providing engineering, land surveying, photogrammetric mapping services, or professional activities of a certified water right examiner to the public and they request retired status. Registrants or certificate holders who are retired may not use their seal. However, retired registrants may sign documents, listing after their name the designation "PE (Retired)," "SE (Retired)," "PLS (Retired)," "Photogrammetrist (Retired)," or "CWRE (Retired)," as appropriate. A retired registrant or certificate holder may, within a period of 5 years from retirement, return to active status:

(a) Upon application to the Board,

ADMINISTRATIVE RULES

(b) By paying the reinstatement fee required by OAR 820-010-0305(3);

(c) By paying the biennial renewal fee required by OAR 820-010-0505; and

(d) By satisfying and submitting proof of completion on a form approved by the Board of 15 PDH units per year for each year (or part of a year) retired.

(5) Inactive registrants or certificate holders. Registrants or certificate holders may place their license or certification on inactive status if the registrant or certificate holder has suffered a debilitating mental or physical illness, injury or disease that prevents the registrant or certificate holder from engaging in the professional practice. Registrants or certificate holders must request to be placed on inactive status. Registrants or certificate holders making such requests must provide documentation prepared by a licensed physician that the registrant or certificate holder suffers from a specific, named debilitating mental or physical illness, injury or disease that prevents the registrant or certificate holder from engaging in the professional practice, and an estimate of the period of time during when the illness, injury or disease will last or whether it is of an unlimited duration. An inactive registrant or certificate holder may, within a period of 5 years from inactive, return to active status:

(a) Upon application to the Board;

(b) By paying the reinstatement fee required by OAR 820-010-0305(3);

(c) By paying the biennial renewal fee required by OAR 820-010-0505; and

(d) By satisfying and submitting proof of completion on a form approved by the Board of 15 PDH units per year for each year (or part of a year) inactive.

Stat. Auth.: ORS 672.255(1)(g)

Stats. Implemented: ORS 672.170(4), 672.180 & 672.255(1)(g)

Hist.: BEELS 5-2007, f. & cert. ef. 9-20-07; BEELS 2-2008, f. & cert. ef. 7-9-08; BEELS 2-2009, f. & cert. ef. 11-13-09; BEELS 1-2011, f. & cert. ef. 1-14-11; BEELS 2-2012, f. & cert. ef. 5-10-12; BEELS 1-2013, f. & cert. ef. 3-13-13; BEELS 1-2015, f. & cert. ef. 2-3-15; BEELS 7-2015, f. & cert. ef. 9-16-15; BEELS 8-2016, f. & cert. ef. 12-29-16

820-010-0720

Advertising for or Offering to Perform Services without Employing a Licensee or Certificate Holder; Engineering, Land Surveying and Photogrammetry Offices

(1) Individuals, firms, partnerships, corporations, or other entities with registration from another state, U.S. territory, or foreign country.

(a) Advertising. An individual registered or certified only by another state, United States Territory, or foreign country, or a firm, partnership, corporation, or other entity having as a partner, employee, or officer, a person registered, as a professional engineer, professional land surveyor, professional photogrammetrist, professional structural engineer only by another state, United States Territory, or foreign country, shall not advertise to perform professional services for which a license or certificate is required under ORS Chapter 672, unless and until the individual, firm, partnership, corporation, or other entity first obtains, full-time, a partner, manager, officer or employee certified as a water right examiner under ORS Chapter 537, or professional engineer, professional land surveyor, professional photogrammetrist, professional structural engineer registered under ORS Chapter 672.

(b) Offering. An individual registered or certified only by another state, United States Territory, or foreign country, or a firm, partnership, corporation, or other entity registered or certified in another state, United States Territory, or foreign country, or having as a partner, employee, or officer, a person registered, as a professional engineer, professional land surveyor, professional photogrammetrist, professional structural engineer only by another state, United States Territory, or foreign country, shall not offer professional services for which a license or certificate is required under ORS Chapter 672 or 537 unless the offer includes a prominent written statement that the offeror is not registered to practice engineering, land surveying, or photogrammetric mapping in the State of Oregon, but will have an individual holding valid Oregon registration for the services offered in responsible charge of the work prior to performing any engineering, land surveying, or photogrammetric work.

(2) In no case may an individual, firm, partnership, corporation or other entity with registration only in another state, United States Territory, or foreign country perform services for which registration or certification is required under ORS Chapter 672 or 537, before first obtaining a full-time partner, manager, officer or employee who is registered in Oregon to perform those services, and who is not working for the individual, firm, partnership, corporation or other entity only under a contract or as a consultant on a specific project or projects.

(3) Individuals, firms, partnerships, corporations, or other entities without registration. An individual, firm, partnership, corporation, or other entity shall not advertise for or offer to perform or perform water right examination or professional services for which a license or certificate is required under ORS chapter 672 or 537, unless and until the individual, firm, partnership, corporation, or other entity first obtains a full-time partner, manager, officer or employee certified as a water right examiner under ORS Chapter 537, or registered to provide those professional services under ORS Chapter 672, and who is not working for the individual, firm, partnership, corporation or other entity only via contract or as a consultant on a specific project or projects.

(4) As used in this rule, "full-time" refers to physical presence in the office or on a project site, at least one half of the business's daily hours of operation unless the required licensed or certified partner's, manager's, officer's or employee's professional duties require that the person be on a project site.

(5) Nothing in this rule refers to licensed Construction Contractors. For the rule that refers to licensed Construction Contractors, see OAR 820-010-0715.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: EE 2-1980, f. & ef. 5-14-80; EE 2-1985, f. 12-4-85, ef. 12-16-85; EE 4-1987, f. & ef. 12-1-87; EE 1-1992, f. & cert. ef. 2-3-92; BEELS 1-1998, f. & cert. ef. 2-10-98; Renumbered from 820-010-0016, BEELS 3-2001, f. & cert. ef. 11-26-01; BEELS 2-2007, f. & cert. ef. 4-5-07; BEELS 1-2013, f. & cert. ef. 3-13-13; BEELS 8-2016, f. & cert. ef. 12-29-16

820-025-0005

Official Seal

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

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

(a) Professional engineers holding a structural engineering certificate will use the seal with the designation "Structural" above the words "Registered Professional Engineer," as shown in Exhibit 1-b. Other registered professional engineers will use the seal shown in Exhibit 1-a; [Exhibit not included. See ED. NOTE.]

(b) Registered professional traffic engineer, who may practice only traffic engineering will use the seal shown in Exhibit 1-f; [Exhibit not included. See ED. NOTE.]

(c) Registered professional land surveyors will use the seal shown in Exhibit 1-c; [Exhibit not included. See ED. NOTE.]

(d) Registered professional photogrammetrists will use the seal shown in Exhibit 1-d; [Exhibit not included. See ED. NOTE.]

(e) Registered water rights examiners will use the seal shown in Exhibit 1-e. [Exhibit not included. See ED. NOTE.]

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

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

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

(a) Is unique to the registrant using it;

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

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

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

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

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

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

ADMINISTRATIVE RULES

Stat. Auth.: ORS 670.310 & 672.255
Stats. Implemented: ORS 672.002 - 672.325
Hist.: EE 13, f. 3-29-72, ef. 4-15-72; EE 16, f. 3-5-74, ef. 3-25-74; EE 20, f. & ef. 12-15-77; EE 2-1986, f. 3-26-86, ef. 3-31-86; EE 4-1987, f. & ef. 12-1-87; EE 1-1992, f. & cert. ef. 2-3-92; EE 1-1995, f. 8-15-95, cert. ef. 9-1-95; BEELS 1-1998, f. & cert. ef. 2-10-98; BEELS 1-2000, f. & cert. ef. 1-14-00; BEELS 3-2006(Temp), f. & cert. ef. 12-5-06 thru 6-3-07; Administrative correction, 6-16-07; BEELS 4-2007, f. & cert. ef. 8-15-07; BEELS 2-2008, f. & cert. ef. 7-9-08; BEELS 2-2009, f. & cert. ef. 11-13-09; BEELS 6-2013, f. & cert. ef. 9-11-13; BEELS 7-2013(Temp), f. & cert. ef. 11-12-13 thru 5-9-14; BEELS 10-2013(Temp), f. & cert. ef. 12-5-13 thru 3-14-14; BEELS 2-2014, f. & cert. ef. 2-26-14; Renumbered from 820-010-0620 by BEELS 7-2015, f. & cert. ef. 9-16-15; BEELS 5-2016, f. & cert. ef. 5-12-16; BEELS 8-2016, f. & cert. ef. 12-29-16

Board of Parole and Post-Prison Supervision Chapter 255

Rule Caption: Updating the Sex Offender Risk Assessment Scale, and Definitions and Criteria to reflect current methodologies.

Adm. Order No.: PAR 5-2016(Temp)

Filed with Sec. of State: 12-28-2016

Certified to be Effective: 1-3-17 thru 7-1-17

Notice Publication Date:

Rules Amended: 255-060-0011, 255-060-0016, 255-085-0010, 255-085-0020

Subject: The Board uses the methodology in the Static-99R to perform sex offender risk assessments. The Static-99R uses risk factors that have been empirically shown to be associated with sexual recidivism and has explicit rules for scoring these factors and then combining them into a total risk score. The Board is amending Exhibits Q-1, the Sex Offender Risk Assessment Scale, and Q-2, the Sex Offender Risk Assessment Definitions and Criteria, in order to reflect the latest versions of the methodology as revised by the authors of the Static-99R in 2016. The changes incorporate the latest statistics on recidivism.

Rules Coordinator: Perry Waddell—(503) 945-0946

255-060-0011

Procedures for Predatory Sex Offender Designation for Offenders on Parole and Post-Prison Supervision

(1) For purposes of this rule, a predatory sex offender is defined as a person who exhibits characteristics showing a tendency to victimize or injure others and has been convicted of one or more of the following offenses: Rape in any degree, Sodomy in any degree, Unlawful Sexual Penetration in any degree or Sexual Abuse in any degree, or has been convicted of attempting to commit one or has been found guilty except for insanity of one of these crimes. In determining whether an inmate or offender is a predatory sex offender under this rule, the Board shall use the Static-99R (Exhibit Q-1) and definitions (Exhibit Q-2), which have been approved by the Department of Corrections as required by ORS 181.585(2). The Board may also consider any other evidence that the offender exhibits characteristics showing a tendency to victimize or injure others.

(b) All exhibits referenced in this rule are filed with the rule and are available at the Secretary of State's office, the Board's website, or on request from the Board.

(2) Predatory sex offender designations made by the Board for inmates or offenders released from a Department of Corrections institution before November 14, 2012, are not included in this rule. Those designations are governed by the rules in effect when the designation was made.

(3) Subject to the procedures set forth in this rule, the Board will make a finding that an offender is a candidate for predatory sex offender designation, if the offender scores six or more points on the Static-99R and has been convicted of a qualifying offense or has been found guilty except for insanity of a qualifying offense.

(4) Offenders who score six or more points on the Static-99R, and have been identified as a candidate for predatory designation, must be told. They must be provided with a copy of the Static-99R, the Notice of Rights (Exhibit PSO-5) and the Notice of Rights to File Written Objections form (Exhibit Q-3).

(a) The offender should submit any Written Objections (Exhibit Q-4) to the Static-99R score within three business days after signing the Notice of Rights (Exhibit Q-3).

(b) Unless the offender waives the right to submit Written Objections, no sooner than three days after providing the Notice of Rights, the supervising officer will forward the Static-99R, Notice of Rights and Written Objections, if submitted, to the Board. The supervising officer must also

include a written report explaining why the offender should be considered for predatory designation. Other materials that support the offender's Static-99R score shall be included.

(c) Upon receipt of the required documents, the Board will review them to verify the accuracy of the score, obtain supporting documentation if necessary, and determine if there is sufficient information to conduct an evidentiary hearing for purposes of determining whether the offender should be designated a predatory sex offender. The Board will prepare a file memo that verifies the index offense, qualifying conviction, and each point awarded on the Static-99R. The file memo will address offender's written objections. If the Board determines there is sufficient information in the documents, it will forward them to its hearings officer, who will schedule an evidentiary hearing.

(5)(a) The supervising officer or the Board's hearings officer will provide the offender with: the documentation submitted by the supervising officer; the Static-99R; the memo prepared by the Board; and the Notice of Rights regarding an evidentiary hearing (Exhibit PSO-5).

(b) Unless the offender waives their right to an evidentiary hearing, a hearing will be held. Refusal to participate in the notice of rights process will be considered a waiver.

(c) The sole purpose of the evidentiary hearing will be to determine whether the offender exhibits characteristics showing a tendency to victimize or injure others.

(6)(a) At the evidentiary hearing, the hearings officer will consider the written report submitted by the supervising officer, the Static-99R, and any additional evidence supporting the Static-99R score or otherwise indicating that the offender exhibits characteristics showing a tendency to victimize or injure others.

(b) The offender may present evidence rebutting claims made in the supervising officer's written report, challenge the Static-99R score, or rebut other evidence that the offender exhibits characteristics showing a tendency to victimize or injure others.

(c) After consideration of all the evidence presented at the evidentiary hearing, the hearings officer will submit a report to the Board with a recommendation as to whether the offender is exhibiting characteristics showing a tendency to victimize or injure others.

(7)(a) Upon receipt of the report and recommendation from the Board's hearings officer, the Board will review the report and recommendation and determine whether the offender exhibits characteristics showing a tendency to victimize or injure others and is, therefore, a predatory sex offender.

(b) A finding that an offender is a predatory sex offender must be made by at least two Board members.

(c) The Board will issue an order of supervision containing the predatory designation. Upon receipt of the order, the offender's supervising officer must present it to the offender and document that the offender received the order.

(8) Pursuant to ORS 181.586, the community corrections agency supervising an offender found to be a predatory sex offender shall notify anyone whom the agency determines is appropriate that the person is a predatory sex offender. The agency shall make this determination as required by ORS 181.586.

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

Stat. Auth.: ORS 144.050, 144.140, 181.585 & 181.586

Stats. Implemented:

Hist.: PAR 4-2000, f. & cert. ef. 2-15-00; PAR 1-2002(Temp), f. & cert. ef. 1-15-02 thru 7-13-02; PAR 4-2002, f. & cert. ef. 3-12-02; PAR 5-2003, f. & cert. ef. 10-10-03; PAR 2-2004(Temp), f. & cert. ef. 1-41-04 thru 7-11-04; PAR 7-2004, f. & cert. ef. 6-14-04; PAR 1-2006(Temp), f. & cert. ef. 3-20-06 thru 9-15-06; PAR 5-2006, f. & cert. ef. 6-14-06; PAR 6-2006(Temp), f. & cert. ef. 6-14-06 cert. ef. 6-15-06 thru 12-11-06; PAR 9-2006, f. & cert. ef. 10-9-06; PAR 1-2008, f. & cert. ef. 1-11-08; PAR 3-2008, f. & cert. ef. 9-12-08; PAR 5-2012(Temp), f. & cert. ef. 11-15-12 thru 5-13-13; Administrative correction, 5-22-13; PAR 4-2013, f. & cert. ef. 6-25-13; PAR 5-2016(Temp), f. 12-28-16, cert. ef. 1-3-17 thru 7-1-17

255-060-0016

Procedures for Predatory Sex Offender Designation for Inmates

(1) For purposes of this rule, a predatory sex offender is defined as a person who exhibits characteristics showing a tendency to victimize or injure others and has been convicted of one or more of the following offenses: Rape in any degree, Sodomy in any degree, Unlawful Sexual Penetration in any degree or Sexual Abuse in any degree, or has been convicted of attempting to commit one or has been found guilty except for insanity of one of these crimes. In determining whether an inmate or offender is a predatory sex offender under this rule, the Board shall use the Static-99R (Exhibit Q-1) and definitions (Exhibit Q-2), which have been approved by the Department of Corrections as required by ORS 181.585(2). The Board may also consider evidence that the inmate exhibits characteristics showing a tendency to victimize or injure others.

ADMINISTRATIVE RULES

(b) All exhibits referenced in this rule are filed with the rule and are available at the Secretary of State's office, the Board's website, or on request from the Board.

(2) Predatory sex offender designations made by the board for inmates released from a Department of Corrections institution before November 14, 2012, are not included in this rule. Those designations are governed by the rules in effect when the designation was made or when the inmate was released from custody.

(3) Subject to the procedures set forth in this rule, the Board will make a finding that an inmate is a candidate for predatory sex offender designation, if the inmate scores six or more points on the Static-99R and has been convicted of a qualifying offense or has been found guilty except for insanity of a qualifying offense.

(4) Inmates who score six or more points on the Static-99R, and have been identified as a candidate for predatory designation, must be told. They must be provided with a copy of the completed Static-99R, the Notice of Rights (Exhibit PSO-5) and the Notice of Rights to File Written Objections form (Exhibit Q-3).

(a) The inmate should submit any Written Objections (Exhibit Q-4) to the Static-99R score within three business days after signing the Notice of Rights.

(b) Unless the inmate waives the right to submit Written Objections, no sooner than three days after providing the Notice of Rights, the counselor will forward the Static-99R, Notice of Rights and Written Objections, if submitted, to the Board. Other available materials that support the inmate's Static-99R score shall be included.

(c) Upon receipt of the required documents, the Board will review them to verify the accuracy of the score and obtain supporting documentation if necessary to determine if there is sufficient information to conduct an evidentiary hearing for purposes of determining whether the inmate should be designated a predatory sex offender. The Board will prepare a file memo that verifies the index offense, qualifying conviction, and each point awarded on the Static-99R. The file memo will address inmate's written objections. If the Board determines there is sufficient information in the documents, the inmate will be scheduled for a sex offender evaluation.

(d) Refusal to participate in a sex offender evaluation will not exclude inmate from predatory consideration.

(e) Should the sex offender evaluation determine that the inmate is exhibiting characteristics showing a tendency to victimize or injure others the inmate shall be provided with a copy of the sex offender evaluation and the Board's memo verifying the Static-99R points. Unless inmate waives the right to an evidentiary hearing, a hearing will be held. Refusal to participate in the notice of rights process will be considered a waiver.

(f) The sole purpose of the evidentiary hearing is to determine if the inmate exhibits characteristics showing a tendency to victimize or injure others.

(5)(a) At the evidentiary hearing, the Board will consider the written report submitted by the sex offender evaluator, the Static-99R, and any additional evidence supporting the Static-99R score or otherwise indicating that the inmate exhibits characteristics showing a tendency to victimize or injure others.

(b) The inmate may present evidence rebutting claims made in the sex offender evaluator's written report, challenge the Static-99R score, or rebut other evidence that the inmate exhibits characteristics showing a tendency to victimize or injure others.

(c) After consideration of all the evidence presented at the hearing, the Board will make a determination as to whether the inmate should be designated as a predatory sex offender.

(6) A finding that an inmate is a predatory sex offender must be made by at least two Board members.

(7) Pursuant to ORS 181.586, the community corrections agency supervising an inmate or offender found to be a predatory sex offender shall notify anyone whom the agency determines is appropriate that the person is a predatory sex offender. The agency shall make this determination as required by ORS 181.586.

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

Stat. Auth.: ORS 144.050, 144.140, 181.585, 181.586

Other Auth. V.L.Y v. Board of Parole & Post-Prison Supervision, 338 Or 44(2005)

Hist.: PAR 7-2006(Temp), f. & cert. ef. 8-7-2006 thru 2-2-07; Suspended by PAR 8-2006(Temp), f. & cert. ef. 8-30-06 thru 2-2-07; PAR 10-2006, f. & cert. ef. 10-30-06; PAR 4-2007, f. & cert. ef. 7-17-07; PAR 3-2008, f. & cert. ef. 9-12-08; PAR 5-2012(Temp), f. & cert. ef. 11-15-12 thru 5-13-13; Administrative correction, 5-22-13; PAR 4-2013, f. & cert. ef. 6-25-13; PAR 5-2016(Temp), f. 12-28-16, cert. ef. 1-3-17 thru 7-1-17

255-085-0010

Definitions

The following definitions apply to OAR 255-085-0001 to 255-085-0050:

(1) "Adult male registrant" means a male who was convicted of a sex crime and required to register as a sex offender or who was found guilty except for insanity of a sex crime and required to register as a sex offender, and was at least 18 years of age when he committed the offense.

(2) "Category B registrant" means a person of either gender or any age at the time of crime commission who is required to register as a sex offender based only on a conviction for a Category B sex crime.

(3) "Category B sex crime" means any type of criminal offense within the scope of "Category B offenses" used to administer the Static-99R and listed in Exhibit Q-2 and which is also a sex crime for which reporting is required.

(4) "Existing registrant" means a person for whom the event triggering the obligation to make an initial report under ORS 181.806(3)(a)(A), 181.807(4)(a)(A), 181.808(1)(a)(A), 2(a)(A) or (3)(a)(A) occurred before January 1, 2014.

(5) "Female registrant" means a female who was convicted of a sex crime and required to register as a sex offender or who was found guilty except for insanity of a sex crime and required to register as a sex offender, regardless of her age when she committed the offense.

(6) "Sex crime" has the definition contained in ORS 181.805(5).

(7) "Young male registrant" means a male who was convicted of a sex crime and required to register as a sex offender or who was found guilty except for insanity of a sex crime and required to register as a sex offender, and who was 17 years of age or younger when he committed the offense.

Stat. Auth.: ORS 181.800 and 181.803

Stat. Implemented:

Hist.: PAR 3-2015(Temp), f. & cert. ef. 8-27-15 thru 2-19-16; PAR 1-2016, f. & cert. ef. 1-27-16; PAR 5-2016(Temp), f. 12-28-16, cert. ef. 1-3-17 thru 7-1-17

255-085-0020

Sex Offender Risk Assessment Methodology

(1) For classification and community notification for adult male registrants, the classifying agency shall use the Static-99R (Exhibit Q-1) and definitions (Exhibit Q-2). Classifying agencies shall score and place into one of the following levels:

(a) Level I: Low (Static-99R score of -3 to 3);

(b) Level II: Moderate (Static-99R score of 4 to 5); or

(c) Level III: High (Static-99R score of 6 or higher).

(2) For classification of female registrants, category B registrants, and young male registrants, the classifying agency shall use the Level of Services/Case Management Inventory (LS/CMI) as supplemented by an independent sexual offense-specific evaluation report. Classifying agencies shall score and place the registrant into one of the following levels:

(a) Level I: Low (Score 0 to 10; LS/CMI as supplemented by an independent sexual offense-specific evaluation);

(b) Level II: Moderate (Score 11 to 19; LS/CMI as supplemented by an independent sexual offense-specific evaluation); or

(c) Level III: High (Score 20 or higher; LS/CMI as supplemented by an independent sexual offense-specific evaluation).

(3) Classifying agencies shall classify a person as a Level III sex offender who is designated as sexually violent dangerous offenders under ORS 137.765.

(4) The Board shall classify the following existing registrants as Level III sex offenders:

(a) A person who was previously designated as a predatory sex offender between February 10, 2005 and December 31, 2013;

(b) A person who is designated as a sexually violent dangerous offender under ORS 137.765;

(5) The Board or the Psychiatric Security Review Board shall classify an existing registrant who refuses or fails to participate in a sex offender risk assessment as directed by the classifying agency as a Level III sex offender on or after December 1, 2018.

Stat. Auth.: ORS 181.800 and 181.803

Stat. Implemented: ORS 181.800 and 181.803

Hist.: PAR 3-2015(Temp), f. & cert. ef. 8-27-15 thru 2-19-16; PAR 1-2016, f. & cert. ef. 1-27-16; PAR 5-2016(Temp), f. 12-28-16, cert. ef. 1-3-17 thru 7-1-17

Bureau of Labor and Industries

Chapter 839

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

ADMINISTRATIVE RULES

Adm. Order No.: BLI 11-2016
Filed with Sec. of State: 12-16-2016
Certified to be Effective: 1-1-17
Notice Publication Date: 11-1-2016
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 January 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 for 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.

(2) Copies of *Prevailing Wage Rates for 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

Construction Contractors Board Chapter 812

Rule Caption: Restoration contractor endorsement

Adm. Order No.: CCB 2-2016

Filed with Sec. of State: 12-29-2016

Certified to be Effective: 1-1-17

Notice Publication Date: 12-1-2016

Rules Amended: 812-003-0131, 812-003-0171, 812-003-0221

Subject: A law change in 2015 created a new classification of contractor - a residential restoration contractor. These are contractors that provide services such as non-routine cleaning, water removal, personal property inventory and boarding up window and door openings following a man-made or natural disaster (floods, fires, etc.) Beginning January 1, 2017, CCB must make this license available. Beginning July 1, 2017, all such businesses must be licensed or be subject to disciplinary sanctions.

AMEND:

- 812-003-0131 is amended to add residential restoration contractor to the license endorsements issued by CCB.

- 812-003-0171 is amended to add a \$10,000 bond (or letter of credit) for a residential restoration contractor license endorsement.

- 812-003-0221 is amended to add a \$100,000 minimum liability insurance policy for a residential restoration contractor license endorsement.

Rules Coordinator: Leslie Culpepper—(503) 934-2228

812-003-0131

License Endorsements

The following are license endorsements for new and renewal licenses:

(1) Residential General Contractor. A licensee holding this endorsement may bid or perform work involving an unlimited number of unrelated building trades or crafts on residential or small commercial structures.

(2) Residential Specialty Contractor. A licensee holding this endorsement may:

(a) Bid or perform work involving two or less unrelated building trades or crafts on residential or small commercial structures.

(b) If three or more unrelated trades or crafts are performed or subcontracted out, the entire contract price cannot exceed \$2,500.

(3) Residential Limited Contractor. A licensee holding this endorsement may bid or perform work involving residential or small commercial structures, as long as all of the following conditions are met:

(a) The licensee's annual gross business sales do not exceed \$40,000.

(b) The licensee does not enter into a contract in which the contract price exceeds \$5,000.

(c) If the contract price in a contract for work performed by the licensee is based on time and materials, the amount charged by the licensee shall not exceed \$5,000.

(d) The licensee consents to inspection by the Construction Contractors Board of its Oregon Department of Revenue tax records to verify compliance with paragraph (3)(a) of this rule.

(e) For purposes of this section, "contract" includes a series of agreements between the licensee and a person for work on any single work site within a one-year period.

(4) Residential Developer. A licensee holding this endorsement may develop property zoned for or intended for use compatible with a residential or small commercial structure as long as the licensee meets the conditions in ORS 701.042.

(5) Residential Locksmith Services Contractor. A licensee holding this endorsement may operate a business that provides the services of locksmiths for residential or small commercial structures. The licensee may not, however, engage in any other contractor activities. The licensee must have at least one owner or employee who is a certified locksmith.

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(6) Home Inspector Services Contractor. A licensee holding this endorsement may operate a business that provides the services of home inspectors. The licensee may not, however, engage in any other contractor activities. The licensee must have at least one owner or employee who is a certified home inspector.

(7) Home Services Contractor. A licensee holding this endorsement may operate a business that provides service, repair or replacement pursuant to the terms of a home service agreement. The licensee may not, however, engage in any other contractor activities.

(8) Home Energy Performance Score Contractor. A licensee holding this endorsement may operate a business that assigns home energy performance scores. The licensee may not, however, engage in any other contractor activities. The licensee must have at least one owner or employee who is a certified home energy assessor.

(9) Residential Restoration Contractor. A licensee holding this endorsement may perform restoration work on residential or small commercial structures. A licensee holding this endorsement is not licensed to engage in any other contractor activities.

(10) Commercial General Contractor – Level 1. A licensee holding this endorsement may bid or perform work involving an unlimited number of unrelated building trades or crafts on small or large commercial structures.

(11) Commercial Specialty Contractor – Level 1. A licensee holding this endorsement may bid or perform work involving two or less unrelated building trades or crafts on small or large commercial structures.

(12) Commercial General Contractor – Level 2. A licensee holding this endorsement may bid or perform work involving an unlimited number of unrelated building trades or crafts on small or large commercial structures.

(13) Commercial Specialty Contractor – Level 2. A licensee holding this endorsement may bid or perform work involving two or less unrelated building trades or crafts on small or large commercial structures.

(14) Commercial Developer. A licensee holding this endorsement may develop property zoned for or intended for use compatible with a small or large commercial structure as long as the licensee meets the conditions in ORS 701.042.

(15) A contractor's license may contain:

- (a) One residential endorsement;
- (b) One commercial endorsement; or
- (c) One residential endorsement and one commercial endorsement.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.042, 701.081 & 701.084

Hist.: CCB 5-2008, f. 2-29-08, cert. ef. 7-1-08; CCB 6-2013, f. 12-19-13, cert. ef. 1-1-14; CCB 2-2016, f. 12-29-16, cert. ef. 1-1-17

812-003-0171

Bond, Letter of Credit or Cash Deposit

For all new and renewal license applications, a surety bond as required under ORS 701.068, or a surety bond, letter of credit or cash deposit as required under ORS 701.088, must be in one of the following amounts:

- (1) Residential General Contractor — \$20,000.
- (2) Residential Specialty Contractor — \$15,000.
- (3) Residential Limited Contractor — \$10,000.
- (4) Residential Developer — \$20,000.
- (5) Residential Locksmith Services Contractor — \$10,000.
- (6) Home Inspector Services Contractor — \$10,000.
- (7) Home Services Contractor — \$10,000.
- (8) Home Energy Performance Score Contractor — \$10,000.
- (9) Residential Restoration Contractor — \$10,000.
- (10) Commercial General Contractor Level 1 — \$75,000.
- (11) Commercial Specialty Contractor Level 1 — \$50,000.
- (12) Commercial General Contractor Level 2 — \$20,000.
- (13) Commercial Specialty Contractor Level 2 — \$20,000.
- (14) Commercial Developer — \$20,000.

Stat. Auth.: ORS 670.310, 701.068, 701.088 & 701.235

Stats. Implemented: ORS 701.068 & 701.088

Hist.: CCB 5-2008, f. 2-29-08, cert. ef. 7-1-08; CCB 6-2013, f. 12-19-13, cert. ef. 1-1-14; CCB 2-2016, f. 12-29-16, cert. ef. 1-1-17

812-003-0221

Insurance Amounts

For all new and renewal license applications, insurance amounts as required under ORS 701.073, 701.081, and 701.084, must be in one of the following amounts:

- (1) Residential General Contractor — \$500,000 per occurrence.
- (2) Residential Specialty Contractor — \$300,000 per occurrence.

(3) Residential Limited Contractor — \$100,000 per occurrence.

(4) Residential Developer — \$500,000 per occurrence.

(5) Residential Locksmith Services Contractor — \$100,000 per occurrence.

(6) Home Inspector Services Contractor — \$100,000 per occurrence.

(7) Home Services Contractor — \$100,000 per occurrence.

(8) Home Energy Performance Score Contractor — \$100,000 per occurrence.

(9) Residential Restoration Contractor — \$100,000 per occurrence.

(10) Commercial General Contractor Level 1 — \$2,000,000 aggregate.

(11) Commercial Specialty Contractor Level 1 — \$1,000,000 aggregate.

(12) Commercial General Contractor Level 2 — \$1,000,000 aggregate.

(13) Commercial Specialty Contractor Level 2 — \$500,000 per occurrence.

(14) Commercial Developer — \$500,000 per occurrence.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.073, 701.081 & 701.084

Hist.: CCB 5-2008, f. 2-29-08, cert. ef. 7-1-08; CCB 6-2013, f. 12-19-13, cert. ef. 1-1-14; CCB 2-2016, f. 12-29-16, cert. ef. 1-1-17

Department of Administrative Services Chapter 125

Rule Caption: Amends Department of Administrative Services Public Contracting Rules.

Adm. Order No.: DAS 2-2016

Filed with Sec. of State: 12-22-2016

Certified to be Effective: 1-1-17

Notice Publication Date: 12-1-2016

Rules Amended: 125-246-0100, 125-246-0110, 125-246-0135, 125-246-0140, 125-246-0165, 125-246-0170, 125-246-0200, 125-246-0210, 125-246-0220, 125-246-0350, 125-246-0360, 125-246-0555, 125-246-0570, 125-247-0110, 125-247-0185, 125-247-0275, 125-247-0287, 125-247-0288, 125-247-0305, 125-247-0550, 125-247-0691

Subject: Since 2005, the Department of Administrative Services (DAS) has developed and amended rules (Rules) to put into practice the Public Contracting Code, ORS 279ABC (Code). The Rules apply to state agencies subject to DAS procurement authority (Agencies). In 2015, the Legislature made changes to select sections of the Code and to ORS 279. In addition to the legislative changes to the Code, the Department of Justice and Agencies requested select Rule changes to streamline or reduce duplications. Now, in response to the legislative changes and requests for change from stakeholders, DAS needs to amend the select Rules listed in this filing.

Rules Coordinator: Janet Chambers—(503) 378-5522

125-246-0100

Application; Commentary; Federal Law Prevails

(1) These Rules of the Department of Administrative Services (Department) are policy and procedure that apply to public contracting by:

- (a) Agencies subject to these Rules;
- (b) All contracting agencies, as defined in ORS 279A.010(b); and
- (c) All public agencies, as defined in ORS 279.835(4); that are subject to the DAS rules adopted under:

(A) Oregon Constitution, Article I, Section 41, subsection 11, related to the use of inmate labor (125-247-0200);

(B) ORS 200.005 through 200.200 related to Certification Office for Business Inclusion and Diversity (COBID) certified firms (see OAR 125-246-0200 through 125-246-0220);

(C) ORS 279.835 through 279.855 related to qualified nonprofit agencies for individuals with disabilities (see OAR 125-055-0005 through 125-055-0045);

(D) ORS 279A.140(2)(h) related to personal services contracts (see OAR 125-246-0335 through 125-246-0353);

(E) ORS 279A.159 requiring education, training or experience for persons that conduct procurements or administer contracts for state contracting agencies (see OAR 125-246-0140);

(F) ORS 279A.250 through 279A.290 related to surplus property (OAR 125-050-0100 through 125-050-0400; 125-247-0200); and

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(G) 2015 Oregon Laws, Chapter 807 (HB 3099) requirements for review or approval by the State Chief Information Officer of any Procurement of Information Technology or Telecommunications (see OAR 125-247-0185).

(2) According to ORS 279A.065(5), the Department adopts these Rules, including but not limited to selected and adapted Public Contract Model Rules. Except for those Public Contract Model Rules expressly adopted by the Department in OAR 125-246-0100, 125-247-0100, 125-248-0100 and 125-249-0100, the Public Contract Model Rules adopted by the Attorney General do not apply to the Department or the Agencies. These Department Public Contracting Rules implement the Oregon Public Contracting Code.

(3) These Department Public Contracting Rules consist of the following four Divisions:

(a) Division 246, which applies to all Public Contracting;

(b) Division 247, which applies only to Public Contracting for Supplies and Services, and not to construction services or Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services;

(c) Division 248, which applies only to Public Contracting for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services and Related Services; and

(d) Division 249, which applies only to Public Contracting for construction services.

(4) If a conflict arises between these Division 246 Rules and Rules in Division 247, 248 or 249, the Rules in Divisions 247, 248 or 249 take precedence over these Division 246 Rules.

(5) Commentary on these Rules may be published by the Department to assist the Agencies by providing: examples, options, references, background, and other commentary. The Department's commentary is not a Rule or interpretation of any Rule and has no legally-binding effect.

(6) Federal statutes and regulations prevail and govern, except as otherwise expressly provided in ORS 279C.800 through 279C.870 (Prevailing Wage Rate) and despite other provisions of the Public Contracting Code, under the following conditions:

(a) Federal funds are involved; and

(b) The federal statutes or regulations either:

(A) Conflict with any provision of ORS Chapters 279A, 279B, or 279C.005 through 279C.670; or

(B) Require additional conditions in Public Contracts not authorized by ORS Chapters 279A, 279B, or ORS 279C.005 through 279C.670.

(7) Adaptation of Model Rules for Agency Use. The following words found in those Model Rules expressly adopted by the Department are replaced by the words as defined in OAR 125-246-0110:

(a) "Contracting agency(ies)" is replaced by "Authorized Agency(ies), unless expressly stated otherwise."

(b) "Goods or services" is replaced by "Supplies and Services."

(c) "Agreements to agree" and "price agreement" are replaced by "Price Agreement."

(8) Capitalization of Defined Terms. Uncapitalized terms in those Model Rules expressly adopted by the Department have the same meaning as the same terms that are capitalized and defined in OAR 125-246-0110.

(9) Department Policy. Agencies must comply with Department policies, if applicable.

(10) For purposes of these Division 246 Rules, the Department adopts the following Model Public Contract Rules, as revised and effective January 1, 2016: OAR 137-046-0140, 137-046-0300, 137-046-0330, 137-046-0400, 137-046-0410, 137-046-0420, 137-046-0430, 137-046-0440, 137-046-0450, 137-046-0460, 137-046-0470, 137-046-0480.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.020, 279A.030 & 279A.065

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 4-2005, f. 4-13-05, cert. ef. 6-6-05; DAS 7-2005, f. & cert. ef. 6-6-05; DAS 9-2005, f. & cert. ef. 8-3-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 4-2013, f. 12-17-13, cert. ef. 1-1-14; DAS 4-2015, f. 12-29-15, cert. ef. 1-1-16; DAS 2-2016, f. 12-22-16, cert. ef. 1-1-17

125-246-0110

Definitions

The following terms are a compilation of definitions, including those found in the Public Contracting Code, in other statutes referenced by the Public Contracting Code, and elsewhere in these Rules. Partial definitions of the Public Contracting Code are for the use of the Agencies only. The following terms, when capitalized in these Rules, have the meaning given below:

(1) "Addendum" or "Addenda" means an addition to, deletion from, a material change in, or general interest explanation of a Solicitation Document.

(2) "Adequate" is defined in ORS 279C.305 and means sufficient to control the performance of the Work and to ensure satisfactory quality of construction by the contracting agency personnel.

(3) "Advantageous" means a judgmental assessment by the Agency of the Agency's best interests.

(4) An "Administrator" or "Administering Contracting Agency" is defined in OAR 125-246-0400.

(5) "Affected Person" or "Affected Offeror" means a Person whose ability to participate in a Procurement is adversely affected by an Agency decision.

(6) "Affirmative Action" is defined in ORS 279A.100 and means a program designed to ensure equal opportunity in employment and business for persons otherwise disadvantaged by reason of race, color, religion, sex, national origin, age or physical or mental disability.

(7) "Agency" means those agencies of the State of Oregon that are subject to the procurement authority of the Director of the Department according to ORS 279A.050 and 279A.140. This term includes the Department when the Department is engaged in Public Contracting. Under these Rules, an Agency is authorized only through a delegation of authority according to OAR 125-246-0170.

(8) "Agreement to Agree" means a Price Agreement as defined in Subsection (109).

(9) "Amendment" means a Written modification to the terms and conditions of a Public Contract, other than Changes to the Work as defined in OAR 125-249-0910, that meets the requirements of 125-247-0805, 125-248-0340, 125-249-0160, and 125-249-0910. For the purposes of these Rules, Amendments are included within the definitions of "Procurements" and "Contract Administration."

(10) "Architect" is defined in ORS 279C.100 and means a person who is registered and holds a valid certificate in the practice of architecture in the State of Oregon, as provided under ORS 671.010 to 671.220, and includes without limitation the terms "architect," "licensed architect" and "registered architect."

(11) "Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services" is defined in ORS 279C.100(2).

(12) "As-Is, Where-Is" applies to the sale of Goods and means that the Goods are of the kind, quality, and locale represented, even though they may be in a damaged condition. It implies that the buyer takes the entire risk as to the quality of the Goods involved, based upon the buyer's own inspection. Implied and express warranties are excluded in sales of Goods "As-Is, Where-Is."

(13) "Authorized Agency" means any Person authorized according to OAR 125-246-0170 to conduct a Procurement or take other actions on an Agency's behalf. This term, including its use in the Rules, does not convey authority to an Agency. For the authority of Agencies under the Code and these Rules, see OAR 125-246-0170 only.

(14) "Award" means the Agency's identification of the Person(s) with whom the Agency intends to enter into a Contract.

(15) "Bid" means a Written response to an Invitation to Bid.

(16) "Bidder" means a Person who submits a Bid in response to an Invitation to Bid.

(17) "Brand Name or Equal Specification" is defined in ORS 279B.200(1) and means a Specification that uses one or more manufacturers' names, makes, catalog numbers or similar identifying characteristics to describe the standard of quality, performance, functionality or other characteristics needed to meet the Agency's requirements and that authorizes Offerors to offer Supplies and Services that are equivalent or superior to those named or described in the Specification.

(18) "Brand Name Specification" is defined in ORS 279B.200(2) and means a Specification limited to one or more products, brand names, makes, manufacturer's names, catalog numbers or similar identifying characteristics.

(19) "Business Day" means 8:00 a.m. to 5:00 p.m., Pacific Time, Monday through Friday, excluding State of Oregon holidays.

(20) "Certification Office for Business Inclusion and Diversity (COBID), formerly the Office of Minority, Women, and Emerging Small Business" or "OMWESB" is defined in ORS 200.025 and 200.055 and means the office that administers the certification process for the Disadvantaged Business Enterprise (DBE), Minority-owned Business Enterprise (MBE), Woman-owned Business Enterprise (WBE), Service Disabled Veteran-owned Business (SDV), and Emerging Small Business

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(ESB) Programs. Certification Office for Business Inclusion and Diversity (COBID), formerly OMWESB, is the sole authority providing certification in Oregon for disadvantaged, minority-owned, woman-owned, service disabled veteran owned, and emerging small businesses.

(21) "Chief Procurement Officer" or "CPO" or "State Chief Procurement Officer" means the individual designated and authorized by the Director of the Department to perform certain procurement functions described in these Rules, or the Chief Procurement Officer's delegate.

(22) "Class Special Procurement" is defined in ORS 279B.085 and means a contracting procedure that differs from the procedures described in ORS 279B.055, 279B.060, 279B.065 and 279B.070 and is for the purpose of entering into a series of Contracts over time for the acquisition of a specified class of Goods or Services.

(23) "Client" means any individual, family or Provider:

(a) For whom an Agency must provide Services and incidental or specialized Goods, in any combination thereof ("Services and Incidental Supplies"), according to state, federal law, rule, and policy. Those Services and Incidental Supplies include but are not limited to treatment, care, protection, and support without regard to the proximity of the services being provided;

(b) Who in fact receives and utilizes services provided by an Agency primarily for that individual's or family's benefit;

(c) Who is under the custody, care, or both of the Agency; or

(d) Who provides direct care or Services and is a proxy or representative of the non-Provider Client.

(24) "Client Services" means any Services that directly or primarily support a Client, whether the Client is the recipient through the provision of voluntary or mandatory Services. Client Services also means any Goods that are incidental or specialized in relation to any Services defined in this Subsection. Client Services may include but are not limited to (where these terms are used in another statute, they must have that meaning):

(a) Housing, including utilities, rent or mortgage or assistance to pay rent, mortgage or utilities;

(b) Sustenance, including clothing;

(c) Employment training or Skills training to improve employability;

(d) Services for people with disabilities;

(e) Foster care or foster care facilities;

(f) Residential care or residential care facilities;

(g) Community housing;

(h) In-home care including home delivered meals;

(i) Medical care, services and treatment, including but not limited to:

(A) Medical, Dental, Hospital, Psychological, Psychiatric, Therapy,

Vision;

(B) Alcohol and drug treatment;

(C) Smoking cessation;

(D) Drugs, prescriptions and non-prescription;

(E) Nursing services and facilities;

(j) Transportation or relocation;

(k) Quality of life, living skills training; or

(l) Personal care; or

(m) Legal services and expert witnesses services;

(n) Religious practices, traditions and services, separately or in any combination thereof; and

(o) Educational services. The term "Client Services" does not include benefits or services provided as a condition of employment with an Agency.

(25) "Closing" means the date and time specified in a Solicitation Document as the deadline for submitting Offers.

(26) "Code" is the "Public Contracting Code," defined in ORS 279A.010(1)(bb), and "Code" means ORS Chapters 279A, 279B and 279C.

(27) "Competitive Quotes" means the sourcing method according to OAR 125-249-0160.

(28) "Competitive Range" means the Proposers with whom the Agency will conduct Discussions or Negotiations if the Agency intends to conduct Discussions or Negotiations in accordance with OAR 125-247-0260 or 125-249-0650.

(29) "Competitive Sealed Bidding" means the sourcing method according to ORS 279B.055.

(30) "Competitive Sealed Proposals" means the sourcing method according to ORS 279B.060.

(31) "Consultant" means the Person with whom an Agency enters into a Contract for the purposes of consulting, conferring, or deliberating on one or more subjects, and this Person provides advice or opinion; e.g., Consultants for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and Related Services as defined in ORS 279C.115 and information technology Consultants.

(32) "Contract" means an agreement between two or more Persons which creates an obligation to do or not to do a particular thing. Its essentials are competent parties, subject matter, a legal consideration, mutuality of agreement, and mutuality of obligation. For the purposes of these Rules, "Contract" means Public Contract.

(33) "Contract Administration" means all functions related to a given Contract, including Amendments, between an Agency and a Contractor from:

(a) The time the Contract is signed by all parties until;

(b) The Work is completed and accepted or the Contract is terminated, final payment has been made, and any disputes have been resolved.

(34) "Contract Administrator" means the officer, employee, or other individual designated in Writing by an Authorized Agency, by name or position description, to conduct the Contract Administration of a Contract or class of Contracts.

(35) "Contractor" means the Person with whom an Agency enters into a Contract and has the same meaning as "Consultant" or "Provider."

(36) "Contract Price" means, as the context requires, the maximum monetary obligation that an Agency either will or may incur under a Contract, including bonuses, incentives and contingency amounts, if the Contractor fully performs under the Contract.

(37) "Contract Review Authority" means the Director of the Department and the Director's delegatee, unless specified by statute as the Director of the Oregon Department of Transportation.

(38) "Contract-Specific Special Procurement" is defined in ORS 279B.085 and means a contracting procedure that differs from the procedures described in ORS 279B.055, 279B.060, 279B.065 and 279B.070 and is for the purpose of entering into a single Contract or a number of related Contracts for the acquisition of specified Supplies and Services on a one-time basis or for a single project.

(39) "Contracting Agency."

(a) "Contracting Agency" is defined in ORS 279A.010(1)(b) and, for Agencies operating under these Rules and the Code, means the Director of the Oregon Department of Administrative Services, authorized to act on their behalf according to ORS 279A.140.

(b) The definition of "Contracting Agency" in ORS 279A.010(1)(b) does not give Agencies procurement authority. For procurement authority of Agencies, see OAR 125-246-0170.

(40) "Cooperative Procurement" is defined in OAR 125-246-0400.

(41) "Cooperative Procurement Group" is defined in OAR 125-246-0400.

(42) "Days" means calendar days.

(43) "Department" means the Oregon Department of Administrative Services. The procurement authority of the Department is described in OAR 125-246-0170. When a Rule refers to any action of the Department, any individual acting on behalf of the Department must be authorized to take such action in accordance with OAR 125-246-0170.

(44) "Department Price Agreement" means a Price Agreement issued by the Department on behalf of all Agencies. Such Agreements may be mandatory for use by Agencies or voluntary for use by Agencies. Such Agreements may result from a Cooperative Procurement. According to OAR 125-246-0360 (Purchases through Federal Programs), an Authorized Agency may not purchase Supplies and Services through Federal Programs if a mandatory Department Price Agreement for those authorized Supplies and Services exists.

(45) "Designated Procurement Officer" means the individual designated and authorized by the head of an Authorized Agency to perform certain Procurement functions described in these Rules. If any head of an Authorized Agency does not designate and authorize an individual as a Designated Procurement Officer, "Designated Procurement Officer" also means that head of the Authorized Agency, who then acts in the place of the Designated Procurement Officer.

(46) "Descriptive Literature" means Written information submitted with the Offer that addresses the Supplies and Services included in the Offer.

(47) "Director" is defined in ORS 279A.010(1)(e) and means the Director of the Department or a person designated by the Director to carry out the authority of the Director under the Public Contracting Code and these Rules.

(48) "Discussions" means to exchange information, compare views, take counsel, and communicate with another for the purposes of achieving clarification and mutual understanding of an Offer.

(49) "Disqualification" means a disqualification, suspension or debarment of a Person according to ORS 200.065, 200.075, and 279A.110 and OAR 125-246-0210(4).

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(50) "Donee" is defined in ORS 279A.250(1) and means an entity eligible to acquire federal donation property based upon federal regulations or eligible to acquire Surplus Property in accordance with rules adopted by the Department. Entities eligible to acquire federal donation property may also acquire Surplus Property other than federal donation property.

(51) "Electronic Advertisement" means an Agency's Solicitation Document, Request for Quotes, request for information or other document inviting participation in the Agency's Procurements made available over the Internet via:

- (a) The World Wide Web;
- (b) ORPIN; or

(c) An Electronic Procurement System other than ORPIN approved by the Chief Procurement Officer. An Electronic Advertisement may or may not include a Solicitation Document.

(52) "Electronic Offer" means a response to an Agency's Solicitation Document or request for Quotes submitted to an Agency via

- (a) The World Wide Web or some other Internet protocol; or
- (b) ORPIN.

(53) "Electronic Procurement System" means ORPIN or other system approved by the Chief Procurement Officer, constituting an information system that Persons may access through the Internet, using the World Wide Web or some other Internet protocol, or that Persons may otherwise remotely access using a computer, that enables Persons to send Electronic Offers and an Agency to post Electronic Advertisements, receive Electronic Offers, and conduct any activities related to a Procurement.

(54) "Electronic Goods" means Goods which are dependent on electric currents or electromagnetic fields in order to Work properly and Goods for the generation, transfer and measurement of such currents and fields.

(55) "Emergency" means circumstances that:

- (a) Could not have been reasonably foreseen;
- (b) Create a substantial risk of loss, damage or interruption of services or a substantial threat to property, public health, welfare or safety; and
- (c) Require prompt execution of a Contract to remedy the condition.

An "Emergency Procurement" means a sourcing method according to ORS 279B.080, 279C.335(5), 125-248-0200, or related Rules.

(56) "Energy Savings Performance Contract" means a Public Contract between an Agency and a qualified energy service company for the identification, evaluation, recommendation, design and construction of energy conservation measures, including a design-build contract, that guarantee energy savings or performance.

(57) "Engineer" is defined in ORS 279C.100 and means a Person who is registered and holds a valid certificate in the practice of engineering in the State of Oregon, as provided under ORS 672.002 to 672.325, and includes all terms listed in ORS 672.002(2).

(58) "Enterprise Information Technology and Telecommunications" is defined in ORS (Chapter 807, 2015 Laws) and means:

(a) Technologies, resources, systems and services that state agencies use to generate, process, store and secure information for governmental purposes, including geographic information;

(b) Technologies, resources, systems and services that state agencies use to send, receive, process or otherwise facilitate telecommunications for governmental purposes; and

(c) Technologies, resources, systems and services that state agencies use to install, maintain, repair, update, replace, remove or otherwise support the technologies, resources, systems or services described in paragraphs (a) and (b) of this subsection.

(59) "Established Catalog Price" means the price included in a catalog, price list, schedule or other form that:

- (a) Is regularly maintained by a manufacturer or Contractor;
- (b) Is either published or otherwise available for inspection by customers; and

(c) States prices at which sales are currently or were last made to a significant number of any category of buyers or to buyers constituting the general market, including public bodies, for the Supplies and Services involved.

(60) "Executive Department" is defined in ORS 174.112.

(a) Subject to ORS 174.108, "Executive Department" means: all statewide elected officers other than judges, and all boards, commissions, departments, divisions and other entities, without regard to the designation given to those entities, that are within the Executive Department of government as described in Section 1, Article III of the Oregon Constitution, and that are not:

- (A) In the judicial department or the legislative department;
- (B) Local governments; or
- (C) Special government bodies.

(b) Subject to ORS 174.108, as used in the statutes of this State, "Executive Department" includes:

(A) An entity created by statute for the purpose of giving advice only to the Executive Department and that does not have members who are officers or employees of the judicial department or Legislative Department;

(B) An entity created by the Executive Department for the purpose of giving advice to the Executive Department, if the document creating the entity indicates that the entity is a public body; and

(C) Any entity created by the Executive Department other than an entity described in Subsection (B), unless the document creating the entity indicates that the entity is not a governmental entity or the entity is not subject to any substantial control by the Executive Department.

(61) "Findings" is defined in ORS 279C.330 and means the justification for an Agency's conclusion that includes, but is not limited to, information regarding:

- (a) Operational, budget and financial data;
- (b) Public benefits;
- (c) Value engineering;
- (d) Specialized expertise required;
- (e) Public safety;
- (f) Market conditions;
- (g) Technical complexity; and
- (h) Funding sources.

(62) "Fire Protection Equipment" is defined in ORS 476.005 and means any apparatus, machinery or appliance intended for use by a fire service unit in fire prevention or suppression activities, excepting forest fire protection equipment.

(63) "Flagger" means a person who controls the movement of vehicular traffic through construction projects using sign, hand or flag signals.

(64) "Formal Selection Procedure" means the procedure according to OAR 125-248-0220.

(65) "Fringe Benefits" is defined in ORS 279C.800 and means the amount of:

(a) The rate of contribution irrevocably made by a Contractor or subcontractor to a trustee or to a third person under a plan, fund or program; and

(b) The rate of costs to the Contractor or subcontractor that may be reasonably anticipated in providing benefits to Workers according to an enforceable commitment to carry out a financially responsible plan or program that is committed in Writing to the Workers affected, for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs or for other bona fide fringe benefits, but only when the Contractor or subcontractor is not required by other federal, state or local law to provide any of these benefits.

(66) "Good Cause" is defined in ORS 279C.585, and the Oregon Construction Contractors Board must define "Good Cause" by rule. "Good Cause" includes, but is not limited to, the financial instability of a subcontractor. The definition of "Good Cause" must reflect the least-cost policy for Public Improvements established in ORS 279C.305. This definition does not apply to OAR 125-247-0255 and 125-247-0260.

(67) "Good Faith Dispute" is defined in ORS 279C.580(5)(b) and means a documented dispute concerning:

- (a) Unsatisfactory job progress;
- (b) Defective work not remedied;
- (c) Third-party claims filed or reasonable evidence that claims will be filed;
- (d) Failure to make timely payments for labor, equipment and materials;
- (e) Damage to the prime Contractor or subcontractor; or
- (f) Reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum.

(68) "Goods" means supplies, equipment, or materials, and any personal property, including any tangible, intangible and intellectual property and rights and licenses in relation thereto, that an Agency is authorized by law to procure.

(69) "Goods and Services" or "Goods or Services" is defined in ORS 279A.010 and for purposes of these Rules falls within the meaning of "Supplies and Services" (see the definition of "Supplies and Services" in this Rule). "Goods and Services" or "Goods or Services" does not include Personal Services. "Supplies and Services" includes Personal Services.

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(70) "Governor's Policy Advisor for Economic and Business Equity, formerly the Advocate for Minority, Women and Emerging Small Business", (also known as the Director of Economic & Business Equity), means the individual appointed by the Governor to advise the Governor, Legislature and Director's Office on issues related to the integration of disadvantaged, minority owned, woman owned, service disabled veteran owned, and emerging small businesses into the mainstream of the Oregon economy and business sector. The Governor's Policy Advisor for Economic and Business Equity oversees the resolution of business concerns with Agencies impacting firms certified by the Certification Office for Business Inclusion and Diversity (COBID), formerly the Office of Minority, Women and Emerging Small Businesses, (also known as the Office of Economic & Business Equity). The Governor's Policy Advisor for Economic and Business Equity is also charged with maintaining the Oregon Opportunity Register and Clearinghouse to facilitate the timely notice of business and contract opportunities to COBID certified firms, according to ORS 200.025.

(71) "Grant" is defined in ORS 279A.010(1)(k)(A) and means:

(a) An agreement under which an Agency receives money, property or other assistance, including but not limited to federal assistance that is characterized as a Grant by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets, from a grantor for the purpose of supporting or stimulating a program or activity of the Agency and in which no substantial involvement by the grantor is anticipated in the program or activity other than involvement associated with monitoring compliance with the Grant conditions; or

(b) An agreement under which an Agency provides money, property or other assistance, including but not limited to federal assistance that is characterized as a grant by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets, to a recipient for the purpose of supporting or stimulating a program or activity of the recipient and in which no substantial involvement by the Agency is anticipated in the program or activity other than involvement associated with monitoring compliance with the grant conditions.

(c) "Grant" does not include a Public Contract:

(A) For a Public Improvement for Public Works, as defined in ORS 279C.800; or

(B) For emergency Work, minor alterations or ordinary repair or maintenance necessary to preserve a Public Improvement, when under the Public Contract:

(i) An Agency pays moneys that the Agency has received under a Grant; and

(ii) Such payment is made in consideration for Contract performance intended to realize or to support the realization of the purposes for which Grant funds were provided to the Agency.

(72) "Industrial Oil" means any compressor, turbine or bearing oil, hydraulic oil, metal-working oil or refrigeration oil.

(73) "Informal Selection" means the procedure according to OAR 125-248-0210.

(74) "Information Technology (IT)" means:

(a) Any equipment or interconnected system or subsystem of equipment used in the acquisition, storage, manipulation, management, movement, control, security, display, switching, interchange, transmission, communication, or reception of data or information electronically;

(b) Any development, implementation, and maintenance of computer equipment, ancillary equipment, software, firmware, and related procedures and services, including support services, consulting services, software development and related resources; or

(c) Any computer programs, routines, or subroutines, including operating software, programming aids, application programs, and software products.

(75) "Intermediate Procurement" means a sourcing method according to ORS 279B.070 or OAR 125-249-0160.

(76) "Interstate Cooperative Procurement" is defined in OAR 125-246-0400.

(77) "Invitation to Bid" or "ITB" is defined in ORS 279B.005 and 279C.400 and means all documents, whether attached or incorporated by reference, used for soliciting Bids in accordance with ORS 279B.055, 279B.070 or 279C.335.

(78) "Joint Cooperative Procurement" is defined in OAR 125-246-0400.

(79) "Judicial Department" is defined in ORS 174.113 and means the Supreme Court, the Court of Appeals, the Oregon Tax Court, the circuit courts and all administrative divisions of those courts, whether denominated

as boards, commissions, committees or departments or by any other designation. The Judicial Department includes:

(a) An entity created by statute for the purpose of giving advice only to the Judicial Department and that does not have members who are officers or employees of the Executive Department or Legislative Department;

(b) An entity created by the Judicial Department for the purpose of giving advice to the judicial department, if the document creating the entity indicates that the entity is a public body; and

(c) Any entity created by the Judicial Department other than an entity described in paragraph (b) of this Subsection, unless the document creating the entity indicates that the entity is not a governmental entity or the entity is not subject to any substantial control by the Judicial Department.

(80) "Labor Dispute" is defined in ORS 662.010 and includes any controversy concerning terms or conditions of employment, or concerning the association or representation of Persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

(81) "Land Surveyor" is defined in ORS 279C.100(4) and means a Person who is registered and holds a valid certificate in the practice of land surveying in the State of Oregon, as provided under ORS 672.002 to 672.325, and includes all terms listed in ORS 672.002(5).

(82) "Legally Flawed" is defined in ORS 279B.405(1)(b) and means that a Solicitation Document contains terms or conditions that are contrary to law.

(83) "Legislative Department" is defined in ORS 174.114 and, subject to ORS 174.108, means the Legislative Assembly, the committees of the Legislative Assembly and all administrative divisions of the Legislative Assembly and its committees, whether denominated as boards, commissions or departments or by any other designation. The Legislative Department includes:

(a) An entity created by statute for the purpose of giving advice only to the Legislative Department and that does not have members who are officers or employees of the executive department or judicial department;

(b) An entity created by the Legislative Department for the purpose of giving advice to the legislative department, but that is not created by statute, if the document creating the entity indicates that the entity is a public body; and

(c) Any entity created by the Legislative Department by a document other than a statute and that is not an entity described in paragraph (b) of this Subsection, unless the document creating the entity indicates that the entity is not a governmental entity or the entity is not subject to any substantial control by the Legislative Department.

(84) "Locality" is defined in ORS 279C.800(3) and means the following district in which the Public Works, or the major portion thereof, is to be performed:

(a) District 1, composed of Clatsop, Columbia and Tillamook Counties;

(b) District 2, composed of Clackamas, Multnomah and Washington Counties;

(c) District 3, composed of Marion, Polk and Yamhill Counties;

(d) District 4, composed of Benton, Lincoln and Linn Counties;

(e) District 5, composed of Lane County;

(f) District 6, composed of Douglas County;

(g) District 7, composed of Coos and Curry Counties;

(h) District 8, composed of Jackson and Josephine Counties;

(i) District 9, composed of Hood River, Sherman and Wasco Counties;

(j) District 10, composed of Crook, Deschutes and Jefferson Counties;

(k) District 11, composed of Klamath and Lake Counties;

(l) District 12, composed of Gilliam, Grant, Morrow, Umatilla and Wheeler Counties;

(m) District 13, composed of Baker, Union and Wallowa Counties; and

(n) District 14, composed of Harney and Malheur Counties.

(85) "Lowest Responsible Bidder" is defined in ORS 279A.010(1)(r) and means the lowest Bidder who:

(a) Has substantially complied with all prescribed Public Contracting procedures and requirements;

(b) Has met the standards of responsibility set forth in ORS 279B.110(2) or 279C.375;

(c) Has not been debarred or disqualified by the Agency under ORS 279B.130 or 279C.440; and

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(d) Is not on the list created by the Oregon Construction Contractors Board under ORS 701.227, if the advertised contract is a Public Improvement Contract.

(86) "Lubricating Oil" means any oil intended for use in an internal combustion crankcase, transmission, gearbox or differential or an automobile, bus, truck, vessel, plane, train, heavy equipment or machinery powered by an internal combustion engine.

(87) "Mandatory Use Contract" means a Public Contract, Department Price Agreement, or other agreement that an Agency is required to use for the Procurement of Supplies and Services.

(88) "Multisteped" means more than one step, phase, tier, or round in a process used in Competitive Sealed Bidding or Competitive Sealed Proposals according to ORS 279B and OAR Division 247.

(89) "Negotiations" means to compare views, take counsel, and communicate with another so as to arrive at a voluntary, mutual agreement about a matter.

(90) "Nonprofit Organization" is defined in ORS 279C.810 and means an organization or group of organizations described in Section 501(c)(3) of the Internal Revenue Code that is exempt from income tax under Section 501(a) of the Internal Revenue Code.

(91) "Nonresident Offeror" means an Offeror who is not a resident Offeror. For the meaning of residency, see the definition of "Resident Offeror."

(92) "Not-for-Profit Organization" means a Nonprofit Corporation as defined in ORS 307.130(1)(c).

(93) "OAR" means the Oregon Administrative Rules.

(94) "Offer" means a response to a Solicitation, including: a Bid, Proposal, Quote or similar response to a Solicitation.

(95) "Offeror" means a Person who submits an Offer

(96) "Offering" means a Bid, Proposal, or Quote.

(97) "OPB Certified Professional" means an individual holding an active Oregon Procurement Basic Certification, issued by the Chief Procurement Officer.

(98) "Opening" means the date, time and place specified in the Solicitation Document for the public opening of Written sealed Offers.

(99) "Ordering Instrument" or "Order" means a document used by an Authorized Agency in compliance with the Public Contracting Code, these Rules, and Department policies, for the general purpose of ordering Supplies and Services from one or more Providers.

(a) An Ordering Instrument or Order may also be known as a Purchase Order, Work Order, or other name assigned by an Agency.

(b) A Price Agreement may specify the use of Ordering Instruments.

(c) Absent a Price Agreement and subject to the Public Contracting Code, Rules, and Department policies, an Authorized Agency's appropriate use of an Ordering Instrument is an Offer to purchase Supplies and Services from one or more Providers, and a Provider's responsive and appropriate acceptance of the Offer creates a Public Contract.

(100) "Ordinary Construction Services" means those services that are not Public Improvements, are procured under ORS Chapter 279B, and are otherwise under ORS Chapter 279C, in accordance with OAR 125-249-0100(1) and 125-249-0140.

(101) "Original Contract" means the initial Contract or Price Agreement of the Department or an Authorized Agency. See OAR 125-246-0400 for the definition of "Original Contract" that the Public Contracting Code and Rules use for Cooperative Procurements only.

(102) "ORPIN" means the on-line electronic Oregon Procurement Information Network administered by the Department, as further described in OAR 125-246-0500.

(103) "ORS" means the Oregon Revised Statutes.

(104) "Participant" is defined in OAR 125-246-0400.

(105) "Permissive Cooperative Procurement" is defined in OAR 125-246-0400.

(106) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation or any other legal or commercial entity. "Person" is also defined in ORS 279C.500 and means the State Accident Insurance Fund Corporation and the Department of Revenue. "Person" is defined in ORS 279C.815 and means any employer, labor organization or any official representative of an employee or employer association.

(107) "Personal Services" under ORS 279B means services that require specialized skills, knowledge and resources in the application of technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment, including, without limitation, the services of an accountant, physician or dentist, educator, information tech-

nology professional, Consultant, broadcaster, or artist (including a photographer, filmmaker, painter, weaver or sculptor). "Personal Services" under ORS 279C includes the services of an Architect, Engineer, Photogrammetrist, Transportation Planner, Land Surveyor or Provider of Related Services as defined in ORS 279C.100, and that definition applies only to ORS 279C.100 to 279C.125, for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services.

(108) "Personal Services Contract" means a Contract or a member of a class of Contracts for Personal Services. Contracts for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and Related Services are a special class of Personal Services Contracts, defined in ORS 279C.100(5), and Providers under such Contracts are Consultants, as defined in OAR 125-248-0110(1).

(109) "Prevailing Rate of Wage" is defined in ORS 279C.800 and means the rate of hourly wage, including all fringe benefits, paid in the Locality to the majority of Workers employed on projects of similar character in the same trade or occupation, as determined by the Commissioner of the Bureau of Labor and Industries.

(110) "Price Agreement."

(a) "Price Agreement" is defined in ORS 279A.010(1)(v) and means a Public Contract for the Procurement of Supplies and Services at a set price with:

(A) No guarantee of a minimum or maximum purchase; or

(B) An initial order or minimum purchase combined with a continuing Contractor obligation to provide Supplies and Services in which the Authorized Agency does not guarantee a minimum or maximum additional purchase.

(b) The set price may exist at the outset or be determined later by an Ordering Instrument.

(c) A "Price Agreement" as a Public Contract may collectively consist of an initial agreement, together with later Ordering Instruments, if any.

(A) The initial agreement may be known as an agreement to agree, a master agreement, a Price Agreement for any Supplies and Services, a services agreement, or a retainer agreement, if such agreement meets the requirements of this Rule's definition.

(B) The Ordering Instrument may be known as a work order, purchase order, or task order, or by another name for ordering purposes and related to the initial agreement.

(111) "Procurement" means the act of purchasing, leasing, renting or otherwise acquiring or selling: Supplies and Services; Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services and Related Services; and Public Improvements. Procurement includes each function and procedure undertaken or required to be undertaken by an Authorized Agency to enter into a Public Contract, administer a Public Contract and obtain the performance of a Public Contract under the Public Contracting Code and these Rules. Procurement includes Contract Administration, and Contract Administration includes Amendments.

(112) "Procurement Document" collectively means the inclusive Solicitation Document and all documents either attached or incorporated by reference, and any changes thereto, used for any of the methods according to ORS 279A.200 through 279A.220, 279B.055 through 279B.085, 279C.100 through 279C.125, or 279C.300 through 279C.450.

(113) "Procurement File" means any of the following files maintained by an Authorized Agency: a solicitation, Contract, Amendment, Work Order, or contract administration file, separately or collectively.

(114) "Procurement Process" means the process related to these acts, functions, and procedures of Procurement.

(115) "Product Sample" means the exact Goods or a representative portion of the Goods offered in an Offer, or the Goods requested in the Solicitation Document as a sample.

(116) "Property" is defined in ORS 279A.250 and means personal property.

(117) "Proposal" means a Written response to a Request for Proposals.

(118) "Proposer" means a Person who submits a proposal in response to a Request for Proposals, except for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services and Related Services according to OAR 125-248-0110, whereby "Proposer" means a Consultant who submits a proposal to an Authorized Agency in response to a Request for Proposals.

(119) "Provider" means collectively or in the alternative: the supplier, Contractor or Consultant, providing Supplies and Services or Public Improvements.

ADMINISTRATIVE RULES

(120) "Post-consumer Waste" means a finished material that would normally be disposed of as solid waste, having completed its life cycle as a consumer item. "Post-consumer waste" does not include manufacturing waste.

(121) "Public Agency" is defined in ORS 279C.800 and means the State of Oregon or any political subdivision thereof or any county, city, district, authority, public corporation or entity and any of their instrumentalities organized and existing under law or charter.

(122) "Public Body" is defined in ORS 174.109, subject to ORS 174.108, and means state government bodies, local government bodies and special government bodies.

(123) "Public Contract" is defined in ORS 279A.010(1)(z) and means a sale or other disposal, or a purchase, lease, rental or other acquisition, by an Authorized Agency of Supplies and Services, Public Improvements, Public Works, minor alterations, or ordinary repair or maintenance necessary to preserve a Public Improvement. "Public Contract" does not include Grants. For the purposes of these Rules, "Public Contract" means Contract.

(124) "Public Contracting" is defined in ORS 279A.010(1)(aa) and means Procurement activities described in the Public Contracting Code relating to obtaining, modifying or administering Public Contracts or Price Agreements.

(125) "Public Contracting Code" or "Code" is defined in ORS 279A.010(1)(bb) and means 279A, 279B and 279C.

(126) "Public Improvement Contract" means a Public Contract for a Public Improvement. "Public Improvement Contract" does not include a Public Contract for emergency Work, minor alterations, or ordinary repair or maintenance necessary to preserve a Public Improvement.

(127) "Public Improvement" is defined in ORS 279A.010(1)(cc) and means a project for construction, reconstruction or major renovation on real property by or for an Authorized Agency. "Public Improvement" does not include:

(a) Projects for which no funds of an Authorized Agency are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection; or

(b) Emergency Work, minor alteration, ordinary repair or maintenance necessary to preserve a Public Improvement.

(128) "Public Works" is defined in ORS 279C.800 and includes, but is not limited to: roads, highways, buildings, structures and improvements of all types, the construction, reconstruction, major renovation or painting of which is carried on or contracted for or by any public agency, to serve the public interest, but does not include the reconstruction or renovation of privately owned property that is leased by a Public Agency.

(129) "Purchase Order" means an Ordering Instrument or Order, as defined in this Rule.

(130) "Qualifications Based Selection (QBS)" means the qualifications based selection process mandated by ORS 279C.110 for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and Related Services Contracts.

(131) "Quote" means a verbal or Written Offer obtained through an Intermediate Procurement according to either OAR 125-247-0270 or 125-249-0160.

(132) "Recycled Material" means any material that would otherwise be a useless, unwanted or discarded material except for the fact that the material still has useful physical or chemical properties after serving a specific purpose and can, therefore, be reused or recycled.

(133) "Recycled Oil" means used oil that has been prepared for reuse as a petroleum product by refining, re-refining, reclaiming, reprocessing or other means, provided that the preparation or use is operationally safe, environmentally sound and complies with all laws and regulations.

(134) "Recycled Paper" means a paper product with not less than:

(a) Fifty percent of its fiber weight consisting of secondary waste materials; or

(b) Twenty-five percent of its fiber weight consisting of post-consumer waste.

(135) "Recycled PETE" means post-consumer polyethylene terephthalate material.

(136) "Recycled Product" means all materials, goods and supplies, not less than 50 percent of the total weight of which consists of secondary and post-consumer waste with not less than 10 percent of its total weight consisting of post-consumer waste. "Recycled Product" includes any product that could have been disposed of as solid waste, having completed its life cycle as a consumer item, but otherwise is refurbished for reuse without substantial alteration of the product's form.

(137) "Related Services" is defined in ORS 279C.100(8).

(138) "Request for Proposals" or "RFP" is defined in ORS 279B.005 and means all documents, either attached or incorporated by reference, and any Addenda thereto, used for soliciting Proposals in accordance with ORS 279B.060, 279B.070 or 279C.405 and related rules.

(139) "Request for Qualifications" or "RFQ" means a Written document issued by an Authorized Agency and describing: the Authorized Agency's circumstances; the type of service(s) or Work desired; significant evaluation factors; their relative importance; if appropriate, price; and competitive qualifications. Contractors respond in Writing to the Authorized Agency by describing their experience and qualifications. The RFQ will not result in a Contract. It establishes a list of qualified Contractors in accordance with OAR 125-247-0550, 125-248-0220 or 125-249-0645.

(140) "Request for Quotes" means a Written or oral request for prices, rates or other conditions under which a potential Contractor would provide Supplies and Services or Public Improvements described in the request.

(141) "Resident Bidder" is defined in ORS 279A.120 and means a Bidder that has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the Bid, has a business address in this State, and has stated in the Bid whether the Bidder is a "Resident Bidder."

(142) "Resident Offeror" means an Offeror that has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the Offer, has a business address in this State, and has stated in the Offer whether the Offeror is a "resident Offeror."

(143) "Responsible" means meeting the standards set forth in OAR 125-247-0640 or 125-249-0390(2), and not debarred or disqualified by the Authorized Agency under OAR 125-247-0575 or 125-249-0370.

(144) "Responsible Bidder" or "Responsible Proposer" is defined in ORS 279A.105 and 279B.005 and means a person who meets the standards of responsibility as described in ORS 279B.110.

(145) "Responsible Offeror" means, as the context requires, a Responsible Bidder, Responsible Proposer or a Person who has submitted an Offer and meets the standards set forth in OAR 125-247-0640 or 125-249-0390(2), and who has not been debarred or disqualified by the Agency under OAR 125-247-0575 or 125-249-0370, respectively.

(146) "Responsible Proposer" or "Responsible Bidder" is defined in ORS 279B.005 and means a Person who meets the standards of responsibility described in ORS 279B.110.

(147) "Responsive" means having the characteristic of substantial compliance in all material respects with applicable solicitation requirements.

(148) "Responsive Bid" or "Responsive Proposal" is defined in ORS 279B.005 and means a Bid or Proposal that substantially complies with the Invitation to Bid or Request for Proposals, respectively, and all prescribed Procurement procedures and requirements.

(149) "Responsive Offer" means, as the context requires, a Responsive Bid, Responsive Proposal or other Offer that substantially complies in all material respects with applicable Solicitation requirements.

(150) "Responsive Proposal" or "Responsive Bid" is defined in ORS 279B.005 and means a bid or proposal that substantially complies with the Invitation to Bid or Request for Proposals and all prescribed procurement procedures and requirements.

(151) "Retainage" is defined in ORS 279C.550 and means the difference between the amount earned by a Contractor on a Public Contract and the amount paid on the contract by the Authorized Agency.

(152) "Rules" means these Public Contracting Rules of the Department including Divisions 246 through 249, unless otherwise indicated.

(153) "Scope" means the extent or range of view, outlook, application, operation, or effectiveness. Scope does not include the dollar amount of the Contract.

(154) "Secondary Waste Materials" means fragments of products or finished products of a manufacturing process that has converted a virgin resource into a commodity of real economic value. "Secondary Waste Materials" includes post-consumer waste. "Secondary Waste Materials" does not include excess virgin resources of the manufacturing process. For paper, "Secondary Waste Materials" does not include fibrous waste generated during the manufacturing process such as fibers recovered from waste water or trimmings of paper machine rolls, mill broke, wood slabs, chips, sawdust or other wood residue from a manufacturing process.

(155) "Serial Negotiation" means a Negotiation that is sequential, on-going, consecutive, alternating, or repetitive.

(156) "Services" or "services," for the purpose of these Rules only, means Trade Services, Personal Services, or any combination thereof.

ADMINISTRATIVE RULES

(157) "Signature" means any Written mark, word or symbol that is made or adopted by a Person with the intent to be bound and that is attached to or logically associated with a Written document to which the Person intends to be bound.

(158) "Signed" means, as the context requires, that a Written document contains a Signature or that the act of making a Signature has occurred.

(159) "Small Procurement" means a sourcing method according to ORS 279B.065.

(160) "Sole-Source Procurement" means a sourcing method by which an Authorized Agency awards a Contract without competition to a single source for Supplies and Services, when Written justification demonstrates no other source is available, in accordance with ORS 279B.075 and OAR 125-247-0275.

(161) "Solicitation" means:

(a) A request by an Authorized Agency for the purpose of soliciting Offers. This request may take the form of an Invitation for Bid, a Request for Proposal, a Request for Quotation, a Request for Qualifications or a similar document; or

(b) The process of notifying prospective Offerors that the Authorized Agency requests such Offers; or

(c) The Solicitation Document itself.

(162) "Solicitation Document" means an Invitation to Bid; a Request for Proposals; a Writing for a Small, Intermediate, Informal Selection, Competitive Quote, or Emergency Procurement; a Special Procurement Solicitation; or other document issued to invite Offers from prospective Contractors in accordance with ORS 279B or 279C. "Solicitation Document" includes related documents, either attached or incorporated by reference, and any changes thereto, issued by an Authorized Agency to establish an Original Contract that forms the basis for an Agency's participation in a Procurement. The following examples are not Solicitation Documents because they do not invite offers from prospective Contractors: Request for Qualifications, a prequalification of Bidders, a request for information, and a request for product prequalification.

(163) "Special Government Body" is defined in ORS 174.117 and

(a) Means any of the following:

(A) A public corporation created under a statute of this State and specifically designated as a public corporation.

(B) A school district.

(C) A public charter school established under ORS Chapter 338.

(D) An education service district.

(E) A community college district or community college service district established under ORS Chapter 341.

(F) An intergovernmental body formed by two or more public bodies.

(G) Any entity that is created by statute, ordinance or resolution that is not part of state government or local government.

(H) Any entity that is not otherwise described in this Section that is:

(i) Not part of state government or local government;

(ii) Created according to authority granted by a statute, ordinance or resolution, but not directly created by that statute, ordinance or resolution; and

(iii) Identified as a governmental entity by the statute, ordinance or resolution authorizing the creation of the entity, without regard to the specific terms used by the statute, ordinance or resolution.

(b) Subject to ORS 174.117, "Special Government Body" includes:

(A) An entity created by statute for the purpose of giving advice only to a special government body;

(B) An entity created by a Special Government Body for the purpose of giving advice to the special government body, if the document creating the entity indicates that the entity is a public body; and

(C) Any entity created by a Special Government Body described in Subsection (a) of this Section, other than an entity described in paragraph (B) of this Subsection, unless the document creating the entity indicates that the entity is not a governmental entity or the entity is not subject to any substantial control by the Special Government Body.

(164) "Special Procurement" means a sourcing method may be a class Special Procurement, a contract-specific Special Procurement or both, unless the context requires otherwise in accordance with ORS 279B.085 and OAR 125-247-0287.

(a) "Class Special Procurement" is defined in ORS 279B.085 and means a contracting procedure that differs from the procedures described in ORS 279B.055, 279B.060, 279B.065 and 279B.070 and is for the purpose of entering into a series of Contracts over time for the acquisition of a specified class of Supplies and Services.

(b) "Contract-specific Special Procurement" means a contracting procedure that differs from the procedures described in ORS 279B.055, 279B.060, 279B.065 and 279B.070 and is for the purpose of entering into a single Contract or a number of related contracts for the acquisition of specified Supplies and Services on a one-time basis or for a single project.

(165) "Specification" is defined in ORS 279B.200(3) and means any description of the physical or functional characteristics, or of the nature of the Supplies and Services to be procured by an Agency. "Specification" includes: any requirement for inspecting, testing, or preparing the Supplies and Services for delivery and the quantities or qualities of Supplies and Services to be furnished under the Contract. Specifications generally will state the result to be obtained and occasionally may describe the method and manner of performance.

(166) "State" means the State of Oregon.

(167) "State Government," subject to ORS 174.108, means the Executive Department, the Judicial Department and the Legislative Department.

(168) "Substantial Completion" is defined in ORS 12.135 and means the date when the contractee accepts in Writing the construction, alteration or repair of the improvement to real property or any designated portion thereof as having reached that state of completion when it may be used or occupied for its intended purpose or, if there is no such Written acceptance, the date of acceptance of the completed construction, alteration or repair of such improvement by the contractee.

(169) "Supplies and Services" includes "Supplies or Services" and collectively means Goods, Trade Services, Personal Services, and Ordinary Construction Services separately or in any combination of these terms thereof as appropriate within the context of the Rule. "Supplies and Services" includes the terms "goods and services," "goods or services," and "personal services" contained in ORS 279A and 279B. This term does not include Public Improvements or Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and Related Services, governed under ORS 279C.

(170) "Surplus Property" means all personal property, vehicles and titled equipment property received by the Department as surplus from federal government units, state agencies, local governments, and special government bodies for sale to state agencies, political subdivisions of the State, and private not-for-profit organizations or the general public or any combination thereof. See OAR 125-050.

(171) "Sustainability" is defined in ORS 184.421 and means using, developing and protecting resources in a manner that enables people to meet current needs and provides that future generations can also meet future needs, from the joint perspective of environmental, economic and community objectives.

(172) "Threshold" means a specific monetary limitation that distinguishes one Procurement method from another, triggers a requirement, or marks a point of reference or change in Rule. For example, the Thresholds of \$10,000 to \$150,000 distinguish Intermediate Procurements under ORS 279B from other methods.

(173) "Trade Services" means all remaining services that do not meet the definition for Personal Services.

(174) "Unnecessarily Restrictive" is defined in ORS 279B.405(1)(c) and means that Specifications limit competition arbitrarily, without reasonably promoting the fulfillment of the Procurement needs of an Agency.

(175) "Used Oil" is defined in ORS 459A.555 and means a petroleum-based oil which through use, storage or handling has become unsuitable for its original purpose due to the presence of impurities or loss of original properties.

(176) "Virgin Oil" means oil that has been refined from crude oil and that has not been used or contaminated with impurities.

(177) "Work" means the furnishing of all services, materials, equipment, labor, and incidentals necessary to successfully complete any individual item or the entire Contract and the carrying out and completion of all duties and obligations imposed by the Contract.

(178) "Work Order" means an Ordering Instrument related to Services, including any incidental Supplies.

(179) "Writing" means letters, characters and symbols inscribed on paper by hand, print, type or other method of impression, intended to represent or convey particular ideas or meanings. "Writing" when required or permitted by law, or required or permitted in a Solicitation Document, also means letters, characters and symbols made in electronic form and intended to represent or convey particular ideas or meanings.

(180) "Written" means existing in Writing.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.065, 279A.200, 279B.005 & 279C.110

ADMINISTRATIVE RULES

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 9-2005, f. & cert. ef. 8-3-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 4-2013, f. 12-17-13, cert. ef. 1-1-14; DAS 3-2014, f. 12-29-14, cert. ef. 1-1-15; DAS 4-2015, f. 12-29-15, cert. ef. 1-1-16; DAS 2-2016, f. 12-22-16, cert. ef. 1-1-17

125-246-0135

Solicitation Templates; Contract Forms and Templates

See OAR 137-046-0140.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: 2015 OL, Ch. 646 (HB 2375)

Hist.: DAS 4-2015, f. 12-29-15, cert. ef. 1-1-16; DAS 2-2016, f. 12-22-16, cert. ef. 1-1-17

125-246-0140

Procurement Authority

(1) The Department must conduct all Procurements and administer the contracting for Supplies and Services; Architectural, Engineering and Land Surveying Services, and Related Services; and Public Improvements for the Agencies, unless delegated, according to ORS 279A.140 and 279C.105(1). Delegations of authority in accordance with OAR 125-246-0170 do not relieve the Department of this responsibility.

(2) For Agencies, the Department and its Director are the Contracting Agency described in the Public Contracting Code and represent the Agencies. Authorized Agencies receive delegated authority according to OAR 125-246-0170.

(3) After December 31, 2018, any person conducting a Procurement or administering a Contract for a state contracting agency, as defined in ORS 279A.010(1)(b), must have education, training, professional experience, or a combination thereof that, at a minimum, and in accordance with standards established by the Department pursuant to ORS 279A.159, adequately prepares the person to:

(a) Develop specifications and in develop or adapt solicitation documents for a Procurement;

(b) Read critically, understand, interpret and apply terms and conditions set forth in Public Contracts of the scope and nature for which the person is or will be responsible;

(c) Draft scopes of work, statements of work, contract amendments, change orders, insurance requirements, notices and other documents and communications that are necessary to conduct a Procurement or administer a Public Contract of the scope and nature for which the person is or will be responsible;

(d) Monitor a contractor's performance under a Public Contract to ensure that the contractor performs services, provides goods or supplies materials according to the schedule, pricing, specifications and terms and conditions set forth in the Public Contract;

(e) Manage relations between a state contracting agency and contractors so that contractors meet obligations to the state contracting agency and the state contracting agency meets obligations to contractors;

(f) Recognize and investigate emerging disputes or other risks, unique requirements, unusual situations or other issues that arise in connection with a Procurement and formulate appropriate responses and resolutions, seeking advice from legal counsel, risk management personnel or other persons when necessary;

(g) Understand auditing requirements and procedures that apply to Procurements of the scope and nature for which the person is or will be responsible and organize and maintain appropriate documentation and administrative practices that meet the auditing requirements; and

(h) Follow regular business and office procedures, implement applicable state contracting agency policies and procedures and otherwise conduct Procurements or administer Public Contracts for a state contracting agency in accordance with best practices.

(4) In addition to the requirements set forth in subsections (3)(a)-(h) of this rule, the Department may:

(a) Describe the contents and quality of a curriculum for an appropriate education or training program;

(b) Establish a passing score for an examination or assessment, if appropriate;

(c) Establish requirements for obtaining a certificate or other evidence of having completed the education or training program;

(d) Otherwise determine the skills and the level and depth of knowledge a person must have to fulfill the education or training program;

(e) Describe the length of service or other evidence of adequate experience required; and

(f) Establish levels or classifications of education and training or experience that are necessary for a person to conduct a Procurement or administer a Public Contract for a state contracting agency, according to:

(A) The complexity, scope or category of Procurements a state contracting agency conducts;

(B) The degree of responsibility a person will have for conducting a Procurement or administering a Public Contract; or

(C) Other criteria the Department may establish as appropriate.

(5) Any person conducting any part of a Procurement or any part of administering a Contract for a state contracting agency, after December 31, 2018, who does not have education, training, professional experience, or a combination thereof in accordance with the standards and requirements established by the Department pursuant to ORS 279A.159 and this rule, must

(a) Have a Written delegation from a person who currently meets the standards and requirements established by the Department pursuant to ORS 279A.159 and this rule, and

(b) Have their actions directly reviewed and approved by a person who currently meets the standards and requirements established by the Department pursuant to ORS 279A.159 and this rule.

A delegation under this Section must be in a form approved by the Chief Procurement Officer.

(6) The Department may provide any part or all of an education or training program that meets the standards established by the Department, or may approve any part or all of an education or training program that the Department may determine meets the standards and requirements established by the Department pursuant to ORS 279A.159 and this rule. The Department may phase in or specify incremental steps for meeting the standards and requirements under this rule.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.050(1)(2)

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 2-2016, f. 12-22-16, cert. ef. 1-1-17

125-246-0165

Delegation Policy and Procedures

(1) Generally.

(a) Purpose. This Rule describes the policy and procedures related to the delegation of authority under OAR 125-246-0170, including but not limited to:

(A) Policy of the Code;

(B) Individual Representation;

(C) Forms of Delegations and Revocations of Authority;

(D) Changes in Individual Representation;

(E) Procedural Requirements;

(F) Signature; and

(G) Commitment of Funds.

(b) This Rule applies to all delegations and sub-delegations of Authority (collectively, Delegations), modifications of Delegations, and revocations of Delegations under OAR 125-246-0170. This Rule does not delegate authority. All delegations of authority under the Rules are found solely in 125-246-0170.

(2) Policy of the Code. The policy of the Code is to clarify responsibilities, instill public confidence, promote efficient use of resources, implement socioeconomic programs, allow meaningful competition, and provide a structure that supports evolving procurement methods, according to ORS 279A.015. These Rules support this policy of the Code.

(3) Individual Representation. Public Contracting may be delegated only to an individual, representing the State's interests. Authority under these Rules may be delegated only to individuals acting on behalf of the Agencies and in accordance with this Rule, and OAR 125-246-0170(2)(a)(A). All individual delegates must hold and use this Authority within the scope of their employment by the Agency and act on behalf of the Agency as the Agency's representative. Sub-delegations may be in whole or in part according to ORS 279A.075. Any individual may decline a sub-delegation in whole or in part. A delegator or delegatee may also be referred to in this Rule as an "Authorized Individual."

(4) Forms of Delegations and Revocations of Authority. ORS 279A.075 provides that the exercise of all authorities in the Code may be delegated and sub-delegated in whole or in part. The form of a Delegation or revocation of Authority by an Authorized Individual may be by:

(a) OAR 125-246-0170 by the Director of the Department;

(b) A Written external or internal policy by an authorized delegator or revoker;

(c) An Interagency Agreement, signed by the Chief Procurement Officer and the Authorized Agency; or

(d) A letter or memorandum signed by an authorized delegator or revoker.

ADMINISTRATIVE RULES

(5) Changes in Individual Representation. If an Agency determines that an Authorized Individual has ceased to represent that Agency for Procurement (Absent Individual), then:

(a) The Authority of the Absent Individual automatically reverts back to the individual who originally delegated the Authority to the Absent Individual. The Agency must determine who receives the reverted Authority in accordance with this Rule. If the Absent Individual is a head of an Agency or Designated Procurement Officer, the delegator of authority to that individual must notify the Chief Procurement Officer within thirty (30) days after the change in representation.

(b) Sub-delegations, if any, by an Absent Individual remain in effect unless and until the Authority of any sub-delegatees is modified or revoked by an Authorized Individual.

(6) Procedural Requirements.

(a) Compliance. Authorized Agencies must maintain good contracting procedures in accordance with the Public Contracting Code, related Rules and policies of the Department. Delegation of Authority does not exempt anyone from the requirements of the Public Contracting Code, related Rules, and policies of the Department. Any individual receiving delegated Authority is responsible for following the Public Contracting Code, related Rules, and policies of the Department.

(b) Modifications or Revocations.

(A) Authority. Subject to the conditions of Subsection (ii) below, a Delegation may be modified or revoked by:

(i) The Director of the Department,

(ii) The Chief Procurement Officer in accordance with OAR 125-246-0170(3)(b)(D) and 125-246-0170(3)(d)(J), or

(iii) The original authorized delegator or successor of this delegator who made this Delegation being modified or revoked.

(B) Conditions.

(i) This modification or revocation of a Delegation must be in Writing;

(ii) The delegatee must receive reasonable notice of the modification or revocation of the Delegation; and

(iii) This modification or revocation of a Delegation must be based upon a determination.

(c) Maintenance of Documents. The Authorized Agency must maintain copies of letters, memoranda, or agreements granting a Delegation.

(7) Signature. When an Authorized Agency has delegated Authority according to OAR 125-246-0170, the Authorized Agency's signature constitutes both the execution and approval of the Contract, except as provided in 125-246-0170(2)(a)(B)(i).

(8) Commitment of Funds. ORS 291 and 293, together with the policies of the State Controller's Division of the Department, provide for public financial administration, including: appropriations, allotments by the Department, and an individual's authority to commit or encumber funds, financially obligate the Agency, and decide to expend funds. This type of authority may be referred to as commitment, expenditure, obligation, expenditure decision or signature authority (collectively, Commitment of Funds).

(9) Requests for Delegations. Any Agency may submit a delegation request through ORPIN to the Chief Procurement Officer for authority in accordance with the Public Contracting Code, this Rule, and any related policy of the Department. All requested Delegations must be approved in Writing by the Chief Procurement Officer and based upon a consideration of relevant criteria as follows:

(a) The nature of the Supplies and Services to be provided;

(b) Resources of the Agency requesting the delegation, including trained and qualified contract officers and staff, the Agency's experience and expertise, staff time available, and the degree of economy and efficiency to be achieved in meeting the state's requirements if authority is delegated;

(c) The Agency's Procurement and public contracting past performance;

(d) Department's resources to exercise the authority if it is not delegated; and

(e) Value added by the Agency if the authority is delegated.

(10) Revocation of Delegations. The Chief Procurement Officer may revoke any delegation issued under section (9) of this rule at any time by written notice to the Designated Procurement Officer of the Agency, as defined in OAR 125-246-0170, based upon, but not limited to any of the following:

(a) Failure to comply with the requirements of the delegation;

(b) Failure to comply with the requirements of OAR 125-246-0170(2)(a)(A)

(c) Deficiencies evidenced by performance audits performed by the Department, the Secretary of State, or the Legislative Assembly;

(d) Failure to comply with the Department training requirements to obtain an Oregon Basic Procurement Certification, Advanced Certification, or specific training described in the delegation;

(e) Lack of adequate experience in terms of procurement knowledge and any specialized knowledge pertinent to the authority delegated;

(f) The available resources of the Department to conduct the purchasing activities if authority is revoked; and

(g) The degree of economy and efficiency to be achieved in meeting the state's requirements if authority is revoked.

(11) Return of Delegations from Agencies to the Chief Procurement Officer. If an Agency needs assistance, an Agency may request that the Chief Procurement Officer reclaim the authority previously delegated to the Agency. With sole discretion, the Chief Procurement Officer may accept the reclamation request for assistance according to the responsibilities, resources, and needs of the Department and the Agency.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stat. Implemented: ORS 279A.050, 279A.075 & 279A.140

Hist.: DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 4-2013, f. 12-17-13, cert. ef. 1-1-14; DAS 3-2014, f. 12-29-14, cert. ef. 1-1-15; DAS 2-2016, f. 12-22-16, cert. ef. 1-1-17

125-246-0170

Delegation of Authority

(1) Generally.

(a) Purpose. This Rule delegates the procurement authority of the Department (Authority). Only this Rule delegates this Authority.

(b) Authority of Agencies. The Director of the Department delegates Authority to the Designated Procurement Officers of the Authorized Agencies in section (2) of this rule.

(c) Authority of the Chief Procurement Officer. The Director of the Department delegates Authority to the Chief Procurement Officer in Section (3) of this Rule.

(d) Authority of the Director. According to ORS 279A.140, the Department must conduct all Procurements, including Contract Administration, for the Agencies. Other Sections of the Code authorize specific actions by the Director of the Department. According to ORS 279A.050(1) and (2), this Authority of the Department vests only in the Director of the Department. The Director is ultimately responsible for the Procurement of the Agencies.

(2) Delegation to Individuals in Agencies.

(a) Chain of Delegation and Responsibilities.

(A) Head and Designated Procurement Officer of the Agency.

(i) Conditional Delegation. The Director of the Department delegates Authority, only as set forth in this Section (2), to the heads of Authorized Agencies, on the condition that the heads of Authorized Agencies subdelegate such Authority to their Agencies' Designated Procurement Officers, who may further subdelegate such Authority in accordance with policies of their Agencies (Chain of Delegation). Every Authorized Agency must appoint a Designated Procurement Officer to serve that Authorized Agency; if none is appointed, the head of the Agency is deemed to be the Designated Procurement Officer and assumes the Authority, duties and responsibilities of the Designated Procurement Officer (collectively, "Designated Procurement Officer"). The heads of the Agencies may not subdelegate Authority outside this Chain of Delegation, except as provided in subsection (2)(a)(B).

(ii) Manner of Appointment. The Authorized Agency determines its procedure for appointing its Designated Procurement Officer, and this Rule does not require or imply any inherent Authority in individual(s) or the Agency in order to make this appointment. The Agency must, in a form approved by the Chief Procurement Officer, send a Written notice of its appointment of the Designated Procurement Officer to the Chief Procurement Officer.

(B) Exceptions: Head and Other Individuals of the Agency.

(i) Execution of Contracts. Heads of Authorized Agencies may subdelegate the Authority to execute Contracts, as described in subsection (2)(b)(F), to other individuals within their respective Agency, provided this subdelegation is in accordance with a Written alternative subdelegation plan, maintained on file with the Agency's Designated Procurement Officer.

(ii) Special Procurements of General or Special Counsel Authorized by the Attorney General, according to OAR 125-247-0295. Heads of Authorized Agencies may subdelegate the Authority to procure general or special counsel authorized by the Attorney General, as described in subsection (2)(d)(L), to other individuals within their respective Agency, provided the head of the Authorized Agency has determined that the individ-

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ual receiving the subdelegation has the requisite skills and knowledge to carry out the subdelegation. Such subdelegations may be further subdelegated within that Authorized Agency, provided the subdelegator has determined that each individual receiving the Delegation has the requisite skills and knowledge to carry out the subdelegation.

(iii) Chain of Delegation. Authorized Individuals in accordance with Subsections (2)(a)(B)(i) and (ii) are included in the Chain of Delegation.

(C) Responsibilities. Each individual in the Chain of Delegation remains responsible for the exercise of Authority by that individual's sub-delegatees, and subdelegation does not waive this responsibility. Each delegator must determine and document that the delegatee is capable and accountable for the Procurement. The Designated Procurement Officer, appointed within each Authorized Agency, is responsible for all delegated procurement activity on behalf of the Authorized Agency, as described in this section (2), except as provided in subsection (2)(a)(B).

(b) Duties and Responsibilities of Designated Procurement Officers. The Authority, duties and responsibilities of the Designated Procurement Officer, according to (2)(a)(A), are as follows:

(A) Serve as the exclusive supervisor and manager of the Authorized Agency's Procurement system;

(B) Conduct, supervise and manage the Procurement and the Procurement Process for the Authorized Agency in accordance with the Code and these Rules, except for those Procurements conducted by a delegatee to whom the Designated Procurement Officer has delegated Authority;

(C) Prepare or monitor the use of Specifications or statements of work for all Procurements of the Authorized Agency;

(D) Issue Solicitations and implement other non-Solicitation methods for all Procurements of the Authorized Agency in accordance with the Code and these Rules;

(E) Award Contracts only as authorized in accordance with this Rule;

(F) Execute Contracts, which means causing the signing of Contracts and performance of all necessary formalities to bring the Contracts into their final, legally enforceable forms.

If the Designated Procurement Officer is unable to make a Commitment of Funds as described in OAR 125-246-0165(8), then the head of the Authorized Agency may follow an alternative subdelegation plan in accordance with Subsection (2)(a)(B)(i).

(G) Comply with the reporting requirements of the Code, these Rules, and Department policies;

(H) Monitor sourcing decisions, Procurements, development of Contracts, awarded Contracts, Contract compliance, spend, Delegations, Special Procurements and exemptions. Monitoring Contract development, awards, and compliance applies to all Delegations;

(I) Based upon the monitoring described in subsection (2)(b)(H), determine opportunities, establish targets, and utilize methods according to ORS 279A.200 through 279A.220 and 279B.055 through 279B.085 to optimize savings consistent with strategic sourcing; and

(J) Conduct Cost Analyses, approve Feasibility Determinations and Exceptions, and otherwise comply with OAR 125-247-0110.

(c) Delegation by Rule Based Upon Thresholds. By this Rule, the Director of the Department delegates authority to the heads of all Authorized Agencies, subject to section (2)(a)(A) and (B), for the following Procurements, including Contract Administration:

(A) Small Procurements of Supplies and Services up to and including the Threshold of \$10,000, according to ORS 279B.065 and related Rules;

(B) Direct appointments of Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services according to OAR 125-248-0200;

(C) Intermediate Procurements of Supplies and Services greater than \$10,000 and not exceeding \$150,000, and Amendments of Contracts resulting from Intermediate Procurements, according to ORS 279B.070, OAR 125-247-0270, and any related policy;

(D) Informal Selection Procedures of Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services according to ORS 279C.110 and OAR 125-248-0210, provided that the Authorized Agency follows the requirements as set forth in the policy of the Department;

(E) Competitive Quotes for Public Improvements estimated not to exceed \$100,000, provided that the Authorized Agency follows the requirements as set forth in the policy of the Department;

(F) Competitively Sealed Bidding not exceeding \$150,000 and according to OAR 125-247-0255;

(G) Competitively Sealed Proposals not exceeding \$150,000 and according to OAR 125-247-0260;

(H) Sole-Source Procurements not exceeding \$150,000 and according to ORS 279B.075 and OAR 125-247-0275;

(I) Special Procurements in accordance with OAR 125-247-0287 not exceeding \$150,000. This is the authority to use the Special Procurement. Approval of the Special Procurement method must be requested from the Chief Procurement Officer pursuant to OAR 125-247-0287.

(J) Purchase of Used Personal Property Special Procurements not exceeding \$150,000 and according to OAR 125-247-0288(9);

(K) Reverse Auctions Special Procurements not exceeding \$150,000 and according to OAR 125-247-0288(10); and

(L) Contract Administration as follows:

(i) For Contracts and Ordering Instruments authorized according to this section (2)(c) and (d), the Contract Administration of these Public Contracts and Ordering Instruments, including but not limited to: appropriate payment approvals, ordering in accordance with the terms of Department Price Agreements, and the oversight of the Provider(s); but excluding the Contract Administration described in Subsection (v) below;

(ii) The daily or routine Contract Administration of Ordering Instruments placed against Department Price Agreements and Contracts procured by the Department on behalf of Agencies. This daily or routine Contract Administration includes but is not limited to: appropriate payment approvals, ordering in accordance with the terms of Department Price Agreements, and the oversight of the Provider(s);

(iii) Activities specified in Writing by the Chief Procurement Officer or delegatee;

(iv) Activities specified in a related policy of the Department; and

(v) Despite subsection (2)(c)(L)(i) through (iv) above, this Delegation by subsection (2)(c)(L) does not include:

(I) The Contract Administration of Department Price Agreements; or

(II) For Contracts procured by the Department on behalf of Agencies, Amendments when the amended value of Contract exceeds \$150,000; and terminations of such Contracts when the amended value of such Contract exceeds \$150,000.

(d) Delegation by Rule Based Upon Type. By this Rule, the Director of the Department delegates authority to the heads of all Authorized Agencies, subject to section (2)(a)(A) and (B), for the following Procurements, including Contract Administration:

(A) Emergency Procurements, in accordance with ORS 279B.080, 279C.335(5), OAR 125-248-0200, or related Rules;

(B) One-time, nonrepetitive Joint Cooperative Procurements in accordance with OAR 125-246-0400, provided that:

(i) No such Procurement results in a Permissive Cooperative Procurement that is open to any Agency outside of those Agencies jointly named in the original Procurement;

(ii) No such Procurement of Supplies and Services exceeds the Threshold of \$150,000, including all Amendments, according to OAR 125-247-0805;

(iii) No such Procurement of Public Improvements exceeds \$100,000, including Amendments according to OAR 125-249-0160 and 125-249-0910; and

(iv) The Authorized Agency must follow any related policy of the Department.

(C) Federal program Procurements not exceeding \$150,000 or according to a delegation agreement with the Chief Procurement Officer, and in accordance with ORS 279A.180 and related Rules;

(D) Client Services Special Procurements according to OAR 125-247-0288(1) and (2);

(E) Client Services procured under ORS 279B.055 through 279B.085 and related Rules, including all amendments according to OAR 125-247-0805;

(F) Renegotiations of Existing Contracts with Incumbent Contractors Special Procurements according to OAR 125-247-0288(3) and as follows: the Authorized Agency is limited to the same authority delegated to that Agency with regard to the Original Contract and any Amendments and may not collectively exceed any Threshold related to its authority to procure the Original Contract, except this limit may be exceeded with the prior Written approval of the Chief Procurement Officer;

(G) Advertising Contracts Special Procurements according to OAR 125-247-0288(4);

(H) Equipment Repair and Overhaul Special Procurements according to OAR 125-247-0288(5);

(I) Contracts for Price Regulated Items Special Procurements according to OAR 125-247-0288(6);

(J) Investment Contracts Special Procurements according to OAR 125-247-0288(7);

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(K) Food Contracts Special Procurements according to OAR 125-247-0288(8);

(L) Special Procurements of General or Special Counsel Authorized by the Attorney General, according to OAR 125-247-0295;

(M) Special Procurement(s) related to disaster response, according to OAR 125-247-0287;

(N) Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and Related Services (A&E) Procurement according to OAR 125-248-0200 through 125-248-0340;

(O) Brand Name Specification Determinations for Solicitations in accordance with OAR 125-247-0691; and

(P) Brand Name Specification Determinations for Sole Source Procurements not exceeding \$150,000 and according to OAR 125-247-0691.

(Q) Selling or leasing of Supplies and Services in accordance with OAR 125-246-0800.

(R) Buy Decision in accordance with OAR 125-247-0200(1) and (2).

(3) Delegation to the Chief Procurement Officer.

(a) Powers and Authorities. The Director of the Department delegates to the Chief Procurement Officer the rights, powers and authority vested in the Director of the Department to:

(A) Delegate and subdelegate these authorities in whole or in part according to ORS 279A.075;

(B) Approve Special Procurement requests, according to ORS 279B.085 and related Rules, and receive filed protests of approvals of Special Procurements, according to ORS 279B.400(1);

(C) Conduct hearings, approve Agency findings, approve exemption requests, and issue exemption orders, according to ORS 279C.335, ORS 279C.345, 279C.390, and related Rules;

(D) Create all procedures and Specifications required by the Public Contracting Code and these Rules;

(E) Receive, maintain, and act upon information contained in reports, including but not limited to ORS 279A.140(h) and 279C.355, as required by the Public Contracting Code and these Rules;

(F) Receive and resolve protests according to ORS 279B.400 to 279B.420 and Division 247 Rules, except for appeals from a decision of the Chief Procurement Officer or delegatee;

(G) Receive notices, conduct hearings, and make decisions regarding prequalifications, debarments, and Disqualifications according to ORS 279A.110, 279B.425, 279C.450, 200.065(5), and 200.075(1), except for appeals from a decision of the Chief Procurement Officer or delegatee;

(H) Approve expedited notices for Sole-Source Procurements according to OAR 125-247-0275;

(I) Procure and administer Cooperative Procurements and receive, hear, and resolve related protests and disputes, according to ORS 279A.200 through 279A.225 and OAR 125-246-0400;

(J) Approve General Service Administration federal programs or federal Contracts in accordance with OAR 125-246-0360;

(K) Authorize public notice of bids, proposals, and public improvement Contracts to be published electronically and according to ORS 279B.055(4)(c) and 279C.360(1);

(L) Approve the manner and character of retainage according to ORS 279C.560(1) and (5);

(M) Approve exemptions waiving or reducing the bid security or bonds for Public Improvement projects in accordance with ORS 279C.390(1);

(N) Approve electronic-filing (e-filing) in accordance with ORS 84.049, 84.052 and 84.064;

(O) Approve procurement-related activities required by other law; and

(P) Establish standards of required education, training, professional experience, or a combination thereof pursuant to ORS 279A.159, approve programs or persons that satisfy the standards, and determine any disputes, or requests for exception or sub-delegation.

(Q) Other procurement actions of the Department specifically required by these Rules.

(b) Duties and Responsibilities of the Chief Procurement Officer. The authority, duties and responsibilities of the Chief Procurement Officer are as follows:

(A) Conduct Procurements, including administration of Contracts, for Agencies.

(B) Develop and maintain State-wide Procurement rules, policies, procedures and standard contract terms and conditions as necessary to carry out the Public Contracting Code.

(C) Subdelegate authority in whole or part, in accordance with OAR 125-246-0165(9);

(D) Revoke authority delegated by the Chief Procurement Officer or in accordance with OAR 125-246-0165(10);

(E) Maintain a file of Written subdelegation authority granted and revoked under these Rules in accordance with the law;

(F) Provide guidance and leadership on Procurement matters to Agencies and their employees;

(G) Establish standards of required education, training, or experience and provide training and instruction opportunities to assure Department staff and Agency staff are equipped with necessary knowledge and skills to comply with requirements of the Public Contracting Code, Rules, and Department policy related to Procurement;

(H) Monitor sourcing decisions, Procurements, development of Contracts, awarded Contract, Contract compliance, spend, Delegations, Special Procurements and exemptions. Report these matters to the Authorized Agency and Director as appropriate. Monitoring Contract development, awards, and compliance applies to all Delegations;

(I) Based upon monitoring described in subsection (3)(b)(H), determine opportunities, establish targets, and utilize methods according to ORS 279A.200 through 279A.220 and 279B.055 through 279B.085 to optimize savings consistent with strategic sourcing.

(J) Appoint procurement advisory committees to assist with Specifications, procurement decisions, and structural change that can take full advantage of evolving procurement methods as they emerge within various industries, while preserving competition according to ORS 279A.015.

(c) Delegation by Rule Based Upon Threshold. By this Rule, the Director of the Department delegates authority to the Chief Procurement Officer for the following Procurements, including Contract Administration:

(A) Small Procurements of Supplies and Services on behalf of Agencies not to exceed \$10,000 according to ORS 279B.065;

(B) Intermediate Procurements of Supplies and Services greater than \$10,000 and not exceeding \$150,000, and Amendments of Contracts resulting from Intermediate Procurements, on behalf of Agencies and according to ORS 279B.070 and OAR 125-247-0270;

(C) Informal Selection procedures of Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and Related Services, on behalf of Agencies and according to ORS 279C.110 and OAR 125-248-0210;

(D) Competitive Quotes of Public Improvements estimated not to exceed \$100,000, according to ORS 279C.410 notes and OAR 125-249-0160; and

(E) All Procurements exceeding the Thresholds for Intermediate Procurements, Informal Procurements, or Competitive Quotes, according to ORS 279B.070 and OAR-125-247-0270 (Supplies and Services); ORS 279C.110 and OAR 125-248-0210 (Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and Related Services); and ORS 279C.410 and OAR 125-249-0210 (Public Improvements), respectively.

(d) Delegation by Rule Based Upon Type. By this Rule, the Director of the Department delegates authority to the Chief Procurement Officer for the following Procurements, including Contract Administration:

(A) Cooperative Procurements in accordance with ORS 279A.200 through 279A.225 and OAR 125-246-0400;

(B) Special Procurements according to ORS 279B.085 and related Rules;

(C) Sole-Source Procurements in accordance with ORS 279B.075 and OAR 125-247-0275;

(D) Emergency Procurements in accordance with ORS 279B.080, 279C.335(5), OAR 125-248-0200, or related Rules;

(E) Federal program Procurements in accordance with ORS 279A.180 and OAR 125-246-0360;

(F) Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and Related Services (A&E) Procurement according to OAR 125-248-0200 through 125-248-0340;

(G) Brand Name Specification Determinations for Solicitations in accordance with OAR 125-247-0691;

(H) Brand Name Specification Determinations for Sole Source Procurements according to OAR 125-247-0691;

(I) Selling or leasing of Supplies and Services in accordance with OAR 125-246-0800;

(J) All Procurements otherwise delegated to an Authorized Agency according to Section (2) if the Chief Procurement Officer, at her or his own discretion, revokes and assumes this delegated authority, based upon a

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determination that any Authorized Agency refuses or fails to comply with any Delegation described in section (2); and

(K) Buy Decision in accordance with OAR 125-247-0200(1) and (2).
Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.050, 279A.075 & 279A.140
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 9-2005, f. & cert. ef. 8-3-05; DAS 15-2005(Temp), f. & cert. ef. 12-22-05 thru 5-21-06; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 4-2013, f. 12-17-13, cert. ef. 1-1-14; DAS 3-2014, f. 12-29-14, cert. ef. 1-1-15; DAS 2-2016, f. 12-22-16, cert. ef. 1-1-17

125-246-0200

Affirmative Action; Limited Competition Permitted

According to ORS 279A.100, a Contracting Agency may limit competition on Public Contracts for Supplies and Services, or on other Public Contracts with an estimated cost of \$50,000 or less to carry out affirmative action policies, including but not limited to OAR 125-246-0314 (disabled veterans), and in accordance with any policies and procedures established by the Department.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.100
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 2-2016, f. 12-22-16, cert. ef. 1-1-17

125-246-0210

Subcontracting to and Contracting with Emerging Small Businesses; Disqualification

(1) As set forth in ORS 279A.105, a Contracting Agency may require a Contractor to subcontract some part of a Contract to, or to obtain materials to be used in performing the Contract from:

(a) A business enterprise that is certified under ORS 200.055 as an emerging small business; or

(b) A business enterprise that is:

(A) Certified under ORS 200.055 as an emerging small business; and

(B) Is located in or draws its Workforce from economically distressed areas, as designated by the Oregon Business Development Department.

(2) For purposes of ORS 279A.105, a subcontractor certified under ORS 200.055 as an emerging small business is located in or draws its Workforce from economically distressed areas if:

(a) Its principal place of business is located in an area designated as economically distressed by the Oregon Business Development Department according to administrative rules adopted by the Oregon Economic and Community Development Department; or

(b) The Contractor certifies in Writing to the Contracting Agency that a substantial number of the subcontractor's employees, or subcontractors that will manufacture or provide the Goods or perform the Services under the Contract, reside in an area designated as economically distressed by the Oregon Business Development Department according to administrative rules adopted by the Oregon Business Development Department. For the purposes of making the foregoing determination, the Contracting Agency must determine in each particular instance what proportion of a Contractor's subcontractor's employees or subcontractors constitutes a substantial number.

(3) Discrimination in Subcontracting Prohibited.

(a) Prohibition. An Offeror who competes for or is awarded a Public Contract may not discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a minority, woman, emerging small business enterprise certified under ORS 200.055 or against a business enterprise that is owned or controlled by or that employs a disabled veteran, as defined in ORS 408.225.

(b) Certification. Contracting Agencies must include in each Solicitation Document a requirement that Offerors certify in their Offers that the Offeror has not and will not discriminate, in violation of Subsection (3)(a), against a subcontractor in the awarding of a subcontract because the subcontractor is a minority, woman or emerging small business enterprise certified under ORS 200.055 or against a business enterprise that is owned or controlled by or that employs a disabled veteran, as defined in ORS 408.225.

(4) Disqualification.

(a) A Contracting Agency may disqualify a Person from consideration of award of the Contracting Agency's Contracts under ORS 200.065(5), or suspend a Person's right to bid on or participate in any Public Contract according to ORS 200.075(1) after providing the Person with notice and a reasonable opportunity to be heard in accordance with Subsections (d) and (e) of this Section.

(b) As provided in ORS 200.065 and 200.075 a Contracting Agency may disqualify or suspend a Person's right to submit an Offer or to participate in a Contract (e.g., act as a subcontractor) as follows:

(A) For a Disqualification under ORS 200.065, the Contracting Agency may disqualify a Person upon finding that the Person engaged in any of the activities made unlawful by ORS 200.065(1) or (2), or if the Person has been disqualified by another Contracting Agency according to ORS 200.065.

(B) For a Disqualification under ORS 200.075, the Contracting Agency may suspend a Person upon finding that the Person engaged in any of the acts prohibited by ORS 200.075(a) through (c).

(c) A Contracting Agency may disqualify or suspend a Person's right to submit Offers or participate in Public Contracts only for the length of time permitted by ORS 200.065 or 200.075, as applicable.

(d) The Contracting Agency must provide Written notice to the Person of a proposed Disqualification. The Agency must deliver the Written notice by personal service or by registered or certified mail, return receipt requested. This notice must:

(A) State that the Contracting Agency intends to disqualify or suspend the Person;

(B) Set forth the reasons for the Disqualification;

(C) Include a statement of the Person's right to a hearing if requested in Writing within the time stated in the notice and that if the Contracting Agency does not receive the Person's Written request for a hearing within the time stated, the Person must have waived the right to a hearing;

(D) Include a statement of the authority and jurisdiction under which the hearing will be held;

(E) Include a reference to the particular Sections of the statutes and rules involved;

(F) State the proposed Disqualification period; and

(G) State that the Person may be represented by legal counsel.

(e) Hearing. Upon the Contracting Agency's receipt of the Person's timely request, the Contracting Agency must promptly deliver written notification and this request to the Chief Procurement Officer. The Chief Procurement Officer must schedule a hearing upon its receipt of the Person's timely request. The Department must notify the Person of the time and place of the hearing and provide information on the procedures, right of representation and other rights related to the conduct of the hearing before the hearing. The Chief Procurement Officer has the discretion to delegate authority under OAR 125-246-0170(3)(a)(G) and specify how the delegatee must review and hear Disqualifications.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.200.065, 200.075, 105 & 279A.110

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 2-2016, f. 12-22-16, cert. ef. 1-1-17

125-246-0220

Governor's Policy Advisor for Economic and Business Equity

(1) The Governor's Policy Advisor for Economic and Business Equity (formerly known as the "Director of Economic & Business Equity" and also known as the "Governor's Advocate's Office for Minority, Women and Emerging Small Business") was created in the Office of the Governor, and the Governor's Policy Advisor for Economic and Business Equity is the individual appointed by the Governor to advise the Governor, Legislature and Office of the Governor's Policy Advisor for Economic and Business Equity on issues related to the integration of minority, women and emerging small business into the mainstream of the Oregon economy and business sector. The Governor's Policy Advisor for Economic and Business Equity oversees the resolution of business concerns with Contracting Agencies impacting firms certified by the Certification Office for Business Inclusion and Diversity (COBID). Governor's Policy Advisor for Economic and Business Equity is also charged with maintaining the Oregon Opportunity Register and Clearinghouse to facilitate the timely notice of business and contract opportunities to COBID certified.

(2) The Certification Office for Business Inclusion and Diversity (COBID) administers the certification process for the Disadvantaged Business Enterprise (DBE), Minority Business Enterprise (MBE), Women Business Enterprise (WBE), Emerging Small Business (ESB), and Service Disabled Veteran Business Enterprise (SDV) Programs. As the sole certification authority in Oregon for disadvantaged, minority owned, woman owned, service disabled veteran owned, and emerging small businesses, COBID provides certification services for disadvantaged, minority owned, woman owned, service disabled veteran owned, and emerging small businesses according to ORS 200.025 and 200.055.

(3) A "Disadvantaged Business Enterprise" means a small business concern which is at least 51 percent owned by one or more socially and economically disadvantaged individuals or, in the case of any corporation, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals and whose management and daily

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business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

(4) An "Emerging Small Business" is a business with its principal place of business located in this State; a business with average annual gross receipts over the last three years not exceeding \$1 million for construction firms and \$300,000 for non-construction firms business which has fewer than 20 employees; an independent business (not a subsidiary, affiliate, or successor company of another business whose average gross receipts would exceed the stated limits); and a business properly licensed and legally registered in this State.

(5) A "Minority or Women Business Enterprise" is a small business concern which is at least 51 percent owned by one or more minorities or women, or in the case of a corporation, at least 51 percent of the stock of which is owned by one or more minorities or women, and whose management and daily business operations are controlled by one or more of such individuals, according to ORS 200.005.

(6) A "Service Disabled Veteran Owned Business" or "business that a service-disabled veteran owns" means a small business concern which is at least 51 percent owned by one or more service-disabled veterans, or in the case of a corporation, at least 51 percent of the stock of which is owned by one or more service-disabled veterans, and whose management and daily business operations are controlled by one or more of such individuals, according to ORS 200.005. "Service-disabled veteran" means a veteran who has a United States Department of Veterans Affairs disability rating of at least zero percent as a result of an injury or illness that the veteran incurred, or that was aggravated, during active military service and who received a discharge or release under other than dishonorable conditions.

(7) The general policy of the Department and these Rules is to expand economic opportunities for disadvantaged, minority owned, woman owned, service disabled veteran owned, and emerging small businesses by exposing them to contracting and subcontracting opportunities available through Public Contracts, according to ORS 279A.105 and based upon the Legislative findings set forth in ORS 200.015.

(8) Each State Contracting Agency, as defined by ORS 279A.010, must support the participation of DBEs, MBEs, WBEs, SDVs, and ESBs in its purchasing processes by notifying the Governor's Policy Advisor for Economic and Business Equity as required under ORS 200.035.

(9) When a Public Improvement Contract is less than \$100,000 and the Offerors are being drawn exclusively from a list of Certified Emerging Small Businesses maintained by the COBID, the Contracting Agency may let the Contract without formal competitive sourcing methods after a good faith effort to obtain a minimum of three competitive Quotes from Emerging Small Businesses. To obtain maximum exposure for all firms and guard against favoritism, care must be taken to obtain Quotes from different firms each time the list is used. The Contracting Agency must keep a Written record of the source and amount of the Quotes received and comply with the applicable requirements of this Rule.

(10) In carrying out the policy of affirmative action, a Contracting Agency may rely upon ORS 279A.100 and advice of legal counsel regarding its application.

(11) No Special Procurement according to ORS 279B.085 and no exemption according to ORS 279C.335 approved by the Chief Procurement Officer waives or excepts the requirement of notice to the Governor's Policy Advisor for Economic and Business Equity in accordance with ORS 200.035 and any DAS policy.

(12) All State Contracting Agencies must comply with ORS 200.035, notwithstanding the Public Contracting Code.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.100 & 279A.105

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 2-2016, f. 12-22-16, cert. ef. 1-1-17

125-246-0350

Approval of Personal Services Contracts

(1) Application. For the purposes of this Rule only, "Personal Services" includes Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and Related Services.

(2) Chief Procurement Officer Approval. Except as provided in OAR 125-246-0170, the Chief Procurement Officer or delegate must approve all Personal Services Contracts exceeding \$150,000 before the Authorized Agency executes the Contract.

(3) Requisite Approvals First. All requisite approvals must be obtained, including the approval of the Attorney General, if required, before any Personal Services Contract entered into by an Authorized Agency becomes binding upon the State and before any service may be performed or payment made under the Contract, unless:

(a) The Contract is exempt from the prohibition against services being performed before review for legal sufficiency is obtained under ORS 291.047(6); or

(b) The Chief Procurement Officer or delegate authorizes an Authorized Agency to acquire services before obtaining all requisite approvals in accordance with OAR 125-246-0351.

(4) Approval after Legal Sufficiency Review. The Chief Procurement Officer may not approve a Personal Services Contract before the Attorney General approves this Personal Services Contract under ORS 291.047.

(5) Types of Approvals.

(a) When Attorney General legal sufficiency approval is required under ORS 291.047, the Authorized Agency must seek legal approval;

(b) When an Authorized Agency contracts for services normally provided by another Authorized Agency or for services for which another Authorized Agency has statutory responsibilities, the Authorized Agency is required to seek the other Authorized Agency's approvals, prior to final approval by the Chief Procurement Officer. Examples of these special approvals include, but are not limited to:

(A) Department, Risk Management Services, for providing tort liability coverage.

(B) Department, Enterprise Goods and Services Division, Publishing and Distribution, for printing services;

(C) Department, Enterprise Goods and Services Division, for accounting services;

(D) Office of the Treasurer, Debt Management Division, for financial and bond counsel services (bond counsel services also require the approval of the Attorney General); and

(E) State Chief Information Office, for information-system related and telecommunications services. A state agency, as defined in ORS 279A.010(1), must obtain any review or approval in accordance with OAR 125-247-0185. A state agency is also encouraged to use the Chief Information Office as a resource in carrying out information system-related projects. This may include:

(i) Assistance to the state agency in developing Statements of Work related to information system projects;

(ii) Reviews to assure consistency with State standards and direction; and

(iii) A listing of vendors that provide information system-related services.

(c) The Authorized Agency's and Contractor's execution must be obtained;

(d) The Chief Procurement Officer approval, when required, is last.

(6) Attorney or Financial Auditing Services.

(a) The Attorney General has sole authority to contract for attorney services. Only the Attorney General may grant exceptions in Writing on a case-by-case basis;

(b) The Secretary of State Audits Division has sole authority to contract for financial auditing services. Only the Secretary of State Audits Division may grant exceptions in Writing on a case-by-case basis.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.140(2)

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 4-2013, f. 12-17-13, cert. ef. 1-1-14; DAS 3-2014, f. 12-29-14, cert. ef. 1-1-15; DAS 2-2016, f. 12-22-16, cert. ef. 1-1-17

125-246-0360

Purchases Through Federal Programs

(1) Exemption. An Authorized Agency may purchase certain authorized Supplies and Services through General Service Administration (GSA) federal programs or federal Contracts (Federal Programs) without Competitive Sealed Bidding, Competitive Sealed Proposals or other competition required under ORS 279B.050 to 279B.085, provided that the Authorized Agency has federal authorization to purchase through the Federal Program and follows the procedures set forth in this rule.

(2) Federal Authorization.

(a) The Federal Programs named in ORS 279A.180 are accessible to Authorized Agencies for purchasing Supplies and Services. In addition, by this Rule, the Director of the Department (Director) hereby makes the determination according to ORS 279A.180, that the GSA Order of 2000 and any subsequent revisions or updating of this GSA Order of 2000 (GSA Orders) describe other Federal Programs that, under federal law, are similar to 10 U.S.C. 381 or Section 211 of the Electronic Government Act of 2002 in effectuating or promoting transfers of property to Authorized Agencies; therefore, Authorized Agencies may purchase through those Federal Programs described in a GSA Order without making individual requests for determination to the Director.

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(b) If an Authorized Agency desires to purchase through another Federal Program that is not expressly named in ORS 279A.180 or a GSA Order, the Authorized Agency must request in Writing a determination from the Director or the Director's designated representative. In the request, the Authorized Agency must document that the federal government has authorized states, including the Authorized Agency, to purchase through the proposed Federal Program. The request of the Authorized Agency and the determination by the Director or representative must be limited to those other Federal Programs described in ORS 279A.180 that, under federal law, are similar to 10 U.S.C. 381 or Section 211 of the Electronic Government Act of 2002 in effectuating or promoting transfers of property to Authorized Agencies.

(c) If no federal authorization exists as described in Sections (2)(a) and (b) of the Rule, then an Authorized Agency is not permitted to purchase through any Federal Program.

(3) Procedures. To purchase through a Federal Program, an Authorized Agency must document in its Procurement File that:

(a) The federal authority for the Authorized Agency to purchase through the Federal Program, referring to ORS 279A.180, a GSA Order, or the Chief Procurement Officer's approval of an Authorized Agency's request.

(b) The acquisition meets the Authorized Agency's needs;

(c) The price and other terms of the acquisition are Advantageous to the State;

(d) No mandatory Department Price Agreement for the authorized Supplies and Services exists, based upon the Authorized Agency's inquiry through ORPIN;

(e) The Authorized Agency has considered the acquisition's impact upon local business as follows:

(A) If the Procurement is in excess of \$10,000, the Authorized Agency has given timely notice through ORPIN of its needs, reasons, and intent to procure through a Federal Program;

(B) The Authorized Agency has provided a reasonable time period under the circumstances for individuals to respond to the notice and send Written comments to the Authorized Agency; and

(C) The Authorized Agency has considered any comments and replied, if appropriate, before proceeding with its Procurement through a Federal Program. This Rule provides for an informal opportunity to comment to and be considered by the Authorized Agency, instead of the formal notice requirements for Solicitations in excess of \$10,000 according to ORS 200.035.

(f) State and local preference programs, including but not limited to Inmate Labor in accordance with the Oregon Constitution, Article I, Section 41, Products of Disabled Individuals Program of ORS 279.835 to 850, and state requirements Contracts under OAR 125-247-0296, are not waived or otherwise adversely affected by an acquisition through a Federal Program;

(g) The Authorized Agency has complied with OAR 137-045-0010 to 137-045-0090, and if it is required, obtained a legal sufficiency review or exemption from the Department of Justice; and

(h) The Authorized Agency is informed of its Federal Program's Procurement Process, including:

(A) Voluntary and Direct Contract. The Authorized Agency and Contractors participate voluntarily. The Contractors make direct deliveries to the Authorized Agency and retain the right to decline orders on a case-by-case basis, for any reason, within a five-Day period of receipt of that order;

(B) Funding Fee. The price of a Federal Program Contract includes a GSA industrial funding fee to cover GSA administrative costs to operate the Federal Program;

(C) New Contract. When a Contractor accepts an order from an Authorized Agency, a new Contract is formed. The Contract's terms and conditions are incorporated by reference; and

(D) Additional Terms and Conditions. The Authorized Agency may add to its Contract such significant, substantial contract terms and conditions as are required by State statutes or rules, if such additions do not conflict with the Federal Program's Contract terms and conditions. Examples of such terms and conditions include, but are not limited to:

(i) Prompt Payment. The Authorized Agency may apply the terms and conditions of Oregon's prompt payment law to its Contracts, but if the Authorized Agency fails to make this addition, then the Authorized Agency may be subject to the Federal Prompt Payment Act, 31 U.S.C. sec. 3901 et seq., as implemented at subpart 32.9 of the Federal Acquisition Regulation (FAR);

(ii) Commercial Terms. Patent indemnity and other commercial terms and conditions may be added if they do not conflict with the Federal Program's terms and conditions; and

(iii) Conflict Resolution. The Authorized Agency may revise the Contract's dispute resolution provision to use Alternative Dispute Resolution (ADR) to the extent authorized by law.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279A.180

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 4-2013, f. 12-17-13, cert. ef. 1-1-14; DAS 2-2016, f. 12-22-16, cert. ef. 1-1-17

125-246-0555

Contract Administration; General Provisions

(1) Authority. Procurements include Contract Administration. The authority for an Authorized Agency to conduct Contract Administration is found in OAR 125-246-0170, and is subject to the requirements of ORS 279A.159 and OAR 125-246-0140.

(2) Contract Administrator. The Authorized Agency must appoint, in Writing, a Contract Administrator to represent the Authorized Agency for each Contract. The Contract Administrator may delegate in Writing a portion of the Contract Administrator's responsibilities to a technical representative for specific day-to-day administrative activities for each Contract, including communications according to OAR 125-246-0635.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.050, 279A.065(5), 279A.070, 279A.140, 279A.159

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 2-2016, f. 12-22-16, cert. ef. 1-1-17

125-246-0570

Reinstatement of Expired Contract; Retroactive Approval of Existing Contract

(1) Application. This Rule applies to the reinstatement of expired or terminated Contracts (expired Contracts) and the retroactive approval of existing Contracts procured by Authorized Agencies for Supplies and Services and for Architectural, Engineering and Land Surveying Services or Related Services ("Contracts"). This Rule does not apply to mistakes that may occur in the solicitation process (see OAR 125-247-0470).

(2) Requirements to Reinstatement an Expired Contract.

(a) Before expiration, the Contract was properly signed by all parties;

(b) Then the signed Contract expired;

(c) The Agency reinstates the Contract:

(A) To fulfill its term, up to the maximum time period provided in the Contract or Solicitation; or

(B) To complete one or more deliverable(s) included within the Contract's Scope at the time of its expiration;

(d) The Agency documents in the Procurement File the deliverable(s) to be completed at the time of the expired Contract's reinstatement; and

(e) If the Contractor has performed work under the Contract, the reinstatement does not apply to payments made for work performed between the expiration of the Contract and the date of any reinstatement.

(3) Requirements to Retroactively Approve an Existing Contract.

(a) The Contract exists and has not expired;

(b) The Contract was signed by all parties except that the required approval of the DPO or CPO was lacking;

(c) If the Contractor has performed work under the Contract, the retroactive approval does not apply to payments made for work performed between the start of the Contract and the date of any retroactive approval.

(4) Process. For either a reinstatement of an expired Contract or retroactive approval of an existing Contract, the requesting Agency must meet the following conditions:

(a) The Agency must submit a Written request to the Agency's Designated Procurement Officer (DPO) if the Agency is authorized under OAR 125-246-0170, or if not, to the Chief Procurement Officer (CPO) with authority under 125-246-0170 (Request). If the Request is submitted to the DPO, the Agency must also follow its internal procedures.

(b) The Request must explain the following:

(A) The proposed reinstatement of the expired Contract or retroactive approval of the existing Contract.

(B) The background facts that led to the Request;

(C) The good faith basis for making the Request;

(D) The need for reinstatement of an expired Contract or retroactive approval of an existing Contract due to unforeseen or unavoidable conditions;

(E) The steps to prevent a reoccurrence. For examples:

(i) Improvement of Agency's internal policies and procedures; and

(ii) Provision of new training or retraining; and

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(F) Acknowledgement that the Request is in the best interest of the Agency.

(c) Obtain all other approvals required for the Contract, including but not limited to: Attorney General's approval of legal sufficiency under ORS 291.047 or ratification under 291.049. The Authorized Agency must obtain all other approvals required for the Contract before any reinstatement, extension of time under Subsection (6), or retroactive approval becomes binding.

(d) The DPO or CPO, as described in Subsection (3)(a), must approve the Request.

(5) Effect of Approval.

(a) An approved reinstatement of an expired Contract makes the Contract in full force and effect, as if it had not expired.

(b) An approved retroactive approval of an existing Contract makes the Contract in full force and effect, as if it had been approved by the DPO or CPO when the Contract was formed.

(c) The DPO or CPO, as appropriate, may create any related Contract documents to implement the reinstatement or retroactive approval.

(d) The Agency may make an approved payment after any related Contract documents are signed by the necessary parties.

(6) Amendments of a Reinstated Contract.

(a) If the Agency requests reinstatement of an expired Contract, the Request of the Agency may also include a request to amend the reinstated Contract for time only. The DPO or CPO, as appropriate, may approve this Request, including the amendment.

(b) The Agency may amend a reinstated or retroactively approved Contract for purposes other than time in accordance with OAR 125-247-0805.

(7) An Authorized Agency may combine in one document a Reinstatement of a Contract in accordance with this Rule, Retroactive Approvals of that Contract in accordance with OAR 125-246-0570, and its Amendment in accordance with 125-247-0805, as needed.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.050, 279A.065(5), 279A.070 & 279A.140

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12; DAS 4-2013, f. 12-17-13, cert. ef. 1-1-14; DAS 2-2016, f. 12-22-16, cert. ef. 1-1-17

125-247-0110

Feasibility Determination, Cost Analysis and Department Report

(1) The Table of Contents for this Rule is as follows:

(a) Section 2: Generally

(b) Section 3: Feasibility Determination

(c) Section 4: Cost Analysis: Estimation of Agency and Contractor

Data

(d) Section 5: Decision: Comparison of Compensation and Other

Costs

(e) Section 6: Decision: Comparison of Agency and Contracting

Costs

(f) Section 7: Department Evaluation and Report

(2) Generally.

(a) Before conducting a Procurement for Services, a State Contracting Agency, as defined in ORS 279A.010, (for purposes of this Rule, Agency) must, in the absence of a Feasibility Determination under Section (3) of this Rule, conduct a Written Cost Analysis under sections (4) through (6) of this Rule (Cost Analysis).

(b) Responsibilities for the Conduct of the Cost Analysis.

(A) An Agency with procurement authority must conduct the Cost Analysis for its Agency-specific Procurements;

(B) An Agency without procurement authority must conduct the Cost Analysis for its Agency-specific Procurements to be procured by the Department;

(C) At the Department's request, an Agency must contribute to the Cost Analysis for statewide Price Agreement Procurements; and

(D) The Department must conduct the Cost Analysis for statewide Price Agreement Procurements and Department-specific Procurements.

(c) This Rule applies to a Procurement for Services that the Agency estimates will result in one or more Contracts with a value that exceeds \$250,000 for the estimated term of the Contract(s) (Value), including incidental costs related to the Services, and Amendments. Agencies must not fragment to avoid this threshold (see OAR 125-246-0630).

(d) If a Procurement is conducted in accordance with this Rule, an Award is made, and one or more Amendments then increase the estimated contract's value over \$250,000, a Cost Analysis is not required at that time.

(e) "Services" has the meaning as defined in OAR 125-246-0110, except that for purposes of this Rule only:

(A) "Services" does not include the services of an Architect, Engineer, Photogrammetrist, Transportation Planner, Land Surveyor or Provider of Related Services as defined in ORS 279C.100 as defined in ORS 279C.100; and

(B) "Services" does not include Client Services, defined as of August 4, 2009, in OAR 125-246-0110, as follows:

(i) "Client" means any individual, family or Provider:

(I) For whom an Agency must provide Services and incidental or specialized Goods, in any combination thereof ("Services and Incidental Supplies"), according to state, federal law, rule, and policy. Those Services and Incidental Supplies include but are not limited to treatment, care, protection, and support without regard to the proximity of the services being provided;

(II) Who in fact receives and utilizes services provided by an Agency primarily for that individual's or family's benefit;

(III) Who is under the custody, care, or both of the Agency; or

(IV) Who provides direct care or Services and is a proxy or representative of the non-Provider Client.

(ii) "Client Services" means any Services that directly or primarily support a Client, whether the Client is the recipient through the provision of voluntary or mandatory Services. Client Services also means any Goods that are incidental or specialized in relation to any Services defined in this Subsection. Client Services may include but are not limited to (where these terms are used in another statute, they must have that meaning):

(I) Housing, including utilities, rent or mortgage or assistance to pay rent, mortgage or utilities;

(II) Sustenance, including clothing;

(III) Employment training or Skills training to improve employability;

(IV) Services for people with disabilities;

(V) Foster care or foster care facilities;

(VI) Residential care or residential care facilities;

(VII) Community housing;

(VIII) In-home care including home delivered meals;

(IX) Medical care, services and treatment, including but not limited to:

(IX-a) Medical, Dental, Hospital, Psychological, Psychiatric, Therapy, Vision;

(IX-b) Alcohol and drug treatment;

(IX-c) Smoking cessation;

(IX-d) Drugs, prescriptions and non-prescription;

(IX-e) Nursing services and facilities;

(IX-f) Transportation or relocation;

(IX-g) Quality of life, living skills training; or

(IX-h) Personal care; or

(IX-i) Legal services and expert witnesses services;

(IX-j) Religious practices, traditions and services, separately or in any combination thereof; and

(IX-k) Educational services. The term "Client Services" does not include benefits or services provided as a condition of employment with an Agency.

(3) Feasibility Determination. An Agency may proceed with the Procurement of Services without conducting a Cost Analysis if the Agency makes Written findings that one or more of the Special Circumstances described in subsection (3)(b) make the Agency's use of its own personnel and resources to provide the Services not feasible (Feasibility Determination).

(a) Approval of Feasibility Determination.

(A) The Designated Procurement Officer or delegate (DPO) of an Agency must approve the Feasibility Determination for its Procurement;

(B) The DPO of an Agency without authority must approve the Feasibility Determination for an Agency-specific Procurement to be procured by the Department on behalf of that Agency;

(C) The Chief Procurement Officer must approve the Feasibility Determination for a statewide Price Agreement Procurement or Department-specific Procurement. At the Department's request, DPOs must cooperate with the Department to prepare the findings for the Feasibility Determination for a statewide Price Agreement Procurement.

(b) Special Circumstances. Special Circumstances include any circumstances, conditions or occurrences that would make the Services, if performed by the Agency's employees, incapable of being managed, utilized or dealt with successfully in terms of the quality, timeliness of completion, success in obtaining desired results, or other reasonable needs of the Agency. Special Circumstances may include, but are not limited to, the following circumstances:

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(A) Expertise. The DPO approves a determination that the Agency lacks the specialized capabilities, experience, or technical or other expertise necessary to perform the Services. In making the finding, the Agency must compare the Agency's capability, experience or expertise in the field most closely involved in performing the Services with a potential contractor's capability, experience or expertise in the same or a similar field.

(B) Funding Requirement. The terms under which the Agency receives a grant or other funds for use in a Procurement require the Agency to obtain Services through an independent contractor;

(C) Law Requirement. Other state or federal law requires the Agency to procure Services through an independent contractor;

(D) Real or Personal Property. The Procurement is for Services that are incidental to a contract for purchasing or leasing real or personal property, including service and maintenance agreements for equipment that is leased or rented;

(E) Conflict of Interest; Unbiased Review. The Agency cannot accomplish policy, administrative or legal goals, including but not limited to avoiding conflicts of interest or ensuring independent or unbiased findings in cases when using the Agency's existing personnel or persons the Agency could hire through a regular or ordinary process would not be suitable;

(F) Emergency Procurement. The Procurement is for Services to which the provisions of ORS 279B.080 apply;

(G) Delay. The Procurement is for Services, the need for which is so urgent, temporary or occasional that attempting to perform the Services with the Agency's own personnel or resources would cause a delay that would frustrate the purpose for obtaining the Services; and

(H) Services Completed within Six Months. The Services that the Agency intends to procure will be completed within six months after the date on which the contract for the Services is executed.

(c) Procurement File. All written determinations required in this section (3) must be made a part of the Procurement File in accordance with OAR 125-246-0556.

(4) Cost Analysis: Estimation of Agency and Contractor Data.

(a) Costs of Using Agency's Own Personnel and Resources. The Agency must estimate the Agency's cost of performing the Services and consider cost factors that include:

(A) Salaries or Wages and Benefits. The salary or wage and benefit costs for the employees of the Agency who would be directly involved in performing the Services, to the extent those costs reflect the proportion of the activity of those employees in the direct provision of the Services. These costs include those salary or wage and benefit costs of the employees who inspect, supervise or monitor the performance of the Services, to the extent those costs reflect the proportion of the activity of those employees in the direct inspection, supervision or monitoring of the performance of the Services.

(B) Material Costs. The material costs necessary to the performance of the Services, including the costs for space, energy, transportation, storage, raw and finished materials, equipment and supplies used or consumed in the provision of the Services.

(C) Related Costs.

(i) Costs incurred in planning for, training for, starting up, implementing, transporting and delivering the Services.

(ii) Any costs related to stopping and dismantling a project or operation because the Agency intends to procure a limited quantity of Services or to procure the Services within a defined or limited period of time.

(iii) The miscellaneous costs related to performing the Services, including but not limited to reasonably foreseeable fluctuations in the costs for the items identified in this subsection (4)(a) over the expected duration of the Procurement. These costs exclude the Agency's indirect overhead costs for existing salaries or wages and benefits for administrators and exclude costs for rent, equipment, utilities and materials, except to the extent the cost items identified in this sentence are attributed solely to performing the Services and would not be incurred unless the Agency performed the Services.

(D) Other Information. The Agency's costs described in this subsection (4)(a)(A) do not constitute an exclusive list of cost information. An Agency may consider other reliable information that bears on the cost to the Agency of performing the Services. For example, if the Agency has accounted for its actual costs of performing the Services under consideration, or reasonably comparable Services, in a relatively recent Services project, the Agency may consider those actual costs in making its estimate.

(b) Costs a Potential Contractor Would Incur. The Agency must estimate the cost a potential Contractor would incur in performing the Services and consider cost factors that include:

(A) Salaries or Wages and Benefits. The estimated salary or wage and benefit costs for a potential Contractor and potential Contractor's employees who work in the business or industry most closely involved in performing the Services; and who would be necessary and directly involved in performing the Services or who would inspect, supervise, or monitor the performance of the Services.

(i) The Agency may, but is not required to, communicate with any actual Contractor for information related to this estimate (see OAR 125-246-0635).

(ii) The Agency may consider in making this estimate any public source of information, including but not limited to:

(I) Other Contracts of the Agency or another Agency for reasonably comparable services;

(II) Trade or other marketplace websites;

(III) Industry or professional associations and publications;

(IV) The Oregon Bureau of Labor and Industries or an agency of another jurisdiction that performs comparable functions; and

(V) A survey of Persons who provide reasonably comparable services by means including but not limited to Internet or telephone searches.

(B) Material Costs. The material costs necessary to the performance of the Services, including the costs for space, energy, transportation, storage, raw and finished materials, equipment and supplies used or consumed in the provision of the Services.

(C) Related Costs. The miscellaneous costs related to performing the Services. These miscellaneous costs include but are not limited to reasonably foreseeable fluctuations in the costs listed in subsections (4)(b)(A) through (C) over the expected duration of the Procurement.

(D) Other Information. The potential Contractor's costs described in subsections (4)(b)(A) through (C) do not constitute an exclusive list of cost information. An Agency may consider other reliable information that bears on the costs a potential Contractor would incur. For example, if in the recent past, the Agency conducted a Solicitation that required cost information or permitted negotiation of price based on a cost analysis for Services reasonably comparable to the current Services, the Agency may use that cost information in estimating the costs of current Services.

(5) Decision: Comparison of Compensation and Other Costs.

(a) The Agency must compare:

(A) The Agency's estimated costs under Subsection (4)(a)

(B) The Contractor's estimated costs under subsection (4)(b).

(b) Decision. If the Agency's costs exceed the Contractor's costs under Subsection (5)(a) for the sole reason that the Contractor's costs for salaries or wages and benefits under Subsection (4)(b)(A) are lower than the Agency's costs for salaries or wages and benefits under subsection (4)(a)(A), then the Agency may not conduct the Procurement.

(6) Decision: Comparison of Agency and Contracting Costs.

(a) If subsection (5)(b) does not apply, the Agency must compare:

(A) The Agency's estimated costs under Subsection (4)(a) and

(B) The total estimated costs that the Agency would incur in procuring the Services from a Contractor (Contracting Costs).

(b) Profit Included. Contracting Costs include the Agency's estimate of Contractor's profit in addition to the estimate of Contractor's costs under subsection (4)(b). If the Agency, in the reasonably near past, received Bids or Proposals for the performance of the Services under consideration, or reasonably comparable services, the Agency may consider the pricing offered in those Bids or Proposals in making its estimate. Similarly, the Agency may consider what it actually paid under a Contract for the same or similar services. For the purposes of these examples, the reasonably near past is limited to Contracts, Bids or Proposals entered into or received within the five (5) years preceding the date of the cost estimate. The Agency must take into account, when considering the pricing offered in previous Bids, Proposals, or Contracts, adjustments to the pricing in light of measures of market price adjustments that apply to the Services, such as the Consumer Price Indexes.

(c) Decision. If the Agency's Contracting Cost under this section is lower than the Agency's cost under subsection (4)(a), the Agency may conduct the Procurement. If the Agency's Contracting Cost is higher than the Agency's cost under subsection (4)(a), the Agency may not conduct the Procurement, unless the Exception of subsection (6)(d) applies

(d) Exception Based on Lack of Agency Personnel and Resources; Reporting. If the Agency determines that it would incur less cost in providing the Services with its own personnel and resources, the Agency may still conduct the Procurement if, at the time the Agency intends to conduct the Procurement, the Agency determines that it lacks personnel and resources to perform the Services within the time the Agency requires the Services

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(Exception). When an Agency conducts a Procurement under this Exception, the Agency must:

(A) Make and keep a Written determination that it lacks personnel and resources to perform the Services within the time the Agency requires the Services and the basis for the Agency's decision to conduct the Procurement;

(B) Obtain the Written approval by the DPO of the Agency of the Exception before conducting an Agency-specific Procurement or the Written approval by the CPO of the Exception before the Department conducts a Procurement.

(C) Provide to the Emergency Board, each calendar quarter, copies of each Cost Analysis, Exception, and any other records described in this Subsection (6)(d);

(D) Prepare a request to the Governor for an appropriation and authority necessary for the Agency to hire personnel and obtain resources necessary to perform the Services that the Agency procured under this Subsection (6)(d). The request must include a copy of the records that the Agency provided to the Emergency Board under Subsection (6)(d)(C).

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279B.030, 279B.033 & 279B.036

Hist.: DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 3-2014, f. 12-29-14, cert. ef. 1-1-15; DAS 2-2016, f. 12-22-16, cert. ef. 1-1-17

125-247-0185

Approval of Information Technology or Telecommunications Procurements

For any Procurement of Information Technology or Telecommunications with an anticipated Contract Price of \$1,000,000.00 or more, a state agency, as defined in ORS 279A.010(1), must obtain prior Written approval from the State Chief Information Officer. In addition, and regardless of the anticipated Contract Price, a state agency, as defined in ORS 279A.010(1), must obtain any review or approval the State Chief Information Officer may require under 2015 Oregon Laws, Chapter 807 (HB 3099).

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: 2015 Oregon Laws, Chapter 807 (HB 3099)

Hist.: DAS 4-2015, f. 12-29-15, cert. ef. 1-1-16; DAS 2-2016, f. 12-22-16, cert. ef. 1-1-17

125-247-0275

Sole-Source Procurements

(1) Generally. An Authorized Agency with delegated authority according to OAR 125-246-0170 may award a Contract without a competitive process through a Sole-Source Procurement according to the requirements of ORS 279B.075, this Rule, and the policy of the Department. The Authorized Agency must make a determination of a sole source based upon Written findings of fact that the Supplies and Services are available from only one source.

(2) Findings of Fact. Findings of fact required under OAR 125-247-0275(1) may include:

(a) Compatibility. The efficient utilization of existing Supplies and Services requires the acquisition of compatible Supplies and Services from only one source. For example, compatibility may be implicated when: Supplies are required to directly interface with or attach to equipment of the same manufacturer and no other manufacturer's Supplies will correctly interface with existing equipment; or when Services such as maintenance, warranty, project management, or systems integration are required to interface or integrate with existing Supplies and Services.

(b) Exchange of Software or Data. Specific Supplies and Services, which are available from only one source, may be required for the exchange of software or data with other public or private agencies. This finding may be particularly applicable when the Supplies and Services involve assets such as copyrights, patents, trademarks, and trade secrets.

(c) Pilot or Experimental Project. Supplies and Services are for the use in such projects, which may include but are not limited to research and economic development projects.

(d) Other findings that support the conclusion that Supplies and Services are available from only one source may include but are not limited to considerations of: unique design, availability, geographic location, exclusive authorized representative, cost of conversion, and warranty services.

(3) Market Research. ORS 279B.075 requires that the Authorized Agency "determines in writing" that the goods or services are "available from only one source." This means that the Authorized Agency must conduct and document its market research before public notice described in Section (4) or (5).

(4) Contracts up to \$150,000. For all Contracts awarded through Sole-Source Procurements over \$10,000 and not exceeding \$150,000:

(a) The Authorized Agency must place a public notice on ORPIN of its determination that the Supplies and Services or class of Supplies and Services are available from only one source.

(b) The public notice must describe the Supplies and Services to be acquired through a Sole-Source Procurement and identify the prospective Contractor and include the date, time and place that protests are due.

(c) The Authorized Agency must give Affected Persons at least seven calendar (7) Days from the date of the public notice of the determination that the Supplies or Services are available from only one source to protest the determination under OAR 125-247-0710. If the Department is conducting the Sole-Source Procurement, then the Department is the Authorized Agency for purposes of this Rule.

(d) The Authorized Agency must obtain the Written approval of that Agency's Designated Procurement Officer or delegatee before the Authorized Agency places a public notice on ORPIN in accordance with this Section.

(5) Contracts over \$150,000. For all Contracts exceeding \$150,000:

(a) The Authorized Agency must place a public notice on ORPIN in accordance with Subsections (4)(a)-(c); and if the Department is conducting the Sole-Source Procurement, then the Department is the Authorized Agency for purposes of this Rule; and

(b) The Authorized Agency must obtain the Written approval of the Chief Procurement Officer or delegatee before the Authorized Agency places a public notice on ORPIN in accordance with this Section.

(6) Negotiation. According to ORS 279B.075 and to the extent reasonably practical, the Authorized Agency must negotiate with the sole source to obtain contract terms advantageous to the Authorized Agency.

(7) Protest. An Affected Person may protest the Authorized Agency's determination that the Supplies and Services or class of Supplies and Services are available from only one source in accordance with OAR 125-247-0710.

(8) Brand Name Requirements. If the findings of fact required under this Rule include a specification of a Brand Name, that specification must be in accordance with ORS 279B.215 and OAR 125-247-0691.

(9) Legal Sufficiency Review. When legal sufficiency review by the Attorney General is required under ORS 291.047, the Authorized Agency must seek this approval.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.075

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 2-2016, f. 12-22-16, cert. ef. 1-1-17

125-247-0287

Special Procurements; Request Procedures

(1) Approval. An Authorized Agency may request approval of its new or amended Special Procurement from the Chief Procurement Officer. The request must describe one or more particular Contracts or class of Contracts and use the designated ORPIN form. A request for a Special Procurement concerns the procurement process only, and the authority to use the Special Procurement is determined under OAR 125-246-0170.

(2) Requests. Special Procurement Requests must contain the following:

(a) Request must include reason(s) why Agency has elected to use Special Procurement and how it will benefit the Agency or the public.

(b) The Request must include findings, market research, or other documentation that the Special Procurement:

(A) Is unlikely to encourage favoritism in the awarding of Public Contracts or to substantially diminish competition for Public Contracts, and

(B) Either:

(i) Is reasonably expected to result in substantial cost savings to the Agency or to the public; or

(ii) Otherwise substantially promotes the public interest in a manner that could not practicably be realized by complying with requirements that are applicable under ORS 279B.055, 279B.060, 279B.065 or 279B.070 or under any related Rules.

(c) The alternative process designed by the Agency must be clear and complete, including a description of the Supplies and Services that are the subject of the Special Procurement, provisions for advertisement, a procurement process, including provisions for Amendment and criteria for selection, and the proposed contract document.

(d) The Chief Procurement Officer may require any additional information deemed necessary to evaluate the Agency's request for approval of a Special Procurement.

(3) Effect. The Special Procurement approval is effective only after the Chief Procurement Officer's approval of the findings and Request and completion of the Public Notice required under section (4) of this Rule.

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(4) Public Notice. The Public Notice process and requirements are as follows:

(a) General. The requesting Authorized Agency must give public notice of the approval of its Special Procurement as required under ORS 279B.085(5) and in accordance with this Rule, unless otherwise directed by the Chief Procurement Officer (Public Notice). As a Written condition to approval of the Special Procurement, the Chief Procurement Officer may require that the Department instead of the requesting Agency give the Public Notice.

(b) Content. The Public Notice must at least describe the Supplies and Services or class of Supplies and Services to be acquired through the Special Procurement.

(c) Time Periods.

(A) If the Special Procurement involves one or more Solicitations, then Public Notice of the approval of the proposed Special Procurement must be given at least seven (7) calendar Days before the Award. The Solicitation Document must either contain the attached request and approval of the Special Procurement or incorporate the request and approval by reference with the documents easily accessible to Affected Persons; or

(B) If the Special Procurement does not involve a Solicitation, then Public Notice of the approval of the Special Procurement must be given at least seven (7) Days before the commencement of the Special Procurement.

(d) An Agency may request certain information to be withheld from the public notice requirement of this Rule in cases where confidentiality or security may be jeopardized only according to an exception under the Public Records Law (ORS 192.410 through 192.505).

(5) Protest. An Affected Person may protest the approval of a Special Procurement in accordance with ORS 279B.400 and OAR 125-247-0700.

(6) Reference. Any Solicitation or Contract resulting from a Special Procurement approval must contain a reference to the number of the approved Special Procurement.

(7) Conditions. If the Chief Procurement Officer provides Written approval of the proposed Special Procurement (Approval), the Authorized Agency must award any Contract under the Special Procurement in accordance with the conditions of this Approval and any subsequent amendments to the Approval. The Approval may include conditions, including but not limited to expiration, Public Notice and dollar limitations, and may be revoked at any time by the Chief Procurement Officer.

(8) If an Authorized Agency competitively solicits, it must comply with the process described in the Special Procurement or the Rules for that method of Solicitation according to ORS 279B.055 through 279B.070 and 279A.200 et seq.

(9) Nothing in this Rule exempts the Agency from obtaining the approval of the Attorney General for legal sufficiency according to ORS 291.047.

(10) All Agencies must comply with ORS 200.035 and related Department policy, despite this Rule.

(11) If an Authorized Agency intends to award a Contract through a Special Procurement that calls for competition among prospective contractors, the Authorized Agency must award the Contract to the Offeror the Authorized Agency determines to be the most advantageous to the Authorized Agency.

(12) Reporting. An Authorized Agency must comply with ORS 279A.165, including but not limited to:

(a) Application. This section (12) applies to all Special Procurements advertised or otherwise solicited on or after January 1, 2012.

(b) Records. An Authorized Agency must maintain records about its Special Procurements that enable the Agency to determine and provide to the Chief Procurement Officer at least the following information:

(A) The name of the Agency that conducted each Special Procurement;

(B) The number of Special Procurements the Agency conducted;

(C) The number of contracts awarded through each Special Procurement;

(D) A summary of the reasons that the Agency decided to conduct each Special Procurement;

(E) A descriptive summary of the procurement procedure used to conduct the Special Procurement, noting whether the procedure was competitive or not;

(F) A listing of the number of Offers the Agency received if the Special Procurement procedure was competitive;

(G) The contract price or estimated contract price for each contract awarded through a Special Procurement;

(H) A summary of the protests or other responses to the approval of each Special Procurement that the Agency received; and

(I) A summary of the disposition of the protests or other responses described in subsection 12(b)(H).

(c) Reports. Authorized Agencies must provide to the Chief Procurement Officer the information in section (12)(b) of this rule.

(A) Form. Agencies must report on a form approved by the Chief Procurement Officer.

(B) Timing. Agencies must deliver regular reports on the approved form to the Chief Procurement Officer no later than the dates announced by the Chief Procurement Officer.

(d) Section (12) of this Rule is effective on the date of the filing of this amended Rule.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.165 & 279B.085

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 9-2005, f. & cert. ef. 8-3-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 3-2014, f. 12-29-14, cert. ef. 1-1-15; DAS 2-2016, f. 12-22-16, cert. ef. 1-1-17

125-247-0288

Special Procurements; by Rule

(1) Client Placement and Client Health Care Services.

(a) Authorization and Application. An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Special Procurement by Rule to enter into Written agreements for Client Placement and Client Health Care services, as described in this Rule. When an Authorized Agency determines that a need exists to secure or maintain Client Placement Services or to secure Client Health Care Services, the Authorized Agency may contract subject to the following definitions and conditions of this Section (1).

(A) "Client Placement Services" means securing, enhancing, or continuing the placement of a Client in a structured family-like setting or residential setting operated by a qualified Provider.

(B) "Client Health Care Services" means health care services or provision of incidental or specialized supplies related to the health of a Client. Client Health Care Services include but are not limited to: preventive, diagnostic, therapeutic, behavioral, rehabilitative, maintenance, or palliative care and counseling services, assessment, or procedure with respect to the physical or mental condition, or functional status of a Client, or that affect the structure or function of the body; and the sale or dispensing of a drug, device, equipment, or other item in accordance with a prescription.

(C) Services that may prevent a placement or placement disruption but that cannot definitively be classified as Client Placement Services by the Authorized Agency are deemed to be Client Placement Services and are subject to the Special Procurement approved under this Rule. This Special Procurement for Client Placement Services may include training only if it is provided directly to the Client, excluding Providers.

(b) Authorized Agencies must execute a Contract or amendment to an existing Contract within 180 days of obtaining the Client Placement Services or Client Health Care Services as defined herein. Should the Authorized Agency fail to execute the Contract within this specified period, then the Authorized Agency may execute the Contract if:

(A) A Written statement of justification that describes the unforeseen or unavoidable circumstances that were reasonably unanticipated and preclude the Authorized Agency from executing the Contract within the initial 180 day period; and

(B) A copy of the Written justification is maintained in the Procurement File.

(c) The Authorized Agency may not make any payments for Client Placement Services or Client Health Care Services before obtaining all requisite approvals of the Contract.

(d) An Authorized Agency may:

(A) Use one of the defined source selection methods as found in OAR 125-247-0200. If an Authorized Agency elects to use one of the defined source selection methods, it must conduct it in accordance with the Code, Rules and Department policies; or

(B) The Authorized Agency may elect to create its own source selection method. If an Authorized Agency elects to create its own source selection method, it must document the file describing why the alternate method was selected.

(e) The Authorized Agency must ensure that all Procurement personnel responsible for procuring Placement Services or Client Health Care Services are provided training on the conditions and limitations of this Rule.

(f) Contract and Amendment Forms.

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(A) Original Forms. Authorized Agencies must use a Contract form and Amendment form (Form) approved by the Chief Procurement Officer when acquiring Client Placement Services or Client Health Care Services according to this Rule. The Chief Procurement Officer may approve the Form by facsimile, email, letter or any other method that provides an objective means to verify its approval. The Authorized Agency must review the approved Form at least every two years.

(B) Revised Forms.

(i) Designated Procurement Officer Approval up to \$150,000. For revised Forms up to a cumulative value of \$150,000 and before an Authorized Agency may use a revised Form, it must obtain its Designated Procurement Officer's approval of any revisions to a Form's terms and conditions. The Designated Procurement Officer's approval is not required for revisions to Form exhibits that are unrelated to terms and conditions.

(ii) Department of Justice Approval over \$150,000. For revised Forms exceeding a cumulative value of \$150,000 and before an Authorized Agency may use a revised Form, it must obtain Department of Justice approval of any revisions to the revised Form's terms and conditions. The Department of Justice approval is not required for revisions to Form exhibits that are unrelated to terms and conditions. The Department of Justice approval may be delivered by facsimile, email, letter or any other objective means of approval. Upon an Authorized Agency's request, the Department of Justice may approve a revised Form for repeated use for a specific class or classes of transactions.

(g) Nothing in this Rule exempts the Authorized Agency from obtaining the approval of the Attorney General for legal sufficiency according to ORS 291.047.

(2) Client Services Source Selection.

(a) An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Special Procurement Rule.

(b) The Chief Procurement Officer waives the source selection requirements as found in OAR 125-247-0200 for Authorized Agencies to procure Client Services, as defined in OAR 125-246-0110.

(c) The Authorized Agency is urged to solicit for Client Services when there is known competition. Under these circumstances, the Authorized Agency may:

(A) Use one of the defined source selection methods as found in OAR 125-247-0200. If an Authorized Agency uses one of the defined source selection methods, it must conduct it in accordance with the Code, Rules and Department policies; or

(B) The Authorized Agency may elect to create its own source selection method. If an Authorized Agency creates its own source selection method, it must document the file describing why the alternate method was selected. This Subsection (2)(c) does not apply to Section (1) above.

(3) Renegotiations of Existing Contracts with Incumbent Contractors.

(a) Authorization. An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Special Procurement by Rule to renegotiate and amend an existing Contract with an incumbent Contractor within the term of the contract, when market conditions have changed and it is in the best interest of the State.

(b) Process and Criteria. The Authorized Agency may renegotiate various items of the Contract, including but not limited to: price, term, delivery and shipping, order size, item substitution, warranties, discounts, on-line ordering systems, price adjustments, product availability, product quality, and reporting requirements. The Authorized Agency must post notice on ORPIN. Nothing in this Rule waives the Department of Justice legal sufficiency review if applicable under ORS 291.047. The Authorized Agency must meet the following conditions in its Renegotiations with incumbent Contractors:

(A) Favorable Result. The Authorized Agency must determine that, with all things considered, the renegotiated Contract is at least as favorable to the State as the Original Contract and document this in the Procurement File. For example, the Authorized Agency and the Contractor may adjust terms and conditions within the Original Contract to meet different needs;

(B) Within the Scope. The Supplies and Services provided under the renegotiated Contract must be reasonably related to the Original Contract's Solicitation. For example, the Authorized Agency may accept functionally equivalent substitutes for any Supplies and Services in the Original Contract's Solicitation;

(C) Optional Term or Condition. If a Contractor offered to the Authorized Agency during the original Solicitation a term or condition that was rejected at that time, (for the purpose of this Subsection only, Rejected Term or Condition), the Authorized Agency may not renegotiate for a lower price based on this Rejected Term or Condition as a mandatory term or condition in the renegotiated Contract. If, however, a Contractor offers a lower

price according to a Rejected Term or Condition without additional consideration from the Authorized Agency and as only an option to the Authorized Agency, then the Authorized Agency may accept the option of a lower price under the Rejected Term or Condition. For example, if the Authorized Agency initially rejected a Contractor's proposed Condition that the price required a minimum order, any renegotiated Contract may not mandate this Condition; but the Authorized Agency may agree to the option to order lesser amounts or receive a reduced price based upon a minimum order; and

(D) Market. In order to avoid encouraging favoritism or diminishing competition, the Authorized Agency must research the accepted competitive practices and expectations of Offerors within the market for the specific Contract(s) or Classes of Contracts to be renegotiated (Market Norm). The Authorized Agency must document the results of the Market Norm research in the Procurement File. Based upon this information, the Authorized Agency must confirm that, if the Authorized Agency follows the Market Norm, favoritism is not likely to be encouraged, competition is not likely to be diminished, and substantial cost savings may be realized. Under no condition may the Authorized Agency accept or follow any Market Norm that likely encourages favoritism or diminishes competition, even if it is accepted or expected in the market.

(4) Advertising Contracts.

(a) Authorization. An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Special Procurement by Rule to purchase media advertising, regardless of dollar value, without competitive bidding, according to OAR 125-246-0170.

(b) Process and Criteria. Authorized Agencies must use competitive methods where practicable to achieve best value and must document in Agency policy or the Procurement File the reasons why a competitive process was deemed to be impractical. If the anticipated purchase exceeds \$10,000 and a competitive method is used, the Authorized Agency must post notice on ORPIN. The resulting Contract must be in Writing and the Authorized Agency Procurement File must document the use of this Special Procurement Rule by number to identify the sourcing method. Nothing in this Rule waives the Department of Justice legal sufficiency review if applicable under ORS 291.047.

(5) Equipment Repair and Overhaul.

(a) Authorization. An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Special Procurement by Rule for equipment repair and overhaul, as described in this Rule.

(b) Conditions. An Authorized Agency, having delegated purchasing authority according to OAR 125-246-0170, may enter into a Public Contract for equipment repair or overhaul without competitive bidding, subject to the following conditions:

(A) Service or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing; or

(B) Service or parts required are for sophisticated equipment for which specially trained personnel are required and such personnel are available from only one source; and

(C) The Authorized Agency purchases within the limits and according to the methods in (5)(c) of this Rule.

(c) Process and Criteria. Authorized Agencies must use competitive methods where practicable to achieve best value and must document in Agency policy or the Procurement File the reasons why a competitive process was deemed to be impractical. If the anticipated purchase exceeds \$10,000 and a competitive method is used, the Authorized Agency must post notice on ORPIN. The resulting Contract must be in Writing and the Authorized Agency Procurement File must document the use of this Special Procurement Rule by number to identify the sourcing method. Nothing in this Rule waives the Department of Justice legal sufficiency review if applicable under ORS 291.047.

(6) Contracts for Price Regulated Items.

(a) Authorization. An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Special Procurement by Rule for the Procurement of price regulated items, and the Authorized Agency must comply with the conditions of this Rule. An Authorized Agency having delegated purchasing authority according to OAR 125-246-0170 may, regardless of dollar value and without competitive bidding, contract for the direct purchase of Supplies and Services where the rate or price for the Supplies and Services being purchased is established by federal, state, or local regulatory authority.

(b) Process and Criteria. Authorized Agencies must use competitive methods where practicable to achieve best value and must document in Agency policy or the Procurement File the reasons why a competitive process was deemed to be impractical. If the anticipated purchase exceeds \$10,000 and a competitive method is used, the Authorized Agency must

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post notice on ORPIN. The resulting Contract must be in Writing and the Authorized Agency Procurement File must document the use of this Special Procurement Rule by number to identify the sourcing method. Nothing in this Rule waives the Department of Justice legal sufficiency review if applicable under ORS 291.047.

(7) Investment Contracts.

(a) Authorization. An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Special Procurement by Rule for investment Contracts, including related Contracts arising from or giving rise to investment opportunities (collectively, investment Contracts), as described in this Rule. An Authorized Agency may, without competitive bidding, and regardless of dollar amount, contract for the purpose of the investment of public funds or the borrowing of funds by the Authorized Agency when such investment or borrowing is contracted according to duly enacted statute, or constitution.

(b) Process and Criteria. Authorized Agencies must use competitive methods where practicable to achieve best value and must document in Agency policy or the Procurement File the reasons why a competitive process was deemed to be impractical. If the anticipated purchase exceeds \$10,000 and a competitive method is used, the Authorized Agency must post notice on ORPIN. The resulting Contract must be in Writing and the Authorized Agency Procurement File must document the use of this Special Procurement Rule by number to identify the sourcing method. Nothing in this Rule waives the Department of Justice legal sufficiency review if applicable under ORS 291.047.

(8) Food Contracts.

(a) Intent. The intent of this Rule is to provide a method for Authorized Agencies to procure food products, which are available for a limited period of time at “lower than normal” prices (also referred to as “spot buys”) (Food Contracts).

(b) Authorization. An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Special Procurement by Rule for the Procurement of Food Contracts, and the Authorized Agency must comply with the conditions of this Rule.

(c) Conditions. An Authorized Agency may procure an unlimited dollar value of food using a competitive bid or quote process when all of the following conditions are present:

(A) The proposed unit price of the item(s) to be purchased is significantly less than a comparable item’s price on an existing Mandatory Use Contract or any recent bid and the amount saved exceeds any additional administrative costs incurred to purchase using this Special Procurement;

(B) The product being purchased has limited availability (i.e., the product may no longer be available upon completion of normal bid processes); and

(C) The purchase does not jeopardize fulfillment of a guaranteed minimum volume under an existing Mandatory Use Contract.

(d) Documentation. Purchases may only be made under this Special Procurement after the Authorized Agency documents the following in its Procurement File in accordance with OAR 125-246-0556: the Authorized Agency’s attempt and method to obtain Quotes from at least three sources; the Written Quote or Bid, if obtained; item Specifications; quantity; unit pricing; delivery; and other pertinent information. Contract or bid pricing used for comparison must be representative of current pricing available and must have been obtained or confirmed no more than six (6) months before the current purchase. When practical, Written Quotes are recommended.

(e) Process and Criteria. Authorized Agencies must use competitive methods where practicable to achieve best value and must document in Agency policy or the Procurement File the reasons why a competitive process was deemed to be impractical. If the anticipated purchase exceeds \$10,000 and a competitive method is used, the Authorized Agency must post notice on ORPIN, except when the competitive method involves verbal Quotes for perishable food. The resulting Contract must be in Writing and the Authorized Agency Procurement File must document the use of this Special Procurement Rule by number to identify the sourcing method. Nothing in this Rule waives the Department of Justice legal sufficiency review if applicable under ORS 291.047.

(9) Purchase of Used Personal Property.

(a) Authorization. An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Special Procurement by Rule Subject to the provisions of this Rule, an Authorized Agency may purchase used property or equipment without competitive bidding and without obtaining Quotes, if, at the time of purchase, the Agency has determined and documented that the purchase will (i) be unlikely to encourage favoritism or diminish competition; and (ii) result in substantial cost savings or promote the public interest. “Used personal property or equipment”

means the property or equipment which has been placed in its intended use by a previous owner or user for a period of time recognized in the relevant trade or industry as qualifying the personal property or equipment as “used,” at the time of the Authorized Agency purchase. “Used personal property or equipment” generally does not include property or equipment if the Authorized Agency was the previous user, whether under a lease, as part of a demonstration, trial or pilot project, or similar arrangement.

(b) Process and Criteria.

(A) For purchases of used personal property or equipment not exceeding \$150,000, Authorized Agencies having delegated authority according to OAR 125-246-0170, must, where feasible, obtain three Quotes, unless the Authorized Agency has determined and documented that a purchase without obtaining Quotes will result in cost savings to the Authorized Agency and will not diminish competition or encourage favoritism.

(B) For purchases of used personal property or equipment exceeding \$150,000, the Department must obtain and keep a Written record of the source and amount of Quotes received. If three Quotes are not available, a Written record must be made of the attempt to obtain Quotes.

(C) If the total purchase is estimated to exceed \$150,000, an Authorized Agency must submit a Written request for a Written delegation of authority from the Chief Procurement Officer before making the purchase.

(D) Authorized Agencies must use competitive methods wherever possible to achieve best value and must document in Agency policy or the Procurement File the reasons why a competitive process was deemed to be impractical. If the anticipated purchase exceeds \$10,000 and a competitive method is used, the Authorized Agency must post notice on ORPIN. The resulting Contract must be in Writing and the Authorized Agency Procurement File must document the use of this Special Procurement Rule by number to identify the sourcing method. Nothing in this Rule waives the Department of Justice legal sufficiency review if applicable under ORS 291.047.

(10) Reverse Auctions.

(a) Authority. An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Special Procurement by Rule.

(b) Process. A Reverse Auction means a process for the purchase of Supplies and Services by a buyer from the lowest Bidder. The Authorized Agency as the buyer must conduct Reverse Auctions by first publishing a Solicitation that describes its requirements, Contract terms and conditions. Then, the Authorized Agency must solicit online Bids from all interested Bidders through an Internet-based program. The Solicitation must set forth a start and end time for Bids and specify the following type of information to be disclosed to Bidders during the Reverse Auction:

(A) The prices of the other Bidders or the price of the most competitive Bidder;

(B) The rank of each Bidder (e.g., (i) “winning” or “not winning” or (ii) “1st, 2nd, or higher”);

(C) The scores of the Bidders if the Authorized Agency chooses to use a scoring model that weighs non-price factors in addition to price; or

(D) Any combination of (A), (B) and (C) above. Before the Reverse Auction commences, Bidders must be required by the Authorized Agency to assent to the Contract terms and conditions, either in Writing or by an Internet “click” agreement. The Bidders then compete for the award of a Contract by offering successively lower prices, informed by the price(s), ranks, and scores, separately or in any combination thereof, disclosed by the Authorized Agency. The identity of the Bidders must not be revealed during this process. Only the successively lower price(s), ranks, scores and related details, separately or in any combination thereof, will be revealed to the participants. The Authorized Agency may cancel this Solicitation if this Agency determines that it is in this Agency’s or the State’s best interest. At the end of this Bidding process, the Authorized Agency must award any potential Contract to the lowest Responsible Bidder or in the case of multiple awards, lowest Responsible Bidders according to ORS 279B.055(10)(b). This process allows the Authorized Agency to test and determine the suitability of the Supplies and Services before making the Award. The Authorized Agency must comply with the following procedures for this type of Solicitation:

(c) Policy. The Authorized Agency must follow the policy of the Department.

(d) Public Notice.

(A) The Authorized Agency must disclose the Reverse Auction process in the Solicitation Document. The Reverse Auction process must include the manner of giving notices of the price(s) offered, rank(s), score(s), and related details to the initial Bidders.

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(B) The Authorized Agency must provide initial notice of this Solicitation through ORPIN.

(C) If the value exceeds \$150,000, the Authorized Agency must issue a Notice of Intent to award at least seven (7) calendar Days before making the Award.

(e) Prequalification. For each Solicitation, on a case-by-case basis, the Authorized Agency may determine whether prequalification of suppliers is needed. If prequalification is used, the Authorized Agency must prequalify suppliers and provide an appeal process in accordance with ORS 279B.120 and related Rules.

(f) E-Procurement. The requirements of OAR 125-247-0330 apply to Reverse Auctions. In the event of conflict or ambiguity, the more specific requirements of this Section (11) take precedence over the more general requirements of OAR 125-247-0330.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.085

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 2-2016, f. 12-22-16, cert. ef. 1-1-17

125-247-0305

Public Notice of Solicitation Documents

(1) Application. This Rule applies only to Bidding and Proposals in accordance with ORS 279B.055, 279B.060, and OAR 125-247-0255 through 125-247-0260.

(2) Notice of Solicitation Documents.

(a) Official Notice. An Authorized Agency must post public notice of every Solicitation Document on ORPIN in accordance with OAR 125-246-0500 (Official Notice).

(b) Additional Notice. The Authorized Agency may give additional notice if:

(A) The additional notice refers to the Official Notice, and

(B) The Authorized Agency uses any method it determines appropriate to foster and promote competition, including:

(i) Mailing notice of the availability of the Solicitation Document to Persons that have expressed an interest in the Authorized Agency's Procurements;

(ii) Placing notice on the Authorized Agency's Internet World Wide Web site; or

(iii) Publishing notice in a newspaper of general circulation as described in ORS 279B.055(4) (Additional Notice).

(3) Content of Official and Additional Notices. All notices for solicitation of Offers must set forth:

(a) Where, when, how, and for how long the Solicitation Document may be obtained;

(b) A general description of the Supplies and Services to be acquired;

(c) The date that Persons must file applications for prequalification if prequalification is a requirement and the class of Supplies and Services is one for which Persons must be prequalified;

(d) The office where contract terms, conditions and Specifications may be reviewed if not electronically attached;

(e) The name, title and address of the individual authorized by the Authorized Agency to receive Offers;

(f) The scheduled Opening; and

(g) Any other information the Authorized Agency deems to be appropriate.

(4) Notice Time Periods.

(a) The Authorized Agency must give Official Notice of an Invitation to Bid at least fourteen (14) Days before the Closing.

(b) The Authorized Agency must give Official Notice of a Request for Proposals at least thirty (30) Days before the Closing.

(c) The Authorized Agency may give Additional Notice for any reasonable time

(d) Despite Section (4)(a) and (b), the Authorized Agency may determine that a shorter time period is in the public's interest and that a shorter time period will not substantially affect competition. In no event may the Authorized Agency give any Official Notice less than seven (7) Days before Closing. The Authorized Agency must document the specific reasons for the shorter time period in the Procurement File in accordance with OAR 125-246-0556.

(e) Despite other provisions of this Rule, the public notice time period for a Qualified Products List is at least seven (7) days.

(5) Availability of Written Advertisement for Offers. Upon the request of any member of the public, the Authorized Agency must provide a copy of each advertisement for Offers and all supporting documents, to be located in the Procurement File or an identified repository.

(6) COBID Certified Firms. In accordance with ORS 200.035, a State Contracting Agency, as defined in ORS 279A.010(1), must provide timely notice, in Writing, to the Governor's Policy Advisor for Economic and Business Equity of each Solicitation and contracting opportunity exceeding \$10,000.

(7) Fees. The Authorized Agency may charge a fee or require a deposit for the Solicitation Document, supporting documents and any combination thereof.

(8) Notice of Addenda. The Authorized Agency must provide notice to potential Offerors on ORPIN of any Addenda to a Solicitation Document in accordance with OAR 125-247-0430.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.050-279B.085

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 2-2016, f. 12-22-16, cert. ef. 1-1-17

125-247-0550

Prequalification of Prospective Offerors, Pre-negotiation of Contract Terms and Conditions, and Request for Qualifications (RFQ)

(1) Prequalification of Prospective Offerors. An Authorized Agency may prequalify prospective Offerors according to ORS 279B.120 and 279B.125. Despite the prohibition against revocation of prequalification in ORS 279B.120(3), an Authorized Agency may determine that a prequalified Offeror is not Responsible before Contract Award.

(2) Pre-negotiation of Contract Terms and Conditions. An Authorized Agency may pre-negotiate some or all Contract terms and conditions including prospective Proposer Contract forms such as license agreements, maintenance and support agreements or similar documents for use in future Procurements. Such pre-negotiation of Contract terms and conditions (including prospective Proposer forms) may be part of the prequalification process of a Proposer in Section (1) or the pre-negotiation may be a separate process and not part of a prequalification process. Unless required as part of the prequalification process, the failure of the Authorized Agency and the prospective Proposer to reach agreement on pre-negotiated Contract terms and conditions does not prohibit the prospective Proposer from responding to Procurements. An Authorized Agency may agree to different pre-negotiated Contract terms and conditions with different prospective Proposers. When an Authorized Agency has pre-negotiated different terms and conditions with Proposers or when permitted, Proposers offer different terms and conditions, an Authorized Agency may consider the terms and conditions in the Proposal evaluation process.

(3) Request for Qualifications (RFQ). For purposes of this Section, an RFQ may be used without the RFQ constituting a Prequalification according to Section (1) of this Rule, if the Authorized Agency establishes the RFQ to determine whether competition exists to perform the needed services or to establish a nonbinding, open list of qualified Contractors in addition to the general public and in order to expand the pool of qualified Contractors, before issuing a Request for Proposals (RFP). If an Authorized Agency establishes a closed, exclusive, or binding list of qualified Contractors, then the Authorized Agency must comply with Section (1) of this Rule. The Authorized Agency is not required to issue an RFQ and may elect to forego using an RFQ before issuing an RFP.

(a) At a minimum, the RFQ must describe the particular specialty desired, the qualifications the Contractor(s) must have in order to be considered, and the evaluation factors and their relative importance. The RFQ may require information including, but not limited to: the Contractor's particular capability to perform the required services; the number of experienced staff available to perform the required services, including specific qualifications and experience of personnel; a list of similar services the Contractor has completed, with references concerning past performance; and any other information deemed necessary by the Authorized Agency to evaluate Contractor qualifications.

(b) A qualifications pre-submission meeting, voluntary or mandatory, may be held for all interested Contractors to discuss the proposed services. The RFQ must include the date, time and place of the meeting(s).

(c) Unless the RFQ establishes that competition does not exist or unless the Solicitation process is canceled or all qualification statements are rejected, all respondents who met the published qualifications must receive a notice, or other materials as appropriate, in addition to the general public, of any required services and have an opportunity to submit a proposal in response to an Authorized Agency's subsequent RFP.

(d) All RFQs must:

(A) Be in Writing;

(B) Be posted on ORPIN;

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(C) Provide that the Authorized Agency may, at any time during the Solicitation process, reject any or all Proposals or cancel the Solicitation without liability if it is in the public interest to do so; and

(D) Provide that the Authorized Agency is not responsible for any costs of any proposers incurred while submitting Proposals, and that all Proposers who respond to Solicitations do so solely at their own expense, unless compensation is expressly provided for in the Solicitation Document.

(e) In accordance with ORS 200.035, a State Contracting Agency, as defined in ORS 279A.010(1), must provide timely notice, in Writing, to the Governor's Policy Advisor for Economic and Business Equity of each Solicitation and contracting opportunity exceeding \$10,000.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279.015, 279B.050-279B.085, 279B.120, 279B.125
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 2-2016, f. 12-22-16, cert. ef. 1-1-17

125-247-0691

Brand Name or Equal Specification

(1) Applicability and Use. This Rule applies to Specifications for a Solicitation or class of Solicitations. For a Solicitation or class of Solicitations under ORS 279B.060, 279B.065, 279B.070, 279B.085, or 279A.200-279A.225, as provided in 279B.215:

(a) A brand name or equal Specification may be used when the use of a brand name or equal Specification is advantageous to the Agency, because the brand name describes the standard of quality, performance, functionality and other characteristics of the product needed by the Agency.

(b) The Agency is entitled to determine what constitutes a product that is equal or superior to the product specified, and any such determination is final.

(c) Nothing in this Subsection may be construed as prohibiting an Agency from specifying one or more comparable products as examples of the quality, performance, functionality or other characteristics of the product needed by the Agency.

(2) Determination. A brand name Specification may be prepared and used only if the Agency determines for a Solicitation or a class of Solicitations that only the identified brand name Specification will meet the needs of the Agency based on one or more of the following written determinations:

(a) That use of a brand name Specification is unlikely to encourage favoritism in the awarding of Public Contracts or substantially diminish competition for Public Contracts;

(b) That use of a brand name Specification would result in substantial cost savings to the Agency;

(c) That there is only one manufacturer or seller of the product of the quality, performance or functionality required; or

(d) That efficient utilization of existing Goods requires the acquisition of compatible Goods or Services.

(3) An Agency's use of a brand name Specification may be subject to review only as provided in ORS 279B.405.

(4) Single Manufacturer, Multiple Sellers. An Authorized Agency may prepare and use a brand name or equal Specification for Supplies and Services available from only one manufacturer, but available through multiple sellers, if the Authorized Agency complies with Sections (1) and (2) of this Rule and the following requirements:

(a) If the total purchase is \$10,000 or more but does not exceed \$150,000 and Supplies and Services are not available under an existing Mandatory Use Contract, the Authorized Agency must obtain informal, competitive Quotes, Bids, or Proposals and document this process in the Procurement File according to ORS 279B.070 and OAR 125-247-0270;

(b) If the purchase exceeds \$150,000, and the Supplies and Services are not available under an existing Price Agreement for information technology with competing products or a Mandatory Use Contract, an Authorized Agency must first request and obtain prior written authorization from the Chief Procurement Officer to proceed with the acquisition.

(5) Single Manufacturer, Multiple Purchases. If an Authorized Agency intends to make several purchases of brand name-specified Supplies and Services from a particular manufacturer or seller for a period not to exceed five (5) years, the Authorized Agency must so state this information in: the Procurement File; the Solicitation Document, if any; or a Public Notice of a solicitation on ORPIN. If the Authorized Agency estimates the total purchase amount to exceed \$150,000, this estimate must also be stated in the Public Notice. This Section (5) does not apply to Department Price Agreements, also known as Mandatory Use Contracts.

(6) Nothing in this Rule exempts the Authorized Agency from obtaining the approval of the Attorney General for legal sufficiency according to ORS 291.047.

(7) All Authorized Agencies must comply with ORS 200.035 and related Department policy, despite this Rule.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.215
Hist.: DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 2-2016, f. 12-22-16, cert. ef. 1-1-17

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

Rule Caption: Electrical program delegation standards.

Adm. Order No.: BCD 17-2016

Filed with Sec. of State: 12-28-2016

Certified to be Effective: 1-1-17

Notice Publication Date: 12-1-2016

Rules Amended: 918-308-0000, 918-308-0010, 918-308-0160

Subject: These rules amend the standards for delegation of an electrical inspection program by clarifying the Electrical and Elevator Board's standards for evaluating minimum service levels, financial viability, and compliance efforts of a proposed electrical inspection program.

Rules Coordinator: Holly A. Tucker—(503) 378-5331

918-308-0000

Electrical Delegation Rules

(1) The rules in OAR 918-308-0000 to 918-308-0430 shall be referred to as the Electrical Delegation Rules.

(2) For the purposes of OAR chapter 918, division 308, unless otherwise specified, "third party" means a person or business required to be licensed under ORS 455.457.

Stat. Auth.: ORS 479.855
Stats. Implemented: ORS 479.855
Hist.: BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; BCD 12-2016(Temp), f. & cert. ef. 9-29-16 thru 3-27-17; BCD 17-2016, f. 12-28-16, cert. ef. 1-1-17

918-308-0010

Standards for Delegation

Municipalities seeking initial delegation of an electrical program under ORS chapters 455 and 479 shall meet the requirements of OAR 918-308-0010 to 918-308-0180. Administration and enforcement of the electrical program shall only be delegated under ORS 479.855 to municipalities meeting the following minimum performance standards:

(1) The municipality shall be ready, willing and able to fully operate the electrical program on the effective date of delegation, July 1, except when a municipality is assuming the program from the division.

(2) The municipality shall create and maintain minimum services at least each weekday, excluding holidays as defined in ORS 187.010, to include electrical administrative, enforcement, and inspection services. Minimum administrative, enforcement, and inspection services include the "Ongoing Requirements" in the Electrical Delegation Rules.

(3) Operation of the program shall be financially feasible without unduly increasing short or long-term costs of electrical inspection services to the public, both in the areas delegated and, if applicable, the remaining program in the surrounding area. To be considered financially feasible, the municipality must:

(a) Demonstrate that feasibility to the satisfaction of the Board by providing:

(A) Projected electrical program revenue for the first two years of program operation, which is based on the program revenues collected for work in that municipality by the current service provider for the most recent four fiscal years preceding the date of application;

(B) Projected electrical program activity for the first two years of program operation, which is based on the permits issued for work in that municipality by the current service provider for the four most recent fiscal years up to the date of application;

(C) Projected electrical program expenses for the first two years of program operation which includes the plan review and inspection staff necessary to serve projected program activity; and

(D) Any other information as requested by the Board.

(b) Agree, as a condition of delegation, to indemnify the State for any and all claims related to any personal injury, death, or property damage

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arising from any act, omission, or error on the part of the municipality in the operation of the electrical program;

(c) If contracting with a third party to provide some or all of the services of the jurisdiction's electrical program, include a provision in its contract with the third party in which the third party agrees to indemnify the municipality and the State for any and all claims related to any personal injury, death, or property damage arising from any act, omission, or error on the part of the contractor in its work for the municipality's electrical program;

(d) Agree, as a condition of delegation, that it shall not adopt or implement any fee increases for the first two years of its initial operation term;

(e) Carry a minimum of \$1,500,000 per occurrence of insurance against tort liability and property damage arising out of acts, errors, and omissions in its operation of the electrical program; and

(f) If contracting with a third party to provide some or all of the services of the jurisdiction's electrical program, demonstrate that the third party carries a minimum of \$1,500,000 per occurrence of insurance against tort liability and property damage arising out of the acts, errors, and omissions in its work for the municipality's electrical program.

(4) The municipality shall demonstrate its ability to carry out the proposed electrical program.

(5) The requirements in the Electrical Delegation Rules are in addition to rules adopted by the department in OAR 918-020-0070 through 918-020-0220 for municipalities that apply to undertake inspection programs. When any provision of this section conflicts with or contains greater, more stringent, or more detailed requirements than another section of this division, this section shall control.

Stat. Auth.: ORS 479.730
Stats. Implemented: ORS 479.855, 455.148 & 455.150
Hist.: BCA 21-1993, f. 10-5-93, cert. ef. 12-1-93; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96, Renumbered from 918-300-0100; BCD 8-2008(Temp), f. & cert. ef. 6-19-08 thru 12-15-08; BCD 23-2008, f. 9-30-08, cert. ef. 10-1-08; BCD 12-2016(Temp), f. & cert. ef. 9-29-16 thru 3-27-17; BCD 17-2016, f. 12-28-16, cert. ef. 1-1-17

918-308-0160

Plan for Compliance

(1) The municipality shall have a plan on how electrical permit and code violations will be handled. It shall have an ordinance allowing enforcement actions for violations.

(2) The plan shall describe in detail how the municipality will carry out compliance actions, including the number of staff members who will perform investigations, qualifications of those staff members, number of days per week those staff members will conduct investigations, and a description of how those staff members will conduct checks for electrical licensure on jobsites, including how jobsites will be identified and selected for investigation.

(3) The municipality shall report data as required by the Board and shall annually report compliance actions taken pursuant to the enforcement of the electrical inspection program.

Stat. Auth.: ORS 479.855
Stats. Implemented: ORS 479.855
Hist.: BCA 21-1993, f. 10-5-93, cert. ef. 12-1-93; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96, Renumbered from 918-300-0330; BCD 12-2016(Temp), f. & cert. ef. 9-29-16 thru 3-27-17; BCD 17-2016, f. 12-28-16, cert. ef. 1-1-17

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**Department of Consumer and Business Services,
Director's Office
Chapter 440**

Rule Caption: Repeals DCBS rule to streamline criminal records requirement and use statewide DAS amended rule

Adm. Order No.: DO 1-2017

Filed with Sec. of State: 1-6-2017

Certified to be Effective: 1-6-17

Notice Publication Date: 3-1-2016

Rules Repealed: 440-007-0200, 440-007-0210, 440-007-0230, 440-007-0240, 440-007-0250, 440-007-0260, 440-007-0270, 440-007-0272, 440-007-0275, 440-007-0280, 440-007-0285, 440-007-0290, 440-007-0300

Subject: Repeals existing DCBS-specific administrative rules relating to criminal records checks in order for the agency to follow DAS administrative rules.

Rules Coordinator: Kate Grover—(503) 947-7872

Department of Consumer and Business Services, Finance and Securities Regulation Chapter 441

Rule Caption: Conforming Oregon's mortgage originator pre-licensing education requirements with the Nationwide Mortgage Licensing System.

Adm. Order No.: FSR 4-2016

Filed with Sec. of State: 12-21-2016

Certified to be Effective: 1-1-17

Notice Publication Date: 10-1-2016

Rules Amended: 441-880-0310

Subject: The Department of Consumer and Business Services has been working toward full utilization of and alignment with the Nationwide Mortgage Licensing System and Registry's (NMLS) features. Under the federal Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act) each prospective mortgage loan originator licensee must complete pre-licensure education. Currently, within the NMLS pre-license education does not expire regardless of whether the person actually obtained a license. Department license specialists verify that the pre-licensing education has been completed but not how long ago. In July 2014, the NMLS issued a request for public comments on a proposed expiration of pre-licensure education credits. The NMLS determined that it will develop its licensing database so that pre-licensure education will expire within 3 years if a person has not obtained a license, or if a person fails to maintain an originator license or registration in any jurisdiction for 3 years. Currently, Oregon's rules do not align with the NMLS but all mortgage licensees must apply and renew through the NMLS. Oregon must amend its rules to correspond to NMLS processes.

Rules Coordinator: Shelley Greiner—(503) 947-7484

441-880-0310

Mortgage Loan Originator Continuing Education Requirements; Curing Deficiencies; License Sanctions for Failure to Maintain Continuing Education

A mortgage loan originator shall take and maintain continuing education courses in order to take an application for a residential mortgage loan or negotiate the terms of a residential mortgage loan, consistent with the requirements of this rule.

(1)(a) An applicant for a mortgage loan originator shall complete a minimum of 20 hours of pre-licensing education courses approved by the Nationwide Mortgage Licensing System and Registry before submitting an application to obtain a mortgage loan originator's license in this state. The twenty hours must include a minimum of three hours of instruction on federal law and regulations, three hours of instruction on ethics, two hours of instruction related to lending standards for the nontraditional mortgage product market, and four hours of instruction on Oregon laws and rules.

(b) Pre-licensing education will expire if three (3) years pass without receiving licensure or registration as a mortgage loan originator in any jurisdiction, or if licensure or registration is surrendered, not renewed, allowed to lapse, or through other action or inaction which results in an applicant lacking a valid license or registration in any jurisdiction for three years or longer.

(c) If pre-licensing education expires, an applicant must retake the pre-licensing education course prior to submitting an application for a mortgage loan originator license.

(2) A mortgage loan originator shall take a continuing education course or courses approved by the Nationwide Mortgage Licensing System and Registry. A mortgage loan originator shall complete at least ten hours of continuing education per calendar year. The ten hours must include a minimum of three hours of instruction on federal law and regulations, two hours of instruction on ethics, two hours of instruction related to lending standards for nontraditional mortgage products, and two hours of instruction on Oregon laws and rules.

(3) A mortgage loan originator who fails to meet the continuing education requirement shall not take an application for a residential mortgage loan or negotiate the terms of a residential mortgage loan until the requirements contained in this rule are satisfied.

(4)(a) A mortgage loan originator may submit a written request to make up missing hours in continuing education due to hardship or illness. A written request shall:

(A) Describe the hardship or illness; and

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(B) Describe why the mortgage loan originator was unable to meet requirements for continuing education.

(b) In all requests under this rule, the mortgage loan originator has the burden of proving the hardship or illness responsible for the missing hours in continuing education.

(c) The director shall consider and may grant a request, but the director shall not grant a request for the following:

(A) Failure or inability to pay applicable fees to obtain or maintain a mortgage loan originator license;

(B) A suspension of business activities as a mortgage loan originator; or

(C) Incapacity due to imprisonment.

(5) Nothing in this rule affects the director's authority to require by order a mortgage loan originator to make up missing hours in continuing education under ORS 86A.218 or to decline to renew the person's mortgage loan originator license.

(6) The director may deny, suspend, make inactive, or refuse to renew the mortgage loan originator's license until the mortgage loan originator makes up any missing hours of continuing education required this section.

Stat. Auth.: ORS 86A.242

Stats. Implemented: ORS 86A.218

Hist.: FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10; FCS 4-2012, f. & cert. ef. 8-1-12; FCS 5-2014, f. 9-18-14, cert. ef. 1-1-15; FSR 4-2016, f. 12-21-16, cert. ef. 1-1-17

Department of Consumer and Business Services, Insurance Regulation Chapter 836

Rule Caption: Adoption of Own Risk and Solvency Assessment Guidance Manual and Valuation Manual

Adm. Order No.: ID 11-2016

Filed with Sec. of State: 12-21-2016

Certified to be Effective: 12-21-16

Notice Publication Date: 10-1-2016

Rules Adopted: 836-011-0030, 836-031-0605

Subject: House Bill 2469, enacted in 2015, established requirements for insurers to maintain a risk management framework and to complete an own risk and solvency assessment. Own risk and solvency assessments are confidential internal assessments of material and relevant risks associated with an insurer's or insurance group's business plan and of the sufficiency of capital resources to support the business plan. This rulemaking adopts the Own Risk and Solvency Assessment Guidance Manual insurers will use when conducting an own risk and solvency assessment.

If an insurer is a member of an insurance group for which the Director is the lead state director, the insurer is required to submit an own risk and solvency assessment report to the Director each year. The rules clarify how the Director will determine when those annual reports will be due.

House Bill 2469 also established a process for insurers to implement principle-based reserving which uses one or more methods or one or more assumptions when computing reserve valuations for policies it has written. This rulemaking adopts and sets the operative date of the Valuation Manual insurers will be required to use when establishing reserves using a principle-based valuation method.

Rules Coordinator: Karen Winkel—(503) 947-7694

836-011-0030

Own Risk and Solvency Assessment

(1) For the purpose of complying with ORS 732.650 to 732.672, every insurer, or insurance group of which the insurer is a member, shall use a process that is comparable to the process described in the July 2014 edition of the NAIC Own Risk and Solvency Assessment (ORSA) Guidance Manual.

(2) Every insurer required to submit an "Own Risk" and "Solvency Assessment" summary report or combination of reports without waiting for a request from the director of the Department of Consumer and Business Services shall submit this information to the director each year in accordance with the schedule established by the director and the insurer.

(3) The NAIC Own Risk and Solvency Assessment (ORSA) Guidance Manual referred to in this rule is available for inspection at the Department of Consumer and Business Services.

Stat. Auth.: ORS 731.244, 732.650 & 732.662

Stats. Implemented: ORS 731.650 & 732.662

Hist.: ID 11-2016, f. & cert. ef. 12-21-16

836-031-0605

Valuation Manual

(1) For the purpose of complying with Oregon Laws 2015 chapter 547, an insurer shall use the Valuation Manual with NAIC adoptions through August 29, 2016 when establishing reserves using a principle-based valuation. The operative date of the Valuation Manual is January 1, 2017.

(2) The Valuation Manual with NAIC adoptions through August 29, 2016 referred to in this rule is available for inspection at the Department of Consumer and Business Services.

Stat. Auth.: ORS 731.244, 2015 OL, Ch 547, sect. 16

Stats. Implemented: 2015 OL, Ch 547

Hist.: ID 11-2016, f. & cert. ef. 12-21-16

Rule Caption: Modernization of Title Plant General Index Requirements

Adm. Order No.: ID 12-2016

Filed with Sec. of State: 12-29-2016

Certified to be Effective: 1-9-17

Notice Publication Date: 10-1-2016

Rules Amended: 836-010-0135, 836-010-0140

Subject: ORS 731.438 requires that title plants post a general index, adequate maps, and tract or geographic indexes. The amendment to OAR 836-010-0135 revises the definition of "general index" so that title plants that are able to access records through a subscription to the Oregon Judicial Case Information Network (OJCIN) will no longer have to duplicate that information in the index. The amendments explicitly allow tract or geographic indexes to be stored electronically. The rule makes several technical and non-substantive corrections to the text of OAR 836-010-0135 and OAR 836-010-0140.

Rules Coordinator: Karen Winkel—(503) 947-7694

836-010-0135

Definitions

As used in OAR 836-010-0130 to 836-010-0145, unless the context requires otherwise:

(1) "Adequate Maps" means:

(a) A map record of all recorded plats in the county covered by the title plant;

(b) Maps based on a complete set of government surveys showing all surveyed sections, government lots and donation land claims within the county covered by the title plant;

(c) Maps of such a scale that they are readily workable. In an area where the majority of the parcels are of less than one sixteenth of a section, maps shall be of a scale no smaller than 400 feet to the inch. A full section of land shall not be represented in a scale smaller than 2,000 feet to the inch; and

(d) Maps showing all public streets, roads, highways, and railroad rights of way of record which can be accurately located by a reasonable search of the records.

(2) "General Index" means a complete compilation of matters affecting real property, which: do not describe, or cannot solely be assigned to, a specific real property account, and which may be found by a search of the proper records within the county covered by the title plant.

(a) Subject to subsection (b), a general index must include:

(A) Unsatisfied Judgments and tax liens having lien effect;

(B) Conservatorships, guardianships, and estates of deceased persons arising during the preceding ten-year period;

(C) Divorce suits closed or pending during the preceding ten-year period;

(D) Powers of attorney recorded during the preceding ten-year period.

(b) The general index is not required to include matters that may be accessed electronically through the Oregon Judicial Case Information Network (OJCIN) or other similar database run by the State of Oregon Judicial Department, provided that the title plant maintains a subscription which allows it to readily access those matters.

(c) A general index may include such other matters as the title plant owner deems appropriate.

(3) "Tract or Geographic Index" means a record of documents and proceedings which affect real property in the county covered by the title plant. Such an index may consist of summaries or replicas, and must meet the following requirements:

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(a) Tract or geographic indexes relating to recorded plats are maintained separately, and may be referred to by name or by number, with accounts segregated to the block or in the absence of blocks to the smallest unit designated on the applicable recorded plat;

(b) Tract or geographic indexes which relate to ownership in all unplatted areas of the county, except land in national forest reserves, national parks and unpatented lands, are maintained in accounts segregated into section subdivisions and government lots. In the event ownership of parcels does not conform to section subdivisions or government lots, such parcels are assigned arbitrary reference numbers or symbols which correspond to like numbers or symbols shown on the arbitrary maps of the area, except if there are 30 or fewer ownership accounts in a quarter section that do not conform to section subdivisions or government lots or are not in a recorded plat then those ownership accounts can be filed under the designation of that particular quarter section without being assigned arbitrary reference numbers or symbols; and

(c) Tract or geographic indexes may be maintained on ledger sheets, separate cards, sheets of film, or any other form or system, whether manual, mechanical, electronic or otherwise, or any combination of such forms or systems. The index ledger sheets, cards, sheets, or film may be bound in books or contained in envelopes or storage files or may be maintained or stored electronically. The segregated account contains a reference to deeds, contracts, suits, liens, unsatisfied mortgages, and other matters of record imparting constructive notice that specifically describe the real property that is subject to the account.

(4) "Currently posted" means postings or entries are made within 15 working days of recording or entry.

Stat. Auth.: ORS 731

Stats. Implemented: ORS 731.438

Hist.: IC 1-1978, f. 3-27-78, ef. 4-1-78; ID 12-2016, f. & cert. ef. 12-29-16

836-010-0140

Title Plant Standards

(1) The title plant shall maintain "adequate maps" as defined in OAR 836-010-0135, that will enable a person working the title plant to locate a tract of land which is the subject of a title search with reference to the government survey system.

(2) The title plant shall maintain a "general index," as defined in OAR 836-010-0135, in either alphabetical or phonetical order, so that any record pertaining to any person by name may be readily located.

(3) The title plant shall maintain a "currently posted" "tract or geographic index" and "general index" as defined in OAR 836-010-0135.

Stat. Auth.: ORS 731

Stats. Implemented: ORS 731.438

Hist.: IC 1-1978, f. 3-27-78, ef. 4-1-78; ID 12-2016, f. & cert. ef. 12-29-16

Rule Caption: Disclosure of Information about Complaints Regarding Unlawful Claims Settlement Practices

Adm. Order No.: ID 1-2017

Filed with Sec. of State: 1-10-2017

Certified to be Effective: 1-10-17

Notice Publication Date: 10-1-2016

Rules Adopted: 836-005-0405

Subject: ORS 731.264 as amended by Senate Bill 1591, provides that the Director of the Department of Consumer and Business Services (DCBS) may provide to any requester information about complaints against insurers for unlawful practices described under ORS 746.230. The statute does not further define what types of records and under what circumstances records must be disclosed. The rule clarifies the method in which individuals may request information about complaints, the types of records and information that DCBS could and could not disclose, and the circumstances and manner in which DCBS would disclose that information.

Rules Coordinator: Karen Winkel—(503) 947-7694

836-005-0405

Disclosure of Information about Complaints Regarding Unlawful Claims Settlement Practices

(1) Subject to subsections (2) through (4), the director shall provide to a person who submits a request, records associated with complaints submitted to the director, for which:

(a) The director has confirmed the complaint to be about an alleged unlawful practice described in ORS 746.230;

(b) The complaint:

(A) Has been closed and the complainant has been provided a closing letter; or

(B) Has been open for more than 120 days;

(c) The complaint was submitted after January 1, 2017; and

(d) The complaint was submitted during a period in which disclosure of complaint information was authorized under ORS 731.264(3).

(2) For each complaint subject to disclosure, the director shall provide:

(a) The complaint intake form;

(b) Any narrative description submitted by the complainant with the initial complaint;

(c) Any request for information submitted by the director to an insurer on behalf of the complainant in order to resolve the complaint; and

(d) Any closing letter provided to the complainant by the director, which summarizes:

(A) The complaint;

(B) Steps the director took to investigate and resolve the complaint; and

(C) Any findings and conclusions reached by the director.

(3) Before providing records to a requestor, the director:

(a) Shall remove any information that could be used to identify any individual;

(b) Shall remove any information for which disclosure is prohibited under applicable federal or state law;

(c) May remove any information exempt from public records requests under ORS 192.410 to 192.505; and

(d) May require the requestor to pay any fees listed in OAR 440-005-0025 and 440-005-0030, unless waived under ORS 192.440.

(4) The director shall not provide complaint records:

(a) Unless a request is submitted to the director in writing;

(b) If a request is made with regard to a particular person, unless the request is made with regard to an insurer; nor

(c) If the director determines that release of such records would clearly and convincingly cause harm to the public interest in the particular instance. If such a determination is made, the director shall provide to the requestor, a written explanation of why the records will not be disclosed.

Stat. Auth.: ORS 731.264, 2016 Or Laws ch 62 (Enrolled Senate Bill 1591)

Stats. Implemented: ORS 731.264

Hist.: ID 1-2017, f. & cert. ef. 1-10-17

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

Rule Caption: New medical billing codes and assignment of maximum allowable payments for these codes for 2017

Adm. Order No.: WCD 7-2016(Temp)

Filed with Sec. of State: 12-16-2016

Certified to be Effective: 1-1-17 thru 6-29-17

Notice Publication Date:

Rules Amended: 436-009-0004, 436-009-0010, 436-009-0040

Subject: These temporary rules adopt, by reference, new medical billing codes for 2017 and related references:

- The American Medical Association (AMA) Current Procedural Terminology (CPT® 2017);

- American Society of Anesthesiologists (ASA), Relative Value Guide 2016

- The AMA CPT® Assistant through Volume 26, Issue 12, 2016;

- The Healthcare Common Procedure Coding System (HCPCS 2017); and

- The American Dental Association's CDT 2017 Dental Procedure Codes.

These temporary rules set maximum allowable reimbursement amounts for new medical codes for services provided in 2017.

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 2016 as a supplementary fee schedule for those anesthesia codes not found in Appendix B. To get a copy of the ASA Relative Value Guide 2015, contact the American Society of Anesthesiologists, 520 N. Northwest Highway, Park Ridge, IL 60068-2573, 847-825-5586, or on the Web at: <http://www.asahq.org>.

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(2) The director adopts, by reference, the American Medical Association's (AMA) Current Procedural Terminology (CPT® 2016 and CPT® 2017), Fourth Edition Revised, 2015 and 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 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® 2016, 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 2016 and 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 2016, CPT® 2016, CPT® 2017, CPT® Assistant, HCPCS 2016, HCPCS 2017, CDT 2016 or 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.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 656.248 & 656.726(4)

Stats. Implemented: ORS 656.248

Hist.: WCD 9-1999, f. 5-27-99, cert. ef. 7-1-99; WCD 2-2000, f. 3-15-00, cert. ef. 4-1-00; WCD 2-2001, f. 3-8-01, cert. ef. 4-1-01; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 6-2003, f. 5-28-03, cert. ef. 7-1-03; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 3-2006, f. 3-14-06, cert. ef. 4-1-06; WCD 2-2007, f. 5-23-07, cert. ef. 7-1-07; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08; WCD 1-2009, f. 5-22-09, cert. ef. 7-1-09; WCD 3-2010, f. 5-28-10, cert. ef. 7-1-10; WCD 1-2011, f. 3-1-11, cert. ef. 4-1-11; WCD 1-2012, f. 2-16-12, cert. ef. 4-1-12; WCD 2-2013, f. 3-11-13, cert. ef. 4-1-13; WCD 7-2013, f. 11-12-13, cert. ef. 1-1-14; WCD 3-2014, f. 3-12-14, cert. ef. 4-1-14; WCD 3-2015, f. 3-12-15, cert. ef. 4-1-15; WCD 8-2015(Temp), f. 12-8-15, cert. ef. 1-1-16 thru 6-28-16; WCD 1-2016, f. 3-7-16, cert. ef. 4-1-16; WCD 7-2016(Temp), f. 12-16-16, cert. ef. 1-1-17 thru 6-29-17

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.

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(d) Medical providers may use computer-generated reproductions of the appropriate forms.

(e) Unless different instructions are provided in the table below, the provider should use the instructions provided in the National Uniform Claim Committee 1500 Claim Form Reference Instruction Manual. [Table not included. See ED. NOTE.]

(4) Billing Codes.

(a) When billing for medical services, a medical provider must use codes listed in CPT® 2016, 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® 2016, 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® 2016, 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. However, the patient may be liable, and the provider may bill the patient:

(A) If the patient seeks treatment for conditions not related to the accepted compensable injury or illness;

(B) If the patient seeks treatment for a service that has not been prescribed by the attending physician or authorized nurse practitioner, or a specialist physician upon referral of the attending physician or authorized nurse practitioner. This would include, but is not limited to, ongoing treatment by non-attending physicians in excess of the 30-day/12-visit period or by nurse practitioners in excess of the 180-day period, as set forth in ORS 656.245 and OAR 436-010-0210;

(C) If the insurer notifies the patient that he or she is medically stationary and the patient seeks palliative care that is not authorized by the insurer or the director under OAR 436-010-0290;

(D) If an MCO-enrolled patient seeks treatment from the provider outside the provisions of a governing MCO contract; or

(E) If the patient seeks treatment listed in section (12) of this rule after the patient has been notified that such treatment is unscientific, unproven, outmoded, or experimental.

(b) If the director issues an order declaring an already rendered medical service or treatment inappropriate, or otherwise in violation of the statute or administrative rules, the worker is not liable for such services.

(10) Disputed Claim Settlement (DCS). The insurer must pay a medical provider for any bill related to the claimed condition received by the insurer on or before the date the terms of a DCS were agreed on, but was either not listed in the approved DCS or was not paid to the medical provider as set forth in the approved DCS. Payment must be made by the insurer as prescribed by ORS 656.313(4)(d) and OAR 438-009-0010(2)(g) as if the bill had been listed in the approved settlement or as set forth in the approved DCS, except, if the DCS payments have already been made, the payment must not be deducted from the settlement proceeds. Payment must be made within 45 days of the insurer's knowledge of the outstanding bill.

(11) Payment Limitations.

(a) Insurers do not have to pay providers for the following:

(A) Completing forms 827 and 4909;

(B) Providing chart notes with the original bill;

(C) Preparing a written treatment plan;

(D) Supplying progress notes that document the services billed;

(E) Completing a work release form or completion of a PCE form, when no tests are performed;

(F) A missed appointment "no show" (see exceptions below under section (13) Missed Appointment "No Show"); or

(G) More than three mechanical muscle testing sessions per treatment program or when not prescribed and approved by the attending physician or authorized nurse practitioner.

(b) Mechanical muscle testing includes a copy of the computer print-out from the machine, written interpretation of the results, and documentation of time spent with the patient. Additional mechanical muscle testing may be paid for only when authorized in writing by the insurer prior to the testing.

(c) Dietary supplements including, but not limited to, minerals, vitamins, and amino acids are not reimbursable unless a specific compensable dietary deficiency has been clinically established in the patient.

(d) Vitamin B-12 injections are not reimbursable unless necessary for a specific dietary deficiency of malabsorption resulting from a compensable gastrointestinal condition.

(12) Excluded Treatment. The following medical treatments (or treatment of side effects) are not compensable and insurers do not have to pay for:

(a) Dimethyl sulfoxide (DMSO), except for treatment of compensable interstitial cystitis;

(b) Intradiscal electrothermal therapy (IDET);

(c) Surface electromyography (EMG) tests;

(d) Rolting;

(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

436-009-0040

Fee Schedule

(1) Fee Schedule Table.

(a) Unless otherwise provided by contract or fee discount agreement allowed by these rules, insurers must pay according to the following table: [Table not included. See ED. NOTE.]

(b) The global period is listed in the column 'Global Days' of Appendix B.

(2) Anesthesia.

(a) When using the American Society of Anesthesiologists Relative Value Guide, a basic unit value is determined by reference to the appropriate anesthesia code. The total anesthesia value is made up of a basic unit value and, when applicable, time and modifying units.

(b) Physicians or certified nurse anesthetists may use basic unit values only when they personally administer the general anesthesia and remain in constant attendance during the procedure for the sole purpose of providing the general anesthesia.

(c) Attending surgeons may not add time units to the basic unit value when administering local or regional block for anesthesia during a procedure. The modifier 'NT' (no time) must be on the bill.

(d) Local infiltration, digital block, or topical anesthesia administered by the operating surgeon is included in the payment for the surgical procedure.

(e) In calculating the units of time, use 15 minutes per unit. If a medical provider bills for a portion of 15 minutes, round the time up to the next 15 minutes and pay one unit for the portion of time.

(f) The maximum allowable payment amount for anesthesia codes is determined by multiplying the anesthesia value by a conversion factor of \$58.00. Unless otherwise provided by contract or fee discount agreement permitted by these rules, the insurer must pay the lesser of:

(A) The maximum allowable payment amount for anesthesia codes;

or

(B) The provider's usual fee.

(g) When the anesthesia code is designated by IC (individual consideration), unless otherwise provided by a contract or fee discount agreement, the insurer must pay 80 percent of the provider's usual fee.

(3) Surgery. Unless otherwise provided by contract or fee discount agreement permitted by these rules, insurers must pay multiple surgical procedures performed in the same session according to the following:

(a) One surgeon [Table not included. See ED. NOTE.]

(b) Two or more surgeons [Table not included. See ED. NOTE.]

(c) Assistant surgeons [Table not included. See ED. NOTE.]

(d) Nurse practitioners or physician assistants [Table not included. See ED. NOTE.]

(e) Self-employed surgical assistants who work under the direct control and supervision of a physician [Table not included. See ED. NOTE.]

(f) When a surgeon performs surgery following severe trauma, and the surgeon does not think the fees should be reduced under the multiple surgery rule, the surgeon may request special consideration by the insurer. The surgeon must provide written documentation and justification. Based on the documentation, the insurer may pay for each procedure at 100 percent.

(g) If the surgery is non-elective, the physician is entitled to payment for the initial evaluation of the patient in addition to the global fee for the surgical procedure(s) performed. However, the pre-operative visit for elective surgery is included in the listed global value of the surgical procedure, even if the pre-operative visit is more than one day before surgery.

(4) Radiology Services.

(a) Insurers only have to pay for X-ray films of diagnostic quality that include a report of the findings. Insurers will not pay for 14" x 36" lateral views.

(b) When multiple contiguous areas are examined by computerized axial tomography (CAT) scan, computerized tomography angiography (CTA), magnetic resonance angiography (MRA), or magnetic resonance imaging (MRI), then the technical component must be paid 100 percent for the first area examined and 75 percent for all subsequent areas. These reductions do not apply to the professional component. The reductions apply to multiple studies done within two days, unless the ordering provider provides a reasonable explanation of why the studies needed to be done on separate days.

(5) Pathology and Laboratory Services.

(a) The payment amounts in Appendix B apply only when there is direct physician involvement.

(b) Laboratory fees must be billed in accordance with ORS 676.310. If a physician submits a bill for laboratory services that were performed in an independent laboratory, the bill must show the amount charged by the laboratory and any service fee that the physician charges.

(6) Physical Medicine and Rehabilitation Services.

(a) Time-based CPT® codes must be billed and paid according to this table: [Table not included. See ED. NOTE.]

(b) Except for CPT® codes 97001, 97002, 97003, 97004, 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: Appendices referenced are available from the agency.]

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.248

Hist.: WCD 9-1999, f. 5-27-99, cert. ef. 7-1-99; WCD 2-2000, f. 3-15-00, cert. ef. 4-1-00; WCD 2-2001, f. 3-8-01, cert. ef. 4-1-01; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 6-2003, f. 5-28-03, cert. ef. 7-1-03; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-

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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

Rule Caption: Correction of drafting error in rules governing employer/insurer coverage responsibility

Adm. Order No.: WCD 8-2016

Filed with Sec. of State: 12-22-2016

Certified to be Effective: 1-1-17

Notice Publication Date: 10-1-2016

Rules Amended: 436-050-0180

Subject: The agency has amended OAR 436-050-0180(1)(e) to explain that the director will calculate “incurred but not reported” by applying a loss development factor determined by the director against the employer’s annual incurred losses, not paid losses. Due to a drafting error, this change was not included in rules filed with the Secretary of State on Nov. 28, 2016. The agency’s intent to refer to “incurred” losses was communicated to the rulemaking advisory committee - see minutes dated Sept. 24, 2015.

Rules Coordinator: Fred Bruyns—(503) 947-7717

436-050-0180

Determination of Amount of Self-Insured Employer’s Deposit; Effective Date of Order to Increase Deposit

(1) Indicated security deposit. Except for self-insured cities, counties, or qualified self-insured employer groups who are exempted under ORS 656.407(3) and OAR 436-050-0185, each self-insured employer is required to maintain a security deposit with the director in an amount determined by the director, subject to the following:

(a) The deposit will not be less than the greater of:

(A) \$100,000;

(B) Future claim liability, including losses incurred but not reported (IBNR), a claims processing administrative cost, and the anticipated assessments payable to the director for the employer’s next fiscal year; or

(C) The annual incurred losses for the self-insured employer’s last fiscal year, including IBNR, a claims processing administrative cost, and anticipated assessments payable to the director for the employer’s next fiscal year;

(b) If the employer is applying for self-insurance, the amount of the initial deposit must not be less than the greater of:

(A) The anticipated assessments payable to the director for the employer’s next fiscal year, plus an amount equal to 65 percent of the annual premium the employer would pay if carrier-insured using the applicable occupational base rate premium, as such rate is applied to the anticipated payroll of the employer’s Oregon operations for the employer’s next fiscal year;

(B) \$300,000 plus \$30,000 additional for each \$100,000 the employer’s net worth is below \$2 million; or

(C) The amount of the approved self-insured retention level for the employer’s excess workers’ compensation insurance;

(c) Assessments payable to the director referred to in this section include moneys and assessments due under ORS 656.506, 656.612, and 656.614;

(d) Claims processing administrative costs will be determined by developing a percentage rate to be applied against the employer’s unpaid losses;

(A) The rate will be based on the information contained in Schedule P, Part ID of the Annual Statement for the previous calendar year as reported to the Insurance Commissioner by SAIF Corporation and the 20 private insurers who had the highest earned premium reported for the preceding calendar year; and

(B) The rate will be computed annually to be effective for the subsequent fiscal year. The rate will be 105 percent of the median of ratios determined as follows for each of these insurers:

(i) “Loss expenses unpaid” for losses incurred in the latest eight years, divided by

(ii) “Losses unpaid” for losses incurred in the latest eight years; and

(e) Under this section, “Incurred but not reported” (IBNR) will be calculated by applying a loss development factor determined by the director against the employer’s annual incurred losses.

(2) Financial strength adjustment. If the self-insured employer received a financial strength rating equal to “moderate” under OAR 436-050-0150(5) or 436-050-0260(12), the amount of the deposit determined under section (1) will be increased by the following percentage factors:

(a) 12 total combined points = no change in calculated deposit;

(b) 11 total combined points = no change in calculated deposit;

(c) 10 total combined points = 5%;

(d) 9 total combined points = 10%;

(e) 8 total combined points = 15%; or

(f) 7 total combined points = 20%.

(3) Certified actuarial study. An employer may request for its security deposit amount to be determined based on a recommended loss reserve level established by a certified actuarial study in place of the calculations under sections (1) and (2) of this rule. The director may base an employer’s security deposit amount on a certified actuarial study under the following conditions:

(a) The actuarial study must be certified by an actuary who is a member in good standing of the American Academy of Actuaries;

(b) The actuarial study must be submitted to the director within seven days after the date of the director’s notice establishing the security deposit amount calculated under sections (1) and (2) of this rule;

(c) The actuarial study must include an estimate or range of estimates of future claim liability and state what provisions for adverse claim development are included in these estimates;

(d) The actuarial study must identify the confidence levels associated with the recommended loss reserve level or loss reserve range;

(e) The actuarial study must include a statement of future claim liability, including the employer’s incurred but not reported (IBNR) losses;

(f) Subject to the minimum requirements of ORS 656.407 and this rule, upon the director’s review and acceptance of the study the amount of the employer’s security deposit will be based on:

(A) The actuarially sound recommended loss reserve level if a single estimate is provided; or

(B) The 75% confidence level estimate, if an actuarially sound loss reserve range is provided; and

(g) If there is probable cause to believe the recommended loss reserve level or range is not actuarially sound, the director will determine the security deposit under sections (1) and (2) of this rule. Probable cause includes, but is not limited to:

(A) The actuarial study not containing a statement by the actuary that the recommended loss reserve level or range is actuarially sound;

(B) The actuarial study containing a disclaimer regarding the actuary’s qualifications or ability to determine the adequacy of the loss reserve level for current or future liabilities; or

(C) The recommended loss reserve level or entire recommended loss reserve range being less than the 75 percent confidence level estimate established in the actuarial study.

(4) Additional factors for security deposit amount. In determining the amount of deposit the director will take the following factors into consideration:

(a) The financial ability of the employer to pay compensation and other payments due;

(b) The employer’s probable continuity of operation;

(c) A self-insured employer group’s financial viability, as determined by the director under OAR 436-050-0150 or 436-050-0260;

(d) Retention and limitation levels of the employer’s excess insurance in relation to the employer’s financial status;

(e) Changes in the employer’s business including, but not limited to, mergers or acquisitions, changes in employment level, nature of employment, incurred claims costs, or material growth in self-insured exposure;

(f) The balance of the Self-Insured Employer Adjustment Reserve or the Self-Insured Employer Group Adjustment Reserve; and

(g) The employer’s credit rating issued by a nationally recognized statistical ratings organization;

(5) Time frame for compliance. A self-insured employer must comply with an order of the director to the self-insured employer to increase the amount of its deposit within 30 days of the order. Failure to comply with this rule may result in the assessment of civil penalties, revocation of the employer’s certification of self-insurance, or both.

Stat. Auth.: ORS 656.407, 656.726(4)

Stats. Implemented: ORS 656.407

Hist.: WCB 2-1976(Admin)(Temp), f. & ef. 4-12-76; WCB 3-1976(Admin), f. & ef. 6-15-76; WCD 3-1980(Admin), f. & ef. 4-2-80; WCD 4-1982(Admin), f. 2-10-82, ef. 2-15-82; WCD 7-1983(Admin), f. 12-22-83, ef. 12-27-83; WCD 5-1985(Admin), f. 12-10-85, cert. ef. 1-1-86, Renumbered from 436-051-0320; WCD 9-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 9-1987, f. 12-18-87, ef. 1-1-88; WCD 5-2001, f. 6-22-01, cert. ef. 7-1-01; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04; WCD 6-2012, f. 10-4-12, cert. ef. 1-1-13; WCD 10-2014, f. 8-15-

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14, cert. ef. 9-15-14; WCD 5-2016, f. 11-28-16, cert. ef. 1-1-17; WCD 8-2016, f. 12-22-16, cert. ef. 1-1-17

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Department of Energy
Chapter 330

Rule Caption: Postpones operative date of minimum energy efficiency standards for embedded small battery chargers.

Adm. Order No.: DOE 5-2016

Filed with Sec. of State: 12-21-2016

Certified to be Effective: 12-21-16

Notice Publication Date: 11-1-2016

Rules Amended: 330-092-0015

Subject: The primary purpose of these proposed rule amendments is to postpone for one year the operative date of minimum energy efficiency standards for certain small battery charger systems not sold at retail. The charger systems affected by the postponement are contained completely within a larger product, and provide power for data storage or for continuity within volatile cache or memory systems as well maintaining information for system use, but are not capable of powering full operation of the product when AC mains power is not present. The proposed rule amendments also update the operative dates for other types of battery charger systems to match the effective dates in statute.

Rules Coordinator: Elizabeth Ross—(503) 378-8534

330-092-0015

Effective Dates for Regulated Equipment

(1) The following list specifies the effective dates for equipment for which Oregon minimum energy efficiency standards have been adopted:

(a) Battery charger systems, as defined in ORS 469.229(7): The standards in ORS 469.233(19) are effective for:

(A) Large battery charger systems manufactured on or after January 1, 2014.

(B) Small battery charger systems for sale at retail that are not USB charger systems with a battery capacity of 20 watt-hours or more and that are manufactured on or after January 1, 2014.

(C) Small battery charger systems for sale at retail that are USB charger systems with a battery capacity of 20 watt-hours or more and that are manufactured on or after January 1, 2014.

(D) Except as provided in paragraph (1)(a)(E), small battery charger systems that are not sold at retail that are manufactured on or after January 1, 2017.

(E) The operative date of the minimum energy efficiency standard is postponed until January 1, 2018, for small battery charger systems that are not sold at retail and that are contained completely within a larger product and that:

(i) Provide power for data storage or for continuity within volatile cache or memory systems;

(ii) Maintain information for system use; and

(iii) The battery is not capable of powering full operation of the product when AC mains power is removed.

(F) Inductive charger systems manufactured on or after January 1, 2014, unless the inductive charger system uses less than one watt in battery maintenance mode, less than one watt in no battery mode and an average of one watt or less over the duration of the charge and battery maintenance mode test.

(G) Battery backups and uninterruptible power supplies, manufactured on or after January 1, 2014, for small battery charger systems for sale at retail, which may not consume more than $0.8 + (0.0021 \times Eb)$ watts in battery maintenance mode, where (Eb) is the battery capacity in watt-hours.

(H) Battery backups and uninterruptible power supplies, manufactured on or after January 1, 2014, for small battery charger systems for sale at retail, which may not consume more than $0.8 + (0.0021 \times Eb)$ watts in battery maintenance mode, where (Eb) is the battery capacity in watt-hours.

(b) Bottle-type water dispensers, as defined in ORS 469.229(9): The standards in ORS 469.233(12) are effective September 1, 2009 for sale of equipment in Oregon and September 1, 2010 for installation.

(c) Commercial hot food holding cabinets, as defined in ORS 469.229(13): The standards in ORS 469.233(13) are effective September 1, 2009 for sale of equipment in Oregon and September 1, 2010 for installation.

(d) Commercial refrigerators and freezers, as defined in ORS 469.229(15): The standards in ORS 469.233(4) are effective January 1, 2008 for sale of equipment and January 1, 2009 for installation.

(e) Compact audio products, as defined in ORS 469.229(16): The standards in ORS 469.233(14) are effective September 1, 2009 for sale of equipment in Oregon and September 1, 2010 for installation.

(f) Digital versatile disc players and digital versatile disc recorders, as defined in ORS 469.229(21): The standards in ORS 469.233(15) are effective September 1, 2009 for sale of equipment in Oregon and September 1, 2010 for installation.

(g) High light output double-ended quartz halogen lamps, as defined in Oregon Laws 2013, Chapter 418, Section 2: The standards in Oregon Laws 2013, Chapter 418, Section 4, are effective January 1, 2016, for sale of equipment and installation.

(h) Portable electric spas, as defined in ORS 469.229(32): The standards in ORS 469.233(16) are effective September 1, 2009 for sale of equipment in Oregon and September 1, 2010 for installation.

(i) Televisions, as defined in ORS 469.229(42): The standards in ORS 469.233(18) are effective January 1, 2014, for sale of equipment and installation.

(2) The following equipment is currently federally regulated and not subject to further regulation under ORS 469.229 through 469.261 or these rules:

(a) Automatic commercial ice cube machines as defined in ORS 469.229(2).

(b) Commercial clothes washers, as defined in ORS 469.229(12).

(c) Commercial pre-rinse spray valves, as defined in ORS 469.229(14).

(d) Illuminated exit signs, as defined in ORS 469.229(24).

(e) Incandescent reflector lamps, as defined in ORS 469.229(41).

(g) Metal halide lamp fixtures, as defined by ORS 469.229(28).

(i) Single-voltage external AC to DC power supplies, as defined in ORS 469.229(39).

(h) Torchieres, as defined in ORS 469.229(45).

(j) Traffic signal modules, as defined in ORS 469.229(46).

(k) Unit heaters, as defined in ORS 469.229(47).

(l) Walk-in refrigerators and walk-in freezers, as defined in ORS 469.229(49).

Stat. Auth.: ORS 469.040, 469.255, 469.261, OL 2013, Ch. 418 (SB 692)

Stats. Implemented: ORS 469.229–469.261, OL 2013, Ch. 418

Hist.: DOE 2-2008, f. 2-28-08, cert. ef. 3-1-08; DOE 6-2013, f. 12-23-13, cert. ef. 1-1-14; DOE 5-2016, f. & cert. ef. 12-21-16

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Rule Caption: Update and clarify definitions and requirements for Home Energy Performance Score program.

Adm. Order No.: DOE 6-2016

Filed with Sec. of State: 12-21-2016

Certified to be Effective: 12-21-16

Notice Publication Date: 11-1-2016

Rules Amended: 330-063-0010, 330-063-0015, 330-063-0020, 330-063-0025

Subject: The primary purpose of these proposed rule amendments is to establish the U.S. Department of Energy's (U.S. DOE) Home Energy Score as the standard for home energy performance scoring in Oregon. The proposed rule changes would require that, in order to meet the state standard, a home energy performance report must include the U.S. DOE Home Energy Score, as well as an estimate of total annual energy use, by fuel type, generated by U.S. DOE's Home Energy Scoring Tool. A home energy performance report may also contain a home energy performance score generated by another entity, as long as that score meets certain requirements and has been reviewed by a stakeholder panel and approved by the director of the Oregon Department of Energy. The proposed rules would require home energy performance reports to use average annual retail fuel prices provided by the Oregon Department of Energy in calculating estimates of annual home energy costs. Finally, the proposed rule would require home energy assessors to complete training in the software used to produce the U.S. DOE's Home Energy Score, and to obtain a professional credential recognized by U.S. DOE as a prerequisite to qualify as a Home Energy Score assessor.

Rules Coordinator: Elizabeth Ross—(503) 378-8534

ADMINISTRATIVE RULES

330-063-0010

Definitions

For the purposes of these rules, unless otherwise specified, the following definitions shall apply:

(1) "Asset rating" means a representation of the building's energy efficiency or energy use generated by modeling under standardized weather and occupancy conditions.

(2) "Building" means any enclosed structure created for permanent use as a residence, a place of business, or any other activities whether commercial or noncommercial in character.

(3) "Building energy assessment" means a determination of a building's energy use and energy efficiency by analyzing the building's physical systems and assuming certain operational characteristics.

(4) "Commercial building" means a structure of which more than 50 percent of usable square footage is used or intended for use in the exchange, sale, or storage of goods, or the provision of services.

(5) "Department" means the State Department of Energy created under ORS 469.030.

(6) "Director" means the Director of the State Department of Energy appointed under ORS 469.040.

(7) "Energy performance score system" means a technical and administrative framework for producing and reporting metrics that describe the energy consumption, generation and efficiency of a building.

(8) "Home" means a residential building.

(9) "Home energy assessor" has the meaning given that term in ORS 701.527.

(10) "Home energy performance score" has the meaning given that term in ORS 701.527.

(11) "Home energy performance score system" means an energy performance score system designed and used for residential buildings and which meets the requirements of OAR 330-063-0015(1).

(12) "Operational rating" means a representation of a building's energy use generated by measuring actual energy consumption taking into consideration all physical systems and their operation.

(13) "Physical systems" means any energy-consuming equipment integrated in the building design, function or operation.

(14) "Residential building" has the same meaning as "residential structure" as defined in ORS 701.005.

(15) "Oregon's Home Energy Performance Score Standard" means a standard that meets all requirements in 330-063-0015.

Stat. Auth.: 2009 OL Ch. 750 (SB 79), ORS 469.703 & 469.040
Stats. Implemented: 2009 OL Ch. 750 & 469.703

Hist.: DOE 6-2010, f. & cert. ef. 7-1-10; DOE 5-2014, f. 6-30-14, cert. ef. 7-1-14; DOE 6-2016, f. & cert. ef. 12-21-16

330-063-0015

Home Energy Performance Score System Requirements

(1) A home energy performance score system must:

(a) Generate a home energy performance score that meets the requirements of section (2);

(b) Generate a home energy performance report that meets the requirements of sections (3) through (5);

(c) Incorporate building energy assessment software, the output of which must be used to derive the information presented on the home energy performance report;

(d) Provide or specify required training in the use of the home energy performance score system for home energy assessors; and

(e) Establish minimum performance standards for quality assurance.

(2) A home energy performance score must be an asset rating that is based on physical inspection of the home or design documents used for the home's construction.

(3) A home energy performance report must include the following information:

(a) The U.S. Department of Energy's Home Energy Score and an explanation of the score;

(b) An estimate of the total annual energy used in the home in retail units of energy, by fuel type, generated by the U.S. Department of Energy's Home Energy Scoring Tool;

(c) An estimate of the total annual energy generated by on-site solar electric, wind electric, hydroelectric, and solar water heating systems in retail units of energy, by type of fuel displaced by the generation;

(d) An estimate of the total monthly or annual cost of energy purchased for use in the home in dollars, by fuel type, based on data provided by the Department for the current average annual retail residential energy price of the utility serving the home at the time of the report and the average annual energy prices of non-regulated fuels, by fuel type;

(e) The current average annual utility retail residential energy price in dollars, by fuel type, and the average annual energy prices of non-regulated fuels, by fuel type, provided by the Department and used to determine the costs described in subsection (d) of this section;

(f) At least one comparison home energy performance score that provides context for the range of possible scores. Examples of comparison homes include, but are not limited to, a similar home with Oregon's average energy consumption, the same home built to Oregon energy code, and the same home with certain energy efficiency upgrades.

(g) The name of the entity that assigned the home energy performance score and that entity's Construction Contractors Board license number if such a license is required by law;

(h) The date the building energy assessment was performed; and

(i) For reports that meet all requirements of this division, the statement "This report meets Oregon's Home Energy Performance Score standard." Reports generated by home energy performance score systems that have not been approved for use in Oregon according to OAR 330-063-0020 may not include this statement.

(4) Additional information that may be presented in a home energy performance report includes, but is not limited to:

(a) A home energy performance score described in section (2) that meets the requirements of OAR 330-063-0020, and an explanation of the score;

(b) A list of recommended energy efficiency upgrades for the building;

(c) A hypothetical home energy performance score representing the score the building would be expected to receive upon completion of the energy efficiency upgrades in subsection (4)(b);

(d) The estimated amount of carbon dioxide equivalent (CO₂e) emissions, in metric tons, resulting from the energy used in the home based on the carbon intensity, as reported on the department website, of the electricity provided by the electric utility that serves the home, natural gas and other fuel types used in the home.

(5) A home energy performance report must consist, at a minimum, of either:

(a) a printed document that presents all information required under section (3) on a single side of a single 8.5 by 11 inch page; or

(b) a downloadable electronic document that is formatted for printing and presents all information required under section (3) on a single side of a single 8.5 by 11 inch page.

Stat. Auth.: ORS 469.703 & 469.040

Stats. Implemented: ORS 469.703

Hist.: DOE 5-2014, f. 6-30-14, cert. ef. 7-1-14; DOE 6-2016, f. & cert. ef. 12-21-16

330-063-0020

Review and Approval of a Home Energy Performance Score System

(1)(a) The director will appoint a stakeholder panel to recommend to the director whether to approve home energy performance score systems for use in Oregon.

(b) Members of the stakeholder panel may serve terms up to five years. Members may include but are not limited to:

(A) A chair from the Oregon Department of Energy;

(B) A representative from Energy Trust of Oregon;

(C) A representative from the U.S. Department of Energy;

(D) A representative from a provider of building energy assessment software;

(E) A representative from each home energy performance score system approved for use in Oregon;

(F) A representative from an investor-owned electric utility;

(G) A representative from a consumer-owned electric utility;

(H) A representative from a natural gas utility;

(I) A representative from the residential construction industry;

(J) A representative from the real estate industry;

(K) A representative from the appraisal industry; and

(L) A representative from an entity that provides training for building energy assessments.

(c) In its review of a home energy performance score system, the stakeholder panel must review all required elements of the home energy performance score system listed in OAR 330-063-0015.

(d) The stakeholder panel may recommend to the director criteria for approval of home energy performance score systems, criteria for approval of training and certification programs or work experience, and revisions to OAR 330-063-0015 that specify criteria for content and format of a standard energy metrics label to be included in all home energy performance reports.

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(e) The stakeholder panel may develop a charter and operating procedures. The stakeholder panel must provide its recommendations to the director in writing and must include a description of any dissenting views of panel members. Recommendations should be based on consensus when possible.

(2) Home energy performance score systems must meet the requirements of OAR 330-063-0015, be reviewed by the stakeholder panel and be approved by the director prior to being used to assign home energy performance scores to homes in Oregon.

(a) An entity seeking approval for use of a home energy performance score system in Oregon must submit to the department a written request for review and approval. The request must include:

(A) A copy of or an internet link to the building energy assessment software used by the home energy performance score system;

(B) A sample of the home energy performance report generated by the home energy performance score system;

(C) A copy of test results demonstrating the accuracy of the building energy assessment software used by the home energy performance score system; and

(D) Other information that may be necessary for the stakeholder panel to make a recommendation to the director.

(b) Within 120 days of the department's receipt of a complete request, the stakeholder panel must complete its review of the home energy performance score system and provide its written recommendation to the director. If the stakeholder panel is unable to make a recommendation to the director within 120 days, department staff will make a recommendation to the director.

(c) Within 60 days of the director's receipt of the stakeholder panel's recommendation, the director will decide whether the home energy performance score system is approved for use in Oregon and provide that decision, including reasons for denying approval if approval is denied, in writing to the applicant. In deciding whether to approve a home energy performance score system for use in Oregon, the director will consider:

(A) Whether the system meets the requirements for home energy performance score systems in OAR 330-063-0015;

(B) The recommendation of the stakeholder panel, as well as dissenting views raised by one or more panel members;

(C) The test results of the building energy assessment software used by the home energy performance score system;

(D) The degree and nature of use of the system in the marketplace; and

(E) Any other information the director determines is necessary to make a decision whether to approve.

(3) The provider of a home energy score system that has been approved for use in Oregon must submit to the department a new written request for review and approval every time a substantive revision is made to the approved system. The request for review and approval must include supporting documentation describing the revision. The request will be reviewed by the stakeholder panel and considered for approval by the director according to the process and timelines described in subsections (2)(b) and (c). A home energy performance score system that has undergone a substantive revision may not be used to assign home energy performance scores to homes in Oregon until the director has provided written approval for the use of the revised system. Substantive revisions include significant changes to the building energy assessment methodology, significant changes to the derivation of the home energy performance score or the scale on which it is presented, and significant changes to the training and quality assurance requirements for home energy assessors.

(4) The department may, at any time, request from the provider of an energy performance score system documentation demonstrating that no substantive revisions have been made to the home energy performance score system since the system was last approved for use in Oregon. The provider must comply with the department's request within 60 days. If the provider cannot demonstrate that no substantive revisions have been made to the system since it was last approved, the provider must submit to the department a written request for review and approval that includes documentation describing the revisions. The request will be reviewed by the stakeholder panel and considered for approval by the director according to the process and timelines described in subsections (2)(b) and (c). The system may not be used to assign home energy performance scores to homes in Oregon until the director has provided written approval.

Stat. Auth.: 2009 OL Ch. 750 (SB 79), ORS 469.703 & 469.040

Stats. Implemented: 2009 OL Ch. 750 & ORS 469.703

Hist.: DOE 6-2010, f. & cert. ef. 7-1-10; DOE 5-2014, f. 6-30-14, cert. ef. 7-1-14; DOE 6-2016, f. & cert. ef. 12-21-16

330-063-0025

Training Requirements for Home Energy Assessors

Individuals producing home energy performance scores must:

(1) Be certified as a home energy assessor by the Oregon Construction Contractors Board if required by ORS 701.529;

(2) Have completed training in the software program used to produce the U.S. Department of Energy's Home Energy Score; and

(3) Have successfully completed one of the following training and certification programs:

(a) Training and certification as a Building Performance Institute Building Analyst or Home Energy Professional Energy Auditor;

(b) Training and certification from the Residential Energy Services Network as a Home Energy Rater;

(c) Training and certification from the Oregon Training Institute as a Residential Energy Analyst;

(d) A professional credential recognized by the U.S. Department of Energy as a prerequisite for qualification as a Home Energy Score assessor; or

(e) Other training and certification program or work experience approved by the department. Requests for such approval must be submitted to the department in writing. The department may request information about the training and certification program or work experience from the requestor and will provide an approval decision to the requestor within 120 days of receipt of all requested information.

Stat. Auth.: ORS 469.703 & 469.040

Stats. Implemented: ORS 469.703

Hist.: DOE 5-2014, f. 6-30-14, cert. ef. 7-1-14; DOE 6-2016, f. & cert. ef. 12-21-16

Rule Caption: Establishes process to issue renewable energy certificates for thermal energy from biomass-based electricity generation.

Adm. Order No.: DOE 7-2016

Filed with Sec. of State: 12-21-2016

Certified to be Effective: 12-21-16

Notice Publication Date: 10-1-2016

Rules Adopted: 330-160-0080, 330-160-0090

Rules Amended: 330-160-0015, 330-160-0030, 330-160-0035

Subject: The primary purpose of these proposed rules is to implement Senate Bill 1547 (2016), Oregon Laws 2016 chapter 28, which requires the Oregon Department of Energy to establish a system for issuing renewable energy certificates for facilities generating electricity using biomass that also generate thermal energy for a secondary purpose. The proposed rules add definitions related to thermal renewable energy certificates; specify eligible facilities and qualifying thermal energy; and provide requirements for metering, monitoring and reporting of qualifying thermal energy.

Rules Coordinator: Elizabeth Ross—(503) 378-8534

330-160-0015

Definitions

For the purposes of Oregon Administrative Rules, chapter 330, division 160, the following definitions apply unless the context requires otherwise:

(1) "Banked Renewable Energy Certificate" has the meaning in ORS 469A.005.

(2) "Bundled Renewable Energy Certificate" has the meaning in ORS 469A.005.

(3) "Compliance Year" has the meaning in ORS 469A.005.

(4) "Department" means the Oregon Department of Energy.

(5) "Director" means the Director of the Oregon Department of Energy.

(6) "Electricity Service Supplier" has the meaning in ORS 469A.005.

(7) "Electric Utility" has the meaning in ORS 469A.005.

(8) "Federal Columbia River Power System" (FCRPS) means the transmission system constructed and operated by Bonneville Power Administration (BPA) and the hydroelectric dams constructed and operated by the U.S. Army Corps of Engineers and the Bureau of Reclamation in Oregon, Washington, Montana and Idaho.

(9) "Generator representative" means an electricity generating facility's owner, operator or WREGIS account holder.

(10) "High Water Mark Contract" means a power sales contract between a consumer-owned utility and BPA that contains a contract high water mark, and under which the utility purchases power from BPA at rates established by BPA in accordance with the tiered rate methodology.

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(11) "Joint Operating Entity" means an entity that was lawfully organized under State law as a public body or cooperative prior to September 22, 2000, and is formed by and whose members or participants are two or more public bodies or cooperatives, each of which was a customer of BPA on or before January 1, 1999.

(12) "Multiple-fuel facility" means a facility that is capable of generating electricity using more than one type of fuel. A facility that uses fossil fuel for generator start-up but otherwise uses a single eligible resource and is not required to register in WREGIS as a multi-fuel generating unit, as defined by WREGIS, is not a multiple-fuel facility.

(13) "Oregon's share" as used in ORS 469A.020(3), means the portion of Federal Columbia River Power System generation attributable to the Oregon load of hydroelectric efficiency upgrades that BPA provides to:

(a) Each consumer-owned utility serving load located in Oregon, pursuant to a High Water Mark Contract;

(b) Each Joint Operating Entity with retail utility members serving load located in Oregon, pursuant to a High Water Mark Contract; and

(c) Each investor-owned utility participating in the Residential Exchange Program that serves load located in Oregon.

(14) "Qualifying Electricity" has the meaning in ORS 469A.005.

(15) "Qualifying thermal energy" means thermal energy that meets the requirements of OAR 330-160-0080.

(16) "Renewable Energy Certificate" (REC or Certificate) means a unique representation of the environmental, economic, and social benefits associated with the generation of electricity from renewable energy sources that produce Qualifying Electricity. One Certificate is created in association with the generation of one MegaWatt-hour (MWh) of Qualifying Electricity. While a Certificate is always directly associated with the generation of one MWh of electricity, transactions for Certificates may be conducted independently of transactions for the associated electricity.

(17) "Renewable Energy Source" has the meaning in ORS 469A.005.

(18) "Residential Exchange Program" means the arrangement, based on section 5(c) of the Pacific Northwest Electric Power Planning and Conservation Act, whereby regional utilities sell BPA an amount of power equal to their residential and small-farm load at their average system cost in exchange for federal electric power, and pass on the benefits to their residential and small-farm customers in the form of a bill credit.

(19) "RPS" means the Oregon renewable portfolio standard as established in ORS 469A.

(20) "Secondary purpose" means an end use for thermal energy that:

(a) Is for heating, cooling, humidity control, or mechanical or chemical work; and

(b) For which fuel or electricity would otherwise be consumed.

(21) "Station service" means the energy that is used to operate an electric or thermal generating plant. It includes energy consumed for plant lighting, power, and auxiliary facilities in support of the electricity generation system. Station service includes thermal energy used to process the facility's fuel.

(22) "Stranded electricity" means qualifying electricity that:

(a) Was generated between January 1, 2007, and March 4, 2011, by a generating unit that was registered in WREGIS on or before March 4, 2011; and

(b) Was reported to the Department on or before March 11, 2011.

(23) "Stranded thermal energy" means qualifying thermal energy that:

(a) Was generated between March 8, 2016 and the effective date of this rule;

(b) Was generated by a facility that was registered for thermal generation in WREGIS on or before August 1, 2017;

(c) Was generated by a facility for which an application for certification as Oregon RPS-eligible was submitted to the Department on or before August 1, 2017; and

(d) Was reported to WREGIS no later than six months after the application for certification as Oregon RPS-eligible was approved by the Department.

(24) "Thermal Renewable Energy Certificate" (T-REC) means a REC created in association with the generation of 3,412,000 British thermal units of qualifying thermal energy, which is equivalent to one REC created in association with the generation of one megawatt hour of Qualifying Electricity.

(25) "Unbundled Renewable Energy Certificate" has the meaning in ORS 469A.005.

(26) "Vintage" means the month and year that qualifying electricity was created in accordance with WREGIS protocol.

(27) "WREGIS" means the Western Renewable Energy Generation Information System, which is the renewable energy certificate tracking and

reporting system established by the California Energy Commission and the Western Governors' Association and governed by the Western Electricity Coordinating Council for use by states and provinces throughout the western power interconnection.

Stat. Auth.: ORS 469A.130

Stats. Implemented: ORS 469A.130 - 469A.145

Hist.: DOE 6-2008, f. & cert. ef. 9-3-08; DOE 11-2010(Temp), f. & cert. ef. 8-31-10 thru 2-26-11; DOE 1-2011, f. & cert. ef. 2-22-11; DOE 2-2011, f. & cert. ef. 3-4-11; DOE 11-2012, f. & cert. ef. 11-14-12; DOE 1-2014, f. & cert. ef. 2-10-14; DOE 7-2016, f. & cert. ef. 12-21-16

330-160-0030

Allowed Vintage of Renewable Energy Certificates

(1) The system of renewable energy certificates established through this rule may be used to comply with or participate in the Oregon RPS through the use of Certificates with a vintage of January 2007 or later.

(2) No renewable energy certificate that derives from the WREGIS renewable energy certificate system with a vintage before January 2007 will be eligible for compliance with the Oregon RPS.

(3) Banked renewable energy certificates with a vintage of January 2007 or later, both bundled and unbundled, may be held for future use within the WREGIS renewable energy certificate system to comply with the Oregon RPS.

(4) Generating facilities that produce qualifying electricity shall be eligible to receive certificates associated with generation beginning on January 1, 2007.

(5) Renewable energy certificates created by WREGIS that are associated with stranded electricity or with stranded thermal energy may be used to comply with the Oregon RPS.

(6) Generating facilities that meet the requirements of OAR 330-160-0080 and that produce qualifying thermal energy shall be eligible to receive T-RECs associated with generation on or after March 8, 2016.

Stat. Auth.: ORS 469A.130

Stats. Implemented: ORS 469A.130

Hist.: DOE 6-2008, f. & cert. ef. 9-3-08; DOE 2-2011, f. & cert. ef. 3-4-11; DOE 1-2014, f. & cert. ef. 2-10-14; DOE 7-2016, f. & cert. ef. 12-21-16

330-160-0035

Application Process

(1) To apply for certification by the Department that electricity or thermal energy from a generating facility qualifies for the Oregon RPS, the generator representative must submit to the Department a completed general application form and, for hydroelectric, hydro efficiency, hydrogen, biomass, multiple-fuel facilities, and thermal energy the applicable supplemental form available on the Department's website. Thermal energy applications must also include a thermal energy measurement plan as described in OAR 330-160-0090.

(2) The Department may require from the applicant supporting documentation such as photographs of the facility, records of generating equipment purchases, records of installation or service work orders, and an explanation of the relationship between the applicant and the WREGIS account holder.

(3) The Department will determine whether the facility meets the requirements in ORS 469A.010 to 469A.025 and these rules for generating qualifying electricity or qualifying thermal energy and will provide written notification of its determination to the applicant.

(a) If the Department determines that the facility meets the requirements for generating qualifying electricity or qualifying thermal energy, it will certify the facility as Oregon RPS-eligible in WREGIS and provide the Oregon RPS certification number and the first eligible REC vintage date in writing to the applicant.

(b) If the Department determines that the facility does not meet the requirements for generating qualifying electricity or qualifying thermal energy, it will provide the reasons for its determination in writing to the applicant.

(c) If the Department lacks information necessary to make a determination, it will not certify the facility in WREGIS and will provide the reasons it is unable to make a determination in writing to the applicant.

Stat. Auth.: ORS 469A.130

Stats. Implemented: ORS 469A.130 - 469A.145

Hist.: DOE 1-2014, f. & cert. ef. 2-10-14; DOE 7-2016, f. & cert. ef. 12-21-16

330-160-0080

Thermal Energy from the Generation of Electricity Using Biomass

(1) T-RECs may be used to comply with the Oregon RPS if they are created in association with the generation of qualifying thermal energy that is generated in a facility that meets the requirements of Section (3) of this

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rule and generated in a manner that meets the requirements of Section (4) of this rule.

(2) Qualifying thermal energy must be in the form of direct heat, steam, hot water, or other useful thermal form.

(3) Facility Requirements:

(a) The facility must generate electricity from renewable biomass sources listed under ORS 469A.025(2) and must also generate thermal energy for a secondary purpose;

(b) The age of the facility must meet the requirements of ORS 469A.020;

(c) The location of the facility must meet the requirements of ORS 469A.135(2); and

(d) The facility's electric generator must have a rated capacity of at least 10 percent of the energy content of the fuel input.

(4) Manner of Generation:

(a) The thermal energy must be generated as a byproduct of the generation of electricity using biomass sources listed under ORS 469A.025(2). For multiple-fuel facilities, only the portion of thermal energy that is generated from eligible biomass sources is eligible for the generation of T-RECs, in accordance with OAR 330-160-0060; and

(b) The thermal energy must be used for a "secondary purpose," as defined in OAR 330-160-0015.

(5) Thermal energy may not be used to comply with the Oregon RPS if:

(a) It is used for "station service," as defined in OAR 330-160-0015;

(b) It is returned to the biomass conversion device that initially created the eligible thermal resource;

(c) It bypasses the electricity production device; or

(d) It is generated while the electricity production equipment is out of service.

Stat. Auth.: ORS 469.040, 469A.130, OL 2016, Ch. 28

Stats. Implemented: ORS 469A.010 - 469A.025, 469A-130 - 469A.145, OL 2016, Ch. 28

Hist.: DOE 7-2016, f. & cert. ef. 12-21-16

330-160-0090

Metering, Monitoring, and Reporting of Qualifying Thermal Energy

In order to be eligible to generate T-RECs, a facility must meet all the requirements of this Rule. Qualifying thermal energy must be measured, monitored, and reported using the following methods:

(1) Metering:

(a) Large facilities: For facilities with the capacity to generate one or more T-RECs per hour of operation (3.412 million Btu/hr), the generator representative must have installed a thermal energy measurement system to continually measure qualifying thermal energy. The thermal energy delivered to the secondary purpose must be metered. All parameters needed to determine thermal energy to the secondary purpose must be directly measured.

(b) Small facilities: For facilities with the capacity to generate less than one T-REC per hour of operation (3.412 million Btu/hr), the generator representative must have installed a thermal energy measurement system to measure qualifying thermal energy delivered to the secondary purpose. Calculation parameters, such as heat capacity, and directly measured parameters, such as temperature and pressure, that do not vary more than +/-2% for the full range of expected operating conditions, may be evaluated on an annual basis and used in the calculation methodology as a constant. These parameters may be based on such sources as manufacturers' published ratings or one-time measurements, but must be clearly defined and explained in the thermal energy measurement plan required under Subsection(e). All other parameters used to determine the amount of qualifying thermal energy must be continually measured. The generator representative must assess the significance of the potential error that the methodology parameters have on the total annual quantity of qualifying thermal energy and include this analysis in the thermal energy measurement plan. The generator representative must also submit to the Department for approval in the thermal energy measurement plan an appropriate discount factor to be applied to the qualifying thermal energy calculation methodology, and the Department may revise this discount factor as it considers appropriate to account for variance due to parameters that are not continually measured.

(c) The thermal energy measurement system must capture sufficient data, and make necessary calculations or provide all necessary data for calculations to be made using standard engineering calculation procedures, to determine the net thermal energy used by the secondary purpose over an interval specified in the thermal energy measurement plan.

(d) Measurement system components must be installed in accordance with the manufacturer's specifications.

(e) The generator representative must submit to the Department a thermal energy measurement plan that describes the thermal energy generating equipment, secondary purposes, data measurements to be collected, all associated measurement devices, data formats and storage, data gathering techniques, measurement system calibration, calculation methodology, discount factors, and other relevant equipment and activities that will be used to determine the quantity of qualifying thermal energy. The generator representative must also submit all necessary documentation, including drawings, specifications, piping and instrumentation diagrams, and other information as requested by the Department for system review. The thermal energy measurement system must be reviewed and approved by the Department as part of the certification of a facility as Oregon RPS-eligible.

(f) The generator representative must submit an updated measurement plan and documentation for review and approval to the Department upon the following:

(A) Changes in the configuration of the thermal energy measurement system;

(B) Installation or removal of thermal energy measurement system components;

(C) Installation of new thermal energy generation equipment or changes in thermal energy generation capacity; or

(D) Installation or removal of secondary purpose equipment, changes to secondary purpose use, or changes the secondary purpose maximum thermal energy demand;

(E) Observations that indicate the thermal energy measurement system is not performing in accordance with the thermal energy measurement plan.

(2) Monitoring

(a) Where continual measurements are required to determine the quantity of qualifying thermal energy, the generator representative must take data readings at least once per hour or more frequently as necessary to capture irregular or frequently varying parameters. For all facilities, the qualifying thermal energy produced shall be totaled for each 24 hour period, each month, and each quarter.

(b) The generator representative must retain measured data and related thermal energy calculations on-site for 5 calendar years and make records available for audit as required by the Department.

(c) Prior to measuring qualifying thermal energy for the purpose of generating T-RECs, the generator representative must perform, or have performed, an initial calibration of the thermal energy measurement system and all associated measurement devices, or demonstrate that a calibration has been performed as specified by system component manufacturers or within the last 365 days of the application date for certification as Oregon RPS-eligible. All measurement devices shall be recalibrated annually or as specified by system component manufacturers to maintain specified accuracy. Calibrations must be performed using the calibration procedures specified by the meter manufacturer, calibration methods published by a consensus-based standards organization, or other industry accepted practice.

(d) Individuals designing, installing, operating, and maintaining the thermal energy measurement system must have appropriate training and certification. The generator representative must maintain documentation of maintenance and calibration activities.

(3) Reporting must be conducted in accordance with all WREGIS reporting requirements.

Stat. Auth.: ORS 469.040, 469A.130, OL 2016, Ch. 28

Stats. Implemented: ORS 469A.010 - 469A.025, 469A-130 - 469A.145, OL 2016, Ch. 28

Hist.: DOE 7-2016, f. & cert. ef. 12-21-16

Rule Caption: Amending Residential Energy Tax Credit rules, rate chart, and sunset provisions.

Adm. Order No.: DOE 8-2016

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Certified to be Effective: 1-1-17

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Rules Amended: 330-070-0010, 330-070-0013, 330-070-0014, 330-070-0022, 330-070-0024, 330-070-0025, 330-070-0026, 330-070-0027, 330-070-0029, 330-070-0060, 330-070-0073

Subject: These permanent rule amendments for the Residential Energy Tax Credit program make program updates, including provisions for the program's sunset. The RETC program sunsets at the end of tax year 2017. The rule amendments include reducing the solar photovoltaic incentive based on market conditions, updating the tax credit calculation for solar radiation for domestic water heating and swimming pool heating systems, adding a lower eligibility tier

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for storage gas water heater devices, clarifying what is included for the eligible cost of the device, updating the photovoltaic solar site assessment method and timelines for the program's sunset. There are also general updates to the tax credit rate chart.

Rules Coordinator: Elizabeth Ross—(503) 378-8534

330-070-0010

Purpose

(1) The department will grant or deny tax credits in accordance with ORS 469B.100 through 469B.118 and ORS 316.116 which allow tax credits for Alternative Energy Devices (AEDs).

(2) These rules establish the criteria and standards for issuance of tax credits for AEDs. None of these rules replace any building code requirements.

(3) All decisions made by the department regarding AED eligibility, approval of tax-credit technician status, complaints regarding performance of tax-credit technicians, revocation of tax-credit technician status and other matters relating to the administration of this program after the effective date of these rules will be made consistent with the criteria and standards contained in these rules.

(4) The amendments to these rules apply to AEDs purchased on or after January 1, 2017.

Stat. Auth.: ORS 469.040, 469B.103

Stats. Implemented: ORS 469B.100-469B.118, 316.116

Hist.: DOE 12(Temp), f. & ef. 10-14-77; DOE 3-1978, f. & ef. 3-7-78; DOE 5-1978, f. & ef. 9-27-78; DOE 6-1979, f. & ef. 11-13-79; DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-1990; DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2000, f. 12-29-00, cert. ef. 1-1-01; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2006, f. 12-29-06, cert. ef. 1-1-07; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 7-2008, f. 10-31-08, cert. ef. 11-1-08; DOE 7-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13; DOE 8-2014, f. 11-18-14, cert. ef. 1-1-15; DOE 6-2015, f. 11-9-15, cert. ef. 1-1-16; DOE 8-2016, f. 12-29-16, cert. ef. 1-1-17

330-070-0013

Definitions

For the purposes of Oregon Administrative Rules, chapter 330, division 70 the following definitions apply unless the context requires otherwise:

(1) "Alternative Energy Device" (AED) — has the meaning provided in ORS 469B.100 and includes a category one alternative energy device or a category two alternative energy device.

(2) "Alternative Fuel" — means any fuel other than gasoline or diesel oil such as electricity, natural gas, ethanol, methanol, propane, and any other fuel approved by the Director.

(3) "Alternative Fuel Device" — has the meaning provided in ORS 469B.100, and includes a facility for mixing, storing, compressing or dispensing fuels for alternative fuel vehicles, and any other necessary and reasonable equipment. Does not include the purchase of an alternative fuel vehicle.

(4) "Annual Fuel Utilization Efficiency" (AFUE) — means a thermal efficiency measurement of combustion equipment like furnaces, boilers, and water heaters. The AFUE differs from the true 'thermal efficiency' in that it is not a steady-state, peak measure of conversion efficiency, but instead attempts to represent the actual, season-long, average efficiency of that piece of equipment.

(5) "Applicant" — means an individual, estate or trust subject to tax under ORS chapter 316, who applies for a residential energy tax credit under this division of rules.

(6) "British Thermal Unit" (Btu) — means a unit of energy. One Btu is the amount of heat required to raise the temperature of one pound of water by one degree Fahrenheit.

(7) "Coefficient of Performance" (COP) — means the measurement of how efficiently a heating or cooling system (particularly a heat pump in its heating mode) will operate at a given outdoor temperature condition. The ratio calculated by dividing the usable output energy by the electrical input energy. Both energy values must be expressed in equivalent units.

(8) "Department" — means the Oregon Department of Energy, unless specified otherwise.

(9) "Domestic Water Heating" — has the meaning provided in ORS 469B.100 and does not include space heating systems.

(10) "Dwelling" — has the meaning provided in ORS 469B.100.

(a) Dwelling includes, but is not limited to, a single-family residence or an individual unit within multiple unit residential housing.

(b) Dwelling does not include a mobile home or recreational vehicle as defined in ORS 446.003.

(11) "Energy-Efficient Appliance" — has the meaning provided in ORS 469B.100, which includes emerging technologies that exceed code or standards as specified in ORS 469B.100 and these rules.

(12) "Energy Factor" (EF) — means a metric used to compare relative efficiencies of water heaters. The higher the EF is, the more efficient the water heater. EF is determined by the USDOE test procedure, Code of Federal Regulations, Title 10, Section 430.

(13) "Energy Use Index" (EUI) — means an index used for Energy Recovery Ventilators (ERV) or Heat Recovery Ventilators (HRV) to determine its electric efficiency, and calculated by dividing a model's power consumption, in watts, by the net supply air delivered, in cubic feet per minute (cfm), while the unit is operating in the lowest speed for which performance data is provided in the Home Ventilating Institute (HVI) Directory.

(14) "Fireplace Efficiency (FE)" — means a measure of a natural gas or propane fireplace's energy efficiency performance over an entire heating season and is expressed as a percentage. The higher the rating, the more efficient the unit. The testing method used to establish Fireplace Efficiency is CAN/CSA-P4.1-09 (R2014).

(15) "First Year Energy Savings" — means the first year energy yield as defined in ORS 469B.100. Energy savings is calculated under average conditions by an AED in 12 consecutive months of typical operation.

(16) "Fuel Cell Stack" — means the portion of a fuel cell system where the electrochemical reactions take place, generally consisting of an anode, an electrolyte, and a cathode and supporting systems bringing fuel to the stack and carrying away the electricity, electrochemical products and thermal energy generated.

(17) "Fuel Cell System" — means a system for producing electricity electrochemically and non-reversibly, using a hydrogen rich fuel and oxygen, and producing an electric current, water, and thermal energy.

(18) "Geothermal System" — means a heating and air-conditioning system, earth-coupled heat pump, geothermal heat pump or ground loop AED.

(19) "Heating Season Performance Factor" (HSPF) — means the measurement of how efficiently a heat pump will operate in a heat mode over an entire normal heating season. HSPF is measured according to test procedures defined by Air-Conditioning, Heating, and Refrigeration Institute (AHRI) in its Standard 210/240 as well as American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standard 116 and the USDOE Test Procedure in 10 CFR; Part 430, Appendix M.

(20) "Ineligible Costs" — means the costs not allowed for determining the tax credit, including, but not limited to, finance charges, maintenance costs, service contracts, or extended warranty.

(21) "Operating Guidelines" (OG) — means the guidelines developed by the Solar Rating and Certification Corporation (SRCC) including system performance or component characteristics defined by SRCC in its directory.

(22) "Operational Date" — means the date when final inspection is completed by a local jurisdiction for an AED and the AED is fully operational.

(23) "Owner-Built" — means an AED that is assembled and installed on an owner's property and with an owner's labor only.

(24) "Passive" — means a solar AED that relies on heated liquid or air rising to collect, store and move heat without assistance from any mechanical devices.

(25) "Passive Solar Space Heating" — means a system or building design that collects and stores solar energy received directly through south facing windows. The system/design is without powered moving parts and includes provisions to collect, store and distribute the sun's energy using only convection, radiation and conduction of energy.

(26) "Pass-through Amount" — means the sum, equal to the present value of the credit, paid to an eligible AED owner in exchange for the right to claim the tax credit. The present value of the tax credit will be determined periodically by the Director.

(27) "Pass-through Partner" — means an individual, estate or trust subject to tax under ORS chapter 316 that pays the pass-through amount to an applicant and receives the tax credit in place of the applicant.

(28) "Pass-through Verification" — means a determination based on information collected by the department that the approved pass-through amount has been provided, that the applicant has relinquished any claim to the tax credit and has assigned the credit to the pass-through partner.

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(29) “Photovoltaic System” — means a complete solar electric power system capable of delivering power to either the main or sub-panel in a dwelling. Necessary components include solar electric modules, inverter, mounting system, and disconnection equipment.

(30) “PowerClerk” — means an online incentive application processing tool used in processing residential photovoltaic system applications.

(31) “Premium Efficiency Biomass Combustion Device” — means any device that burns wood, compressed wood or other non-gaseous or non-liquid solid fuels of 100 percent organic origin for aesthetic or space-heating purposes.

(32) “Purchase Date” — means the date when the first down payment is made by the applicant on a contract or invoice for an AED. The applicant must provide confirmation of the purchase date to the department.

(33) “Sealed Duct System” — means a forced air duct system that has been repaired or constructed for premium efficiency. For purposes of the tax credit, sealed duct systems are considered energy-efficient appliances.

(34) “Sensible Recovery Efficiency” (SRE) — means, in an HRV or ERV, the measurable (sensible) energy recovered to the ventilation supply air stream minus supply fan and preheat coil energy use divided by the total sensible energy being exhausted plus exhaust fan energy. This measure of efficiency accounts for the effects of cross leakage between air streams, purchased energy for fan controls, and defrost system energy use.

(35) “Solar Domestic Water Heating System” — means any configuration of plumbing equipment and components to collect, convey, store and convert the sun’s energy for the purpose of heating water.

(36) “Solar Electric AC Module” — means a solar photovoltaic module coupled with a utility interactive inverter (i.e. micro inverter). The combined system must be Underwriters Laboratory (UL) listed and meet all current Institute of Electronic and Electrical Engineers (IEEE) 929 requirements.

(37) “Solar Labor Costs” — means the cost of labor necessary for the installation of a solar powered AED.

(38) “Solar Material Costs” — means the total cost of all parts necessary for the installation of a solar powered AED.

(39) “Solar Site Assessment” — means a form or report issued or approved by the department, and completed, signed and dated by a tax-credit technician demonstrating the Total Solar Resource Fraction (TSRF) at the site of the solar thermal collector(s) or photovoltaic array. The assessment must represent the point on the array with the lowest TSRF, depict whether any plant life near the array is made up of evergreen or deciduous trees and estimate the effects of 20 years future plant growth.

(40) “Standard Test Conditions” (STC) — As applicable to photovoltaic panels, means 25 degrees Celsius cell temperature and 1000 watts per square meter (W/m²).

(41) “System Certification” — means the certification that an AED as described in an application for tax credit meets all criteria for the tax credit.

(42) “System Cost” — means the costs allowed for determining the tax credit, include material cost, labor cost, and costs for design and acquisition.

(43) “Tax-Credit Technician” (TCT) — means a person who has received a “contractor system certification” as used in ORS 469B.106(5). A technician who has been approved by the department to implement the tax credit program. A tax-credit technician is responsible for assuring that AEDs are installed in accordance with the department’s rules and must verify system installation quality and performance.

(44) “Thermal Efficiency” (TE) — means the performance measurement of the output energy divided by the input energy in a system. Thermal efficiency indicates how well an energy conversion or transfer process is accomplished.

(45) “Third-party” — means the owner, or the owner’s representative, of the alternative energy device for the duration of the third-party agreement.

(46) “Third-party alternative energy device installation” — has the definition given in ORS 469B.100.

(47) “Total Solar Resource Fraction” (TSRF) — means the fraction of usable solar energy that is received by the solar panel/collector throughout the year, which accounts for impacts due to external shading, collector tilt and collector orientation.

(48) “Uncertified Woodstove” — means a solid fuel burning device that burns wood, coal or other nongaseous or non-liquid fuels for aesthetic, space-heating or water heating purposes that has not been certified as meeting emission performance standards set by the U.S. Environmental Protection Agency.

Stat. Auth.: ORS 469.040, 469B.103, 469B.106, 316.116
Stats. Implemented: ORS 469B.100-469B.118, 316.116

Hist.: DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88, Renumbered from 330-070-0023; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2000, f. 12-29-00, cert. ef. 1-1-01; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2006, f. 12-29-06, cert. ef. 1-1-07; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 7-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13; DOE 8-2014, f. 11-18-14, cert. ef. 1-1-15; DOE 6-2015, f. 11-9-15, cert. ef. 1-1-16; DOE 8-2016, f. 12-29-16, cert. ef. 1-1-17

330-070-0014

Pass-Through Eligibility

(1) An individual, estate or trust subject to tax under ORS chapter 316 that pays the present value to purchase the approved tax credit from the applicant may be eligible to claim the tax credit in place of the applicant.

(2) In accordance with ORS 469B.106(10), the department establishes the following rates for calculating the present value of the tax credit:

(a) For tax credits greater than \$1,500 the present value is 90 percent of the tax credit amount.

(b) For tax credits less than \$1,500 the present value is 95 percent of the tax credit amount.

(3) The department will issue a credit certificate to the pass through partner when the applicant confirms receipt of an amount equal to the present value of the tax credit and relinquishes any claim to the credit.

(4) A tax credit may be transferred or sold only once.

(5) A tax credit may not be transferred in portions. Only the whole tax credit amount may be transferred.

(6) The department must receive a pass-through application on or before June 1, 2018.

Stat. Auth.: ORS 469.040, 469B.106, 469B.109
Stats. Implemented: ORS 469B.100-469B.118, 316.116

Hist.: DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13; DOE 8-2013, f. 12-27-13, cert. ef. 1-1-14; DOE 9-2014, f. 12-29-14, cert. ef. 1-1-15; DOE 6-2015, f. 11-9-15, cert. ef. 1-1-16; DOE 8-2016, f. 12-29-16, cert. ef. 1-1-17

330-070-0022

Amount of Tax Credit

(1) The amount of the AED tax credit is based on the first-year energy savings of an eligible AED. The department has determined first-year energy savings estimates for eligible AEDs and associated tax credit amounts, which are listed in the RETC Rate Chart. The energy savings basis for a solar tax credit may be adjusted by the department to account for less than optimal solar access.

(2) The amount of the AED tax credit may not exceed the lesser of:

(a) For AEDs used for space heating, cooling, electrical energy or domestic water heating, other than an AED using solar radiation for domestic water heating or electric heat pump water heater, \$1,500 or the first-year energy savings of the AED in kWh multiplied by 60 cents. The amount of the credit may not exceed 50 percent of the cost of the AED and materials directly associated with the installation or construction of the AED.

(b) For electric heat pump water heaters rated as a Northern Climate Specification Product Tier 1, \$1,500 or the first-year energy savings of the AED in kWh multiplied by 28 cents. The amount of the credit may not exceed 50 percent of the cost of the AED and materials directly associated with the installation or construction of the AED.

(c) For electric heat pump water heaters rated as a Northern Climate Specification Product Tier 2 or greater, \$1,500 or the first-year energy savings of the AED in kWh multiplied by 38 cents. The amount of the credit may not exceed 50 percent of the cost of the AED and materials directly associated with the installation or construction of the AED.

(d) For AEDs that use solar radiation for domestic water heating:

(A) The incentive rate is based on when the system is certified as operational as of the date of the final inspection:

(i) Before September 1, 2015, \$1,500 or the first-year energy savings of the AED in kWh multiplied by 60 cents. The amount of the credit may not exceed 100 percent of the cost of the system components and their installation.

(ii) On or after September 1, 2015 and for tax years beginning on or after January 1, 2015, the first-year energy savings of the AED in kWh multiplied by \$2.00, or 50 percent of the cost of the system components and their installation, not to exceed \$6,000. The maximum credit claimed per year may not exceed \$1,500.

(B) The tax credit is calculated:

(i) Prior to September 1, 2015, by multiplying the Solar Rating and Certification Corporation (SRCC) savings estimate for the appropriate

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zone, times the Total Solar Resource Fraction (TSRF), times the incentive rate.

(ii) On or after September 1, 2015, by multiplying the Solar Rating and Certification Corporation (SRCC) savings estimate for the appropriate zone times the incentive rate.

(e) For AEDs used for swimming pool, spa or hot tub heating, other than an AED using solar radiation for swimming pool heating, the first-year energy savings of the AED in kWh multiplied by 15 cents, up to 50 percent of the eligible cost of the AED, including the cost of materials directly associated with the installation or construction of the AED and their installation, or \$1,500.

(f) For AEDs using solar radiation for swimming pool heating:

(A) The incentive rate is based on when the system is certified as operational as of the operational date reported on the RETC application form:

(i) Before September 1, 2015, the first-year energy savings of the AED in kWh multiplied by 15 cents, up to 50 percent of the eligible cost of the system components and their installation, or \$1,500.

(ii) On or after September 1, 2015 and for tax years beginning on or after January 1, 2015, the first-year energy savings of the AED in kWh multiplied by \$0.20, or 50 percent of the cost of the system components and their installation, not to exceed \$2,500. The maximum credit claimed per year may not exceed \$1,500.

(B) The tax credit is calculated by multiplying the collector area in square feet, times the number of collectors, times the solar output by zone, times the incentive rate.

(C) The solar output by zone is:

(i) 30 kWh/ft² for systems located in Zone 1 which is areas not in Zone 4 of the following counties: Benton, Clackamas, Clatsop, Columbia, Lane, Lincoln, Linn, Marion, Multnomah, Polk, Tillamook, Washington and Yamhill.

(ii) 30 kWh/ft² for systems located in Zone 2 which is areas not in Zone 4 of the following counties: Coos, Curry, Douglas, Jackson and Josephine.

(iii) 35 kWh/ft² for systems located in Zone 3 which is the following counties: Baker, Crook, Deschutes, Gilliam, Grant, Harney, Hood River, Jefferson, Klamath, Lake, Malheur, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco and Wheeler.

(iv) 20 kWh/ft² for systems located in Zone 4 which is areas within 10 miles of the coast.

(g) For each alternative fuel device, 50 percent of the eligible cost of the alternative fuel device or \$750.

(h) For fuel cell systems, \$3.00 per watt of the installed capacity or \$6,000, and not to exceed 50 percent of the cost of the system components and their installation. One tax credit may be issued per year, per residence, and the maximum credit claimed per year may not exceed \$1,500.

(i) For wind AEDs, the first-year energy savings of the AED in kWh multiplied by \$2.00, not to exceed the lesser of \$6,000 or 50 percent of the cost of the system components and their installation. One tax credit may be issued per year, per residence, and the maximum credit claimed per year may not exceed \$1,500, over a four year period.

(j) For premium efficiency biomass combustion devices, the average heating need times the stove efficiency improvement times 60 cents, up to \$1,500. The amount of the credit may not exceed 50 percent of the cost of the AED and materials directly associated with the installation or construction of the AED. The department will use the EPA default efficiency as of January 1, 2016 when calculating the stove efficiency improvement for:

(A) Wood or pellet stoves without full efficiency testing listed on the EPA list of EPA Certified Wood Heaters,

(B) Wood or pellet stoves without full efficiency testing with the testing data submitted and approved by EPA, or

(C) Pellet stoves on the List of EPA Exempt Wood Heating Appliances that submitted testing certificates to the department.

(k) For sealed duct system devices, \$1,500 or the first-year energy savings of the AED in kWh multiplied by 60 cents. The amount of the credit may not exceed 50 percent of the cost of the AED, materials directly associated with the installation or construction of the AED and their installation.

(3) For photovoltaic systems:

(a) On or after January 1, 2012 and before January 1, 2014, the credit allowed under this section is equal to \$2.10 per watt of the installed capacity measured in watts of direct current at industry standard test conditions; the tax credit is claimed according to OAR 330-070-0024.

(b) On or after January 1, 2014 and before January 1, 2015, the credit allowed under this section is equal to \$1.90 per watt of the installed

capacity measured in watts of direct current at industry standard test conditions; the tax credit is claimed according to OAR 330-070-0024.

(c) On or after January 1, 2015, and before January 1, 2016, the credit allowed under this section is equal to \$1.70 per watt of the installed capacity measured in watts of direct current at industry standard test conditions; the tax credit is claimed according to OAR 330-070-0024.

(d) On or after January 1, 2016, and before January 1, 2017 the credit allowed under this section is equal to \$1.50 per watt of the installed capacity measured in watts of direct current at industry standard test conditions; the tax credit is claimed according to OAR 330-070-0024.

(e) On or after January 1, 2017, the credit allowed under this section is equal to \$1.30 per watt of the installed capacity measured in watts of direct current at industry standard test conditions; the tax credit is claimed according to OAR 330-070-0024.

(f) A maximum of one credit valued at \$6,000 is allowed per residence, per AED. The maximum amount of credit allowed per year, beginning in the year in which the AED was installed, is \$1,500 per year over a four-year period. The total credit may not exceed 50 percent of the cost of the system components and their installation.

(4) The sum of any tax credits, rebates or cash payments, including public purpose organization or federal grants or credits and the residential energy tax credit may not exceed system costs, including installation costs to the extent those costs are not already included in the system cost under OAR 330-070-0022(7).

(5) Each of the following device types installed at a dwelling within in a 5-year period will be considered a single device:

(a) Photovoltaic,

(b) Solar radiation for domestic water heating, or

(c) Solar radiation for swimming pool heating.

(6) For purposes of the tax credit, the cost of the AED must:

(a) Comply with OAR 330-070-0059 through 330-070-0097, as those rules apply;

(b) Be the system cost of acquiring the system.

(A) AEDs using an alternative energy source for only a part of their energy output or savings will have system cost prorated. System cost must be based on that part of the AED's energy output or savings that is due to the alternative source;

(B) The department may find an AED to be too large for a dwelling. In such case the system cost must be prorated. System cost must be based on the largest useful size of an AED for the dwelling. The department will determine largest useful size based on the energy needs of the building; and

(C) The amount of credit for the original system and any addition may not exceed \$1,500 per year.

(7) For purposes of the tax credit, the eligible system cost of the AED is only those costs necessary for the system to yield energy savings or produce renewable energy such as:

(a) The cost to purchase the AED.

(b) The cost of materials directly associated with installation or construction of the AED.

(c) For solar thermal systems, the cost of solar collectors; thermal storage devices; monitors, meters and controls; photovoltaic devices used to supply electricity to parts of the system; installation charges; fees paid for design or building; and ductwork, piping, fans, pumps and controls that move heat from solar collectors to storage and to heat buildings.

(d) For solar photovoltaic systems, solar labor costs and solar material costs including photovoltaic modules; inverters; storage systems and regulators; monitors, meters, and controls; wiring and framing materials; trackers; mounting or racking structures only, no structures beyond those needed for mounting or racking purposes; shipping; and for owner-built system inspections by a tax-credit technician, up to \$400; permits and fees.

(e) For wind systems, the cost of wind turbine generators; DC/AC converters, inverters and synchronous inverters; energy storage (batteries or other methods); tower, foundation and guys; electric transformers and lines and supports; safety equipment; up to \$500 of wind permitting cost; windmills; pumps, linkage, pump heads, and vacuum chambers; and obtaining a project site specific computer model wind speed estimate from a nationally recognized service as approved by the department, not to exceed \$100.

(8) Eligible system costs do not include:

(a) Unpaid labor (including the applicant's labor);

(b) Operating and maintenance costs;

(c) Land costs;

(d) Legal and court costs;

(e) Patent search fees;

(f) Fees for use permits or variances;

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- (g) Loan interest;
- (h) Vendor rebates, discounts and refunds;
- (i) Service contracts;
- (j) Cost of moving a used AED from one site to another;
- (k) Cost of repair or resale of a system;
- (L) Any part of the purchase price which is optional, such as an extended warranty;
- (m) Support structures beyond the mounting or racking hardware necessary for securing equipment; or
- (n) Labor for installation, except for solar photovoltaic, fuel cell, wind, solar radiation and sealed duct systems.

[ED. NOTE: Tables referenced are not included in rule text.]

[Tables: Tables referenced are available from the agency.]

Stat. Auth.: ORS 469.040; 469B.103; 316.116

Stats. Implemented: ORS 469B.100-469B.118; 316.116

Hist.: DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 7-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13; DOE 8-2013, f. 12-27-13, cert. ef. 1-1-14; DOE 8-2014, f. 11-18-14, cert. ef. 1-1-15; DOE 4-2015, f. & cert. ef. 10-5-15; DOE 6-2015, f. 11-9-15, cert. ef. 1-1-16; DOE 3-2016, f. & cert. ef. 6-2-16; DOE 8-2016, f. 12-29-16, cert. ef. 1-1-17

330-070-0024

Year Credit Claimed

- (1) The tax credit must be claimed pursuant to ORS 316.116.
- (2) The tax credit allowed in any one year may not exceed a person's tax liability for that year. Unused credit may be carried forward for a maximum of 5 years as allowed under ORS 316.116.
- (3) The tax year for which the tax credit may be claimed is determined by the operational date of the AED:

(a) If the operational date of the AED is before April 1 of the tax year following the year it was purchased, then the tax credit must be claimed for the tax year in which the AED was purchased. Proof of purchase is established using the "Purchase Date" as defined in OAR 330-070-0013.

(b) Otherwise, the tax credit must be claimed for the tax year in which the AED became operational. Proof of operation is established using the "Operational Date" as defined in OAR 330-070-0013.

Stat. Auth.: ORS 469.040, 469B.103

Stats. Implemented: ORS 469B.100-469B.118, 316.116

Hist.: DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13; DOE 8-2016, f. 12-29-16, cert. ef. 1-1-17

330-070-0025

Application for System Certification

(1) Applicants for a tax credit must obtain a system certification from the department.

(2) All applications for a system certification must meet all of the following:

(a) Provide all requested information and include a statement that the system and technician or owner-builder will meet all federal, state and local requirements.

(b) Include the applicant's social security number for use as an identification number in maintaining internal records. The applicant's social security number may be shared with the Department of Revenue to establish the identity of an individual in order to administer state tax law.

(c) State:

(A) The system cost of the AED;

(B) The location of the AED; and

(C) That the applicant has received an operating manual for the AED, except that no operating manual is required for sunspaces or direct gain space heating systems.

(d) Include an agreement by the tax-credit technician to make any changes required by the department for the system to comply with ORS 469B.100 through 469B.118 and 316.116.

(e) Be signed by the applicant and tax-credit technician, if any. Alternatively, a form of electronic signature acceptable to the department may be provided.

(f) Include no false or misleading information about an AED.

(g) For third-party installations, include a valid reference number as issued to the third-party by the department under OAR 330-070-0029.

(h) The contractor's certification that the AED was installed in accordance with manufacturer's installation specifications and all applicable codes and standards.

(3) System certification applications for solar water heating AEDs must contain:

(a) All the data required in section (2);

(b) The number of collectors;

(c) The manufacturer and/or supplier;

(d) The collector dimensions and/or the net area of the collectors;

(e) The amount of heat storage;

(f) The system type;

(g) A declaration of Solar Rating and Certification Corporation (SRCC) Standard 300 certification status or equivalence, as determined by the department;

(h) The system model;

(i) A description of the orientation and tilt of the collector;

(j) A solar site assessment for the collector location;

(k) A consumer disclosure signed by the applicant and technician or supplier, if any. The disclosure must be provided to the applicant and include estimated energy savings of the AED, required conservation items, required maintenance and freeze protection information; and

(L) Other data the department requires to determine eligibility.

(4) System certification applications for active solar space heating AEDs must contain:

(a) All the data required in sections (2) and (3) of this rule;

(b) A heat loss estimate for the home;

(c) The type and amount of thermal storage;

(d) A solar site assessment for the collector location; and

(e) Other data the department requires to determine eligibility.

(5) System certification applications for passive solar space heating

AEDs must contain:

(a) All the data required in section (2) above;

(b) A copy of the building permit plans;

(c) A copy of the window specifications used;

(d) The type and amount of thermal storage;

(e) A solar site assessment taken at the center of the solar glazing; and

(f) Other data the department requires to determine eligibility.

(6) System certification applications for photovoltaic AEDs must contain:

(a) The data required in section (2);

(b) Retail customer pricing information for:

(A) Total project labor, and

(B) Total project materials;

(c) The number of modules;

(d) The brand name of the module(s);

(e) The rated DC output in watts of the module(s) under Standard Test

Conditions (STC);

(f) A description of the storage provided if storage is a part of the system;

(g) Storage brand and model;

(h) Storage capacity in kWh;

(i) The brand name of the inverter if an inverter is part of the system;

(j) The capacity of the inverter;

(k) The Total Solar Resource Fraction (TSRF);

(L) Other data the department requires to determine eligibility;

(m) The permit number and date of final inspection from the applicant's local jurisdiction; and

(n) All applications submitted by a tax-credit technician (TCT) after June 1, 2015, must be submitted through PowerClerk and must be initially input into PowerClerk on or before December 31, 2017.

(7) System certification applications for geothermal systems must contain:

(a) All the data required in section (2) of this rule;

(b) For all systems connected to a well, data on the well including:

(A) Depth;

(B) Diameter (cased);

(C) Temperature;

(D) Static water level below grade;

(E) A copy of the well driller's log, if available; and

(F) Other data the department requires to determine eligibility.

(c) For systems connected to a heat pump:

(A) Brand name and model number of the heat pump;

(B) Rated output at the entering water temperature;

(C) Estimated system COP rated by AHRI under ANSI/AHRI/ASHRAE/ISO Standard 13256-1, at an entering water temperature of 50 degrees Fahrenheit; and

(D) Any other data the department requires to determine eligibility.

(d) For geothermal systems:

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- (A) All the information in subsection (7)(b) of this rule;
 - (B) Brand name, rated output, estimated COP;
 - (C) Length and depth of the loop;
 - (D) Materials and spacing used;
 - (E) Type of heat transfer fluid; and
 - (F) Other data the department requires to determine eligibility.
- (8) System certification applications for energy-efficient appliances must contain:
- (a) All the data required in section (2) of this rule;
 - (b) The brand name, make, model number, capacity and/or size of the appliance;
 - (c) A signed copy of the sales agreement, which must include all of the following:
 - (A) Verification of applicant's name and address,
 - (B) Verification of model of appliance, and
 - (C) Verification of actual price paid for appliance;
 - (d) Certification of new equipment warranty;
 - (e) For air source ducted heat pumps systems and furnace systems a description of the distribution system; and
 - (f) Other data the department requires to determine eligibility.
 - (9) System certification applications for alternative fuel devices must contain:
 - (a) Taxpayer's name;
 - (b) Taxpayer identification or social security number;
 - (c) Installation location by street address;
 - (d) The name of the licensed and bonded company employing the technician;
 - (e) The employing company's business location;
 - (f) The brand name, make, model number, or component list of the alternative fuel device;
 - (g) A signed copy of the sales agreement, which will include all of the following:
 - (A) Verification of applicant's name and address,
 - (B) Verification of model of, or components used for alternative fuel device, and
 - (C) Verification of actual price paid for the alternative fuel device;
 - (h) Certification of new equipment warranty; and
 - (i) Other data the department requires to determine eligibility.
 - (10) System certification applications for fuel cells must contain:
 - (a) All of the data required in section (2) of this rule;
 - (b) The rated fuel cell stack peak capacity, in kW;
 - (c) The rated fuel cell system peak capacity, in kW (this rating includes peak capacity enhancing devices such as batteries and other storage devices or systems);
 - (d) Whether or not the system is grid connected;
 - (e) The fuel used by the system;
 - (f) The type of fuel stack (PEM, PAFC, SOFC, etc.);
 - (g) An estimate of the average load, in kW, expected to be placed on the system;
 - (h) The thermal energy production rate, in Btu/hour, at peak capacity and at the average load specified in (10)(f) above;
 - (i) Whether or not the system has provisions for thermal heat recovery, and if so, where the thermal energy is designed to be used (domestic hot water, space heating, etc.); and
 - (j) Other data the department requires to determine eligibility.
 - (11) System certification applications for premium efficiency biomass combustion devices must contain:
 - (a) The manufacturer, model, capacity, serial number of the device;
 - (b) The device characteristics, defined as catalytic, non-catalytic, or pellet stove or boiler;
 - (c) Vendor name and address;
 - (d) Price paid for the device, any parts or installation;
 - (e) Efficiency information, as described in OAR 330-070-0073;
 - (f) For replacement of uncertified woodstoves, the applicant must additionally provide:
 - (A) A signed certification from the applicant verifying that the wood burning device being replaced has been rendered unusable, can no longer be used as a heating device, and will be retired permanently from service; and
 - (B) Documentation, in the form of a disposal receipt from a metal recycler, landfill or licensed contractor, verifying that the wood burning device being replaced is an uncertified woodstove and has been rendered unusable; and
 - (g) Other data the department requires to determine eligibility.

(12) A system certification may be transferred by an applicant who does not qualify for tax relief to the first eligible buyer of the dwelling.

(13) For a third-party financed system, the application must provide copies of an energy purchase or lease agreement and full service maintenance agreement.

(14) An application for a tax credit must be received by the department on or before June 1, 2018.

(15) An application required to be submitted in PowerClerk must be initially input on or before December 31, 2017.

Stat. Auth.: ORS 469.040; 469B.103

Stats. Implemented: ORS 469B.100-469B.118; 316.116

Hist.: DOE 6-1979, f. & ef. 11-13-79; DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 7-1984, f. & ef. 12-19-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1988(Temp), f. & cert. ef. 1-13-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13; DOE 8-2013, f. 12-27-13, cert. ef. 1-1-14; DOE 8-2014, f. 11-18-14, cert. ef. 1-1-15; DOE 6-2015, f. 11-9-15, cert. ef. 1-1-16; DOE 8-2016, f. 12-29-16, cert. ef. 1-1-17

330-070-0026

Tax-Credit Technician

(1) Technicians may apply for the department's tax-credit technician (TCT) status for a technology listed in section (2) of this section. Tax-credit technician status is intended to assist consumers with the state tax credit program, ensure that the systems are installed according to department rules, and verify system installation quality and performance. Technician status is valid for two years and must be renewed to remain in effect.

(2) A tax-credit technician status applies only to the following products:

- (a) Solar water heating systems;
- (b) Geothermal systems; and
- (c) Photovoltaic systems.

(3) The tax-credit technician's status is based on the following:

- (a) Knowledge and understanding of the tax credit program requirements and expectations;
- (b) Ability to provide systems that are designed and installed consistent with the manufacturer's warranty and department rules; and
- (c) Employment by a company with a Construction Contractors Board (CCB) license.

(4) Those who do not maintain the competencies in section (3) are subject to revocation of the status.

(5) Tax-credit technician status entitles a technician to:

(a) Inform the AED system owner that he or she has attended the department's online training and is familiar with the rules and requirements of the Residential Energy Tax Credit Program.

(b) Verify that installation of tax-credit qualified equipment and systems meets department standards for performance and longevity.

(6) Tax-credit technician status requires that the technicians must follow department requirements including:

(a) Solar technicians must show at least one of the following, a valid and current:

(A) North American Board of Certified Energy Practitioners (NABCEP) certification,

(B) Limited Renewable Energy Technician (LRT) license for solar electric,

(C) Solar Thermal License (STL) for solar thermal,

(D) Successful passage of the NABCEP Entry-Level Exam for the appropriate AED, or

(E) Other certification approved by the Director to maintain their tax-credit solar technician status with the department.

(b) First-time geothermal technician applicants must show proof of successful completion of International Ground Source Heat Pump Association training (IGSHPA) or IGSHPA certified manufacturer's installer training program or other training approved by the Director.

(c) Solar and geothermal tax-credit technician applicants must complete the department's online training at least once every three years unless otherwise specified in department rule.

(d) Technicians must verify the AED owner has a user manual for the equipment/system.

(e) Technicians must provide the AED owner with a completed application and a copy of the final, itemized and dated invoice for the system that is marked "inspected." And they must verify the owner has a written full warranty for the system that lasts no less than 24 months after the system is installed.

ADMINISTRATIVE RULES

(f) Technicians must maintain tax-credit technician status by completing the following technology-specific requirements during the period between awarding initial status and the renewal period or between renewal periods:

(A) For solar technology:

(i) Technicians must:

(I) Submit and have approved two (2) Residential or Energy Incentives Program applications for systems in a technology in which the tax-credit technician is listed and complete four (4) hours of related technical continuing education;

(II) Submit and have approved one (1) Residential or Energy Incentives Program application for a system in a technology in which the tax-credit technician is listed and complete six (6) hours of related technical continuing education; or

(III) Complete eight (8) hours of related technical education.

(ii) Technicians must provide information on the number of job hours directly associated with the installation of RETC qualified photovoltaic systems within the prior two years. Job estimates should be submitted in hours.

(iii) Technicians are subject to the renewal period on the second year from the year of initial status or renewal year.

(iv) The two month renewal period begins every year on June 1st and ends prior to August 1st.

(v) Proof of related technical continuing education must be provided during the renewal period.

(vi) Failure to complete requalification during the renewal period will result in the revocation of TCT status for one year. TCT status may be reinstated during the following year's renewal period.

(B) For geothermal systems, technicians must submit and have approved a minimum of one (1) tax credit application or provide proof of having completed at least two hours of relevant installer training, community college HVAC course, or other training approved by the Director.

(7) Tax credits for installation of geothermal systems, solar electric and solar thermal systems must be verified by a tax-credit technician.

(8) A tax-credit technician must notify the department within 30 days if changes are made in any of the information in the TCT application.

(9) Tax-credit technicians inspect owner-built systems to verify that the system appears to be installed in a workman-like manner. As part of an owner-built inspection, a tax-credit technician is not required to provide a warranty or guarantee of the owner-built system.

Stat. Auth.: ORS 469.040; 469B.103

Stats. Implemented: ORS 469B.100-469B.118; 316.116

Hist.: DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 7-1984, f. & ef. 12-19-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 7-2008, f. 10-31-08, cert. ef. 11-1-08; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13; DOE 8-2013, f. 12-27-13, cert. ef. 1-1-14; DOE 8-2014, f. 11-18-14, cert. ef. 1-1-15; DOE 6-2015, f. 11-9-15, cert. ef. 1-1-16; DOE 8-2016, f. 12-29-16, cert. ef. 1-1-17

330-070-0027

Application Review Process

(1) The department must receive an application on or before June 1, 2018 to consider the application for AED tax credit approval. AEDs must comply with OAR 330-070-0010 through 330-070-0097. Specific rules for each type of AED are provided in OAR 330-070-0059 through 330-070-0097.

(2) The department will return applications that are not complete and will identify the additional information needed.

(3) The department may require more details to complete its review of an application.

(a) If the department requests additional data and does not receive it within 30 days, the department may deny the application.

(b) During review, the department may ask for proof that the AED complies the rules. The department may also suggest changes to allow the AED and application to comply with these rules.

(4) To obtain the information needed to evaluate an application or to verify eligibility and first year energy savings, the department may, with the owner's consent, inspect an installed AED:

(a) The department may deny a system certification or request Department of Revenue (DOR) to initiate proceedings for the forfeiture of a tax credit if an owner refuses to allow the department to inspect the AED;

(b) The department may require corrections necessary to bring the AED or tax credit application into compliance with the rules to be made within 30 days;

(c) If such changes are not made within this time limit, the department may reject the application; and

(d) The department may use the results of utility, Energy Trust of Oregon or jurisdictional inspections in lieu of its own inspection.

(5) The department may reject any application if the AED does not comply with ORS 469B.100 through 469B.118, 316.116 and OAR 330-070-0010 through 330-070-0097. The department will provide an explanation for all rejected applications in writing. Approved requests for lesser cost than claimed by the applicant will also include a written explanation of the basis for the determination.

(6) If the department rejects an application for system certification or approves a certification for lesser cost than claimed by the applicant, an applicant may appeal the rejection. The appeal must be filed within 60 days of the mailing of the rejection notice by the department, in accordance with ORS 183.310 through 183.500.

Stat. Auth.: ORS 469.040, 469B.103

Stats. Implemented: ORS 469B.100-469B.118, 316.116

Hist.: DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 7-1984, f. & ef. 12-19-84; DOE 1-1986, f. & ef. 2-7-86; DOE 2-1987, f. & ef. 5-13-87; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13; DOE 8-2014, f. 11-18-14, cert. ef. 1-1-15; DOE 8-2016, f. 12-29-16, cert. ef. 1-1-17

330-070-0029

Third-Party Alternative Energy Device Installations

(1) A third-party who intends to complete a third-party alternative energy device installation must obtain a reservation before commencing installation.

(2) The third-party must apply to reserve potential tax credits by submitting a completed reservation request to the department. A reservation request may only be submitted after the owner of the residential property has entered into a contract for a third-party alternative energy device installation. The reservation request must contain the information required by the department and be submitted in PowerClerk.

(3) The department may require the third-party to provide a copy of the signed contract at any time after the submission of a reservation request. Failure to provide requested documents within 30 calendar days may result in the loss of reservations made by the third-party.

(4) A third-party may reserve no more than 25 potential tax credits in each reservation request application. The following limits on reservation requests also apply:

(a) A third-party may request the reservation of up to 50 potential tax credits each week.

(b) A third-party may request no more than 900 reservations between January 1 and September 30 and may request no more than 1,300 total reservations in a calendar year.

(c) The department will not accept reservation request applications once the annual limit in Oregon Laws 2011, chapter 730, section 75 has been reached.

(5) The department will reserve the requested potential tax credits from the amount allowed by Oregon Laws 2011, chapter 730, section 75 and will provide the third-party with a reference number for each potential tax credit. The owner of the residential property at which the alternative energy device is installed must include the reference number on their tax credit application.

(6) A third-party may release a reservation by submitting a written request or notification within PowerClerk, including the reference number, to the department. If reservations are released in the same tax year they are reserved the department will re-allocate the potential tax credits to new reservation requests in the order the requests are received. Reservations of potential tax credits may not be transferred, except to a purchaser or owner of the residential site address where the AED is located.

(7) The department will continually monitor the rate of allocation of tax credits to ensure that the total amount of tax credits do not exceed the amounts specified in Oregon Laws 2011, chapter 730, section 75. The department will allocate potential tax credits according to these rules and in the order in which requests are received. The department will return any excess reservation requests. A third-party may not commence installation until a reservation reference number is issued by the department.

(8) The department will issue tax credits based on the year the potential tax credit is reserved if the installation is completed, as verified by an approved final inspection issued by the local jurisdiction, before April 1 of the following tax year. Tax credits for installations completed after April 1 of the tax year following the reservation must reserve a new tax credit through the PowerClerk system and will be issued a tax credit for the tax year in which the installation is completed.

ADMINISTRATIVE RULES

(9) Reservation of potential tax credits does not guarantee approval of tax credit applications.

Stat. Auth.: ORS 469.040; 469B.103

Stats. Implemented: ORS 469B.100-469B.118; 316.116

Hist.: DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13; DOE 8-2013, f. 12-27-13, cert. ef. 1-1-14; DOE 8-2014, f. 11-18-14, cert. ef. 1-1-15; DOE 8-2016, f. 12-29-16, cert. ef. 1-1-17

330-070-0060

Solar Domestic Water Heating AEDs

(1) Installations of solar domestic water heating systems must comply with all applicable state, county or local codes and regulations and be verified by a tax-credit technician.

(2) Consumers who purchase a solar domestic water heating system must receive written operating and maintenance instructions. These instructions must at a minimum include:

(a) Clear instructions on how to determine if the system is functioning properly; and

(b) How to protect the system from overheating due to stagnation during periods when the system is not in use.

(3) System designs and installations must comply with the following additional requirements:

(a) Collectors and piping must be securely mounted to withstand local wind loads.

(b) Piping and pump sizing must consider collector area, total flow rates, pressure drop across collectors, length of run from collectors to pump, and maximum allowable pressure drop for the system.

(c) Pipe insulation must be installed on all solar pipe runs and protected against damage from exposure in outdoor conditions and be rated for design condition temperatures.

(d) Any building insulation disturbed due to the system installation must be restored to previous condition.

(e) For systems using pressurized anti-freeze fluids, a pressure gauge must be installed to indicate pressure in the system.

(f) Piping containing pressurized water in attics 24 hours a day must be of the appropriate material allowed by applicable Oregon plumbing codes.

(4) Systems using tanks, piping, pumps and other components containing water in unheated spaces must be adequately protected from freezing.

(5) Drain-down or manual drain systems are not acceptable freeze protection methods for solar domestic water heating systems.

(6) A method to show that the system is operating correctly must be provided.

(a) For passive systems this must be a thermometer in line between solar storage and backup tank.

(b) For an active system this must be a flow meter in the supply line to the collectors and a thermometer on the outlet port of the solar storage tank.

(7) Annual energy savings will be based on the annual performance simulations provided by the Solar Rating and Certification Corporation (SRCC).

(a) The SRCC annual energy savings must be adjusted for site specific conditions as documented by a Solar Site Assessment.

(b) The system must have a minimum Total Solar Resource Fraction (TSRF) of 75 percent.

(8) All systems must meet the standards established by the SRCC Standard-300 system certification in effect at the time the rules are adopted, or equivalent requirements as determined by the Director.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 469.040, 469B.103

Stats. Implemented: ORS 469B.100-469B.118, 316.116

Hist.: DOE 12(Temp), f. & ef. 10-14-77; DOE 3-1978, f. & ef. 3-7-78; DOE 5-1978, f. & ef. 9-27-78; DOE 6-1979, f. & ef. 11-13-79; DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 7-1984, f. & ef. 12-19-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2000, f. 12-29-00, cert. ef. 1-1-01; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2006, f. 12-29-06, cert. ef. 1-1-07; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13; DOE 8-2014, f. 11-18-14, cert. ef. 1-1-15; DOE 6-2015, f. 11-9-15, cert. ef. 1-1-16; DOE 8-2016, f. 12-29-16, cert. ef. 1-1-17

330-070-0073

Energy-Efficient Appliances

(1) Energy-efficient appliances must meet or exceed the United States Department of Energy (USDOE) energy efficiency standards, as applicable,

the department will designate a nationally recognized test procedure that will apply where USDOE standards do not exist.

(2) Water Heating Appliances.

(a) High-efficiency heat pump water heaters (HPWH) for domestic hot water must meet the "Northern Climate" specifications by the Northwest Energy Efficiency Alliance (NEEA). AEDs meeting the Northern Climate Specification Product Tier 1 must provide configuration options for semi-conditioned spaces such as unheated basements and unconditioned spaces such as garages or crawl spaces. Tier 1 AEDs must be Energy Star compliant and rated at a minimum 1.8 Energy Factor.

(b) High-efficiency heat pump water heaters (HPWH) for domestic hot water must meet the "Northern Climate" specifications by NEEA. AEDs meeting Northern Climate Specification Product Tier 2 or greater must provide configuration options for semi-conditioned, unconditioned and conditioned spaces such as heated utility rooms. Tier 2 or greater AEDs must be Energy Star compliant and rated at a minimum 2.0 Energy Factor.

(c) Storage gas water heaters, which heat and store water within the appliance at a thermostatically controlled temperature for delivery, and natural gas, propane, or oil-fired residential storage type water heaters, as defined by Title 10, Code of Federal Regulations, Chapter 11, Part 430, Subpart B, Appendix E, must have:

(A) An Energy Factor of 0.67-0.69 as tested with propane or natural gas fuel; or

(B) Either an Energy Factor of 0.70 or greater as tested with propane or natural gas fuel or a thermal efficiency of 0.80 or greater.

(d) Whole-home gas fired instantaneous water heaters, as defined by Title 10, Code of Federal Regulations, Chapter 11, Part 430, Subpart B, Appendix E, must have an Energy Factor of at least 0.82 or greater if installed on or after January 1, 2011. Integrated water-space heating combination devices will be evaluated as if they were an instantaneous water heater with at least a 93.3 Annual Fuel Utilization Efficiency (AFUE) rating.

(e) Equipment efficiency requirements are based on either the listing by ENERGY STAR®, the directory of the Air-Conditioning, Heating, and Refrigeration Institute (AHRI), or other third-party certified list approved by the Director.

(3) Wastewater Heat Recovery Device is a device designed to recover thermal energy from household wastewater streams for the purpose of returning a portion of this energy to the dwelling's domestic hot water system. Field performance data submitted to and approved by the department will be the basis for tax credit qualification. The following rules also apply:

(a) The system must meet all plumbing code requirements for vented double-wall heat exchangers;

(b) The system must not interfere with the proper operation of the dwelling's wastewater system; and

(c) Energy recovered must be re-introduced into the dwelling's hot water supply system.

(4) Sealed Duct Systems must meet the following requirements:

(a) Have all work must done by technician with a current or valid certification with Performance Tested Comfort System (PTCS), ACCA Quality Installation or approved by the department as equivalent.

(b) To apply for a sealed duct system tax credit, the following information must be submitted on the department approved application form:

(A) Certification that Bonneville Power Association's Prescriptive Duct Sealing Specifications have been completed; and

(B) Itemized invoice identifying costs.

(5) Energy Recovery Ventilators (ERVs) are devices that provide balanced fresh air ventilation for homes with the ability to transfer energy from the outgoing air stream to the incoming air stream. ERVs must:

(a) Be tested, rated and certified through the Home Ventilating Institute (HVI) Division of the Air Movement and Control Association (AMCA) International, Inc., and listed in the HVI directory;

(b) Be capable of at least 30 percent Latent Recovery/Moisture Transfer (LRMT) at 32 degrees F when operating on the lowest fan speed. LRMT is the moisture recovered to the ventilation supply air stream divided by moisture being exhausted, corrected for cross leakage, if any. For example, LRMT = 0 would indicate that no exhausting moisture is recovered for the incoming supply air stream. LRMT = 1 would indicate that all exhausting moisture is recovered for the incoming supply air stream;

(c) Have a maximum EUI of 1.10 watts/cfm at the lowest fan speed for which performance data is published in the HVI directory; and

(d) Have a minimum Sensible Recovery Efficiency (SRE) of:

(A) 75 percent at 32°F/0°C when operating at the lowest fan speed;

and

(B) 67 percent at 32°F/0°C when operating at the highest fan speed.

ADMINISTRATIVE RULES

(6) Heat Recovery Ventilators (HRVs) are devices that provide balanced fresh air ventilation for homes with the ability to transfer energy from the outgoing air stream to the incoming air stream. HRVs must:

(a) Be tested, rated and certified through the Home Ventilating Institute (HVI) Division of the Air Movement and Control Association (AMCA) International, Inc., and listed in the HVI directory;

(b) Have a maximum EUI of 1.10 watts/cfm at the lowest fan speed for which performance data is published in the HVI directory; and

(c) Have a minimum Sensible Recovery Efficiency (SRE) of:

(A) 75 percent at 32°F/0°C when operating at the lowest fan speed; and

(B) 67 percent at 32°F/0°C when operating at the highest fan speed.

(7) High Efficiency Air Source Ducted Heat Pump Systems are devices that use heat pump technology to create heated or cooled air, for distribution through ductwork. An air source ducted heat pump device consists of one or more factory-made assemblies which normally include an indoor conditioning coil, compressor and outdoor coil. These devices must:

(a) Have all work done by technician with a current or valid certification with Performance Tested Comfort System (PTCS), Proctor Engineering CheckMe!, ACCA Quality Installation or approved by the department as equivalent;

(b) Be tested and rated in accordance with the USDOE Appendix M test procedure in effect at the time these rules are adopted, and be certified by, and be listed in the directory of the Air-Conditioning, Heating, and Refrigeration Institute (AHRI) that is in effect at the time these rules are adopted;

(c) Consist of a matched outdoor unit and indoor unit (air handler and coil or furnace and coil), as tested, rated and listed in the AHRI directory;

(d) Have a minimum USDOE Region IV HSPF rating of 9.5 or greater; and

(e) Systems must be installed and attested to the protocols of tested and serviced as needed to confirm correct refrigerant charge and air flow by a technician authorized by the department and by an approved Performance Tested Comfort System (PTCS), Proctor Engineering CheckMe!, ACCA Quality Installation or approved by the department as equivalent.

(8) High Efficiency Furnace Systems are devices that heat and distribute air through the dwelling using a system of ductwork. A high efficiency furnace system is determined by its Annual Fuel Utilization Efficiency, (AFUE). These devices must:

(a) Be rated by and listed in the directory of the Air-Conditioning, Heating, and Refrigeration Institute (AHRI) in effect at the time these rules are adopted;

(b) Have a minimum AFUE rating of 0.95 (95 percent);

(c) Use direct ducted outdoor air for combustion; and

(d) Must be listed in the AHRI directory of Certified Energy Rating in effect at the time these rules are adopted as an “e” “electrically efficient” furnace.

(9) High Efficiency Ductless Air Source Heat Pump Systems are air-source heat pumps consisting of an outdoor unit connected directly to one or more indoor units through which conditioned air is delivered directly to the room or zone of a home rather than through a central furnace. These devices must:

(a) Include an inverter-driven variable speed compressor;

(b) Be listed in the Air-Conditioning, Heating and Refrigeration Institute (AHRI) Directory of Certified Products;

(c) Deliver at least 50 percent of its AHRI-certified rated heating capacity at 17°F outside temperature;

(d) Have a minimum USDOE Region IV HSPF rating of 10.0 or greater;

(e) Include no integrated electric resistance backup heat;

(f) Be sized and installed per manufacturer specifications; and

(g) Be installed by a technician trained by the equipment manufacturer.

(10) High Efficiency Direct Vent Gas Fireplace Devices are direct vent sealed combustion natural gas or propane fireplace devices that take combustion air directly from outside through a dedicated air inlet and vent combustion products directly outside. These devices must:

(a) Meet CAN/CSA-P.4.1-09 (R2014) Fireplace Efficiency (FE) of 70 percent or greater.

(b) Be direct vented to the outside with sealed combustion.

(c) Have an electronic ignition that is either an intermittent or Pilot on Demand system meeting American National Standards Institute (ANSI) Z21.20-2014.

(11) Any other standards adopted by the department for energy-efficient appliances and alternative fuel devices, their components, or systems as determined by the Director.

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

Stat. Auth.: ORS 469.040 & 469B.103

Stats. Implemented: ORS 469B.100 - 469B.118 & 316.116

Hist.: DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2000, f. 12-29-00, cert. ef. 1-1-01; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 4-2004, f. & cert. ef. 8-2-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2006, f. 12-29-06, cert. ef. 1-1-07; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 7-2008, f. 10-31-08, cert. ef. 11-1-08; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13; DOE 8-2013, f. 12-27-13, cert. ef. 1-1-14; DOE 4-2014(Temp), f. & cert. ef. 5-15-14 thru 11-10-14; Administrative correction, 11-24-14; DOE 8-2014, f. 11-18-14, cert. ef. 1-1-15; DOE 6-2015, f. 11-9-15, cert. ef. 1-1-16; DOE 8-2016, f. 12-29-16, cert. ef. 1-1-17

Department of Fish and Wildlife Chapter 635

Rule Caption: Commercial Dungeness Crab Season Opens on the Central and North Coasts.

Adm. Order No.: DFW 152-2016(Temp)

Filed with Sec. of State: 12-22-2016

Certified to be Effective: 12-22-16 thru 6-19-17

Notice Publication Date:

Rules Amended: 635-005-0465

Rules Suspended: 635-005-0465(T)

Subject: This amended rule sets the opening of the 2016-2017 ocean commercial Dungeness crab fishery from Cape Blanco (42° 50' 00" N. Lat.) northward to the Washington border as January 1, 2017. The commercial Dungeness crab fishery south of Cape Blanco (42° 50' 00" N. Lat.) to the Washington border opened on December 18, 2016. Rule modifications maintain implementation of “fair start” provisions and the removal of the 30 day permit transfer suspension by the previous temporary rule. Fair start provisions mandate that vessels which began fishing in an open area may not fish in any area that opens at a later date until 30 days after the later opening date. Removal of the permit transfer suspension allows transfer of permits at any time if other legal requirements for transfer are met.

Rules Coordinator: Michelle Tate—(503) 947-6044

635-005-0465

Closed Season in Pacific Ocean and Columbia River

(1) It is *unlawful* to take, land or possess Dungeness crab for commercial purposes from the Pacific Ocean or Columbia River:

(a) In the area from Cape Blanco (42° 50' 00" N. Lat.) northward to the Oregon/Washington border (46° 16' 00" N. Lat.) from August 15, 2016 through January 1, 2017 at 08:59 AM.

(b) In the area from Cape Blanco (42° 50' 00" N. Lat.) southward to the Oregon/California border (42°00'00") from August 15, 2016 through December 18, 2016 at 08:59 AM.

(2) The season opening for the commercial Ocean Dungeness crab fishery may be delayed in one or more fishing zones based on the results of crab quality or biotoxin testing. The Pre-season Testing Protocol for the Tri-State Coastal Dungeness crab Commercial Fishery (hereafter, “Tri-State Protocol”) specifies the process for establishing fishing zones (section VI) and coordinating the opening of the fishery in Washington, Oregon, and California north of Point Arena (sections IV and V). Therefore, the following sections of the Tri-State Protocol (Revised July 2014) are hereby incorporated into Oregon Administrative Rule by reference:

(a) Section IV — Season Opening Criteria.

(b) Section V — Test Fishing and Process for Setting the Season Opening Date.

(c) Section VI — Procedure for Establishing Fishing Zones. In the event that crab quality or biotoxin tests do not meet the criteria for opening the season on December 1, the Director shall adopt temporary rules delaying the season in accordance with the Tri-State Protocol. A vessel used for fishing crab in any open zone may not be used for fishing crab in any zone that opens at a later date until 30 days after the later opening date. The fisher must declare on the pre-season hold inspection certificate the zone in which the vessel will start fishing.

(3) It is *unlawful* to land, receive or buy, Dungeness crab in the first thirty days of the ocean Dungeness crab fishery from a vessel that has not been certified by officials of the State of Oregon, Washington, or California to have been free of Dungeness crab before fishing in the ocean Dungeness

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crab fishery. In the event the area between Gray's Harbor, Washington and Point Arena, California is divided into zones with different season opening dates, the ocean Dungeness crab fishery refers to the fishery in that zone for the purposes of this rule.

(4) Upon a determination by the Department that catch in Oregon's ocean Dungeness crab fishery after May 31 is greater than ten percent of the catch in the previous December 1 through May 31 period, the Director shall adopt a temporary rule closing the commercial season until the following December 1.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129

Stats. Implemented: ORS 506.109, 506.129

Hist.: FC 246, f. 5-5-72, ef. 5-15-72; FC 285(74-20), f. 11-27-74, ef. 12-25-74; FC 293(75-6), f. 6-23-75, ef. 7-11-75; FWC 30, f. & ef. 11-28-75; FWC 132, f. & ef. 8-4-77; FWC 30-1985, f. 6-27-1985, ef. 7-1-85, Renumbered from 625-010-0155, Renumbered from 635-036-0125; FWC 56-1982, f. & ef. 8-27-82; FWC 13-1983, f. & ef. 3-24-83; FWC 39-1983(Temp), f. & ef. 8-31-83; FWC 11-1984, f. 3-30-84, ef. 9-16-84, except section (1) per FWC 45-1984, f. & ef. 8-30-84; FWC 30-1985, f. 6-27-85, ef. 7-1-85; FWC 78-1986(Temp), f. & ef. 12-1-86; FWC 36-1987, f. & ef. 7-1-87; FWC 97-1987(Temp), f. & ef. 11-17-87; FWC 102-1988, f. 11-29-88, cert. ef. 12-29-88; FWC 119-1989(Temp), f. 11-29-89, cert. ef. 12-1-89; FWC 135-1991(Temp), f. 12-10-91, cert. ef. 12-11-91; FWC 136-1991(Temp), f. & ef. 12-19-91; FWC 112-1992, f. 10-26-92, cert. ef. 11-1-92; FWC 70-1993, f. 11-9-93, cert. ef. 11-11-93; FWC 88-1994(Temp), f. 11-30-94, cert. ef. 12-1-94; FWC 89-1994(Temp), f. & cert. ef. 12-1-94; FWC 89-1995(Temp), f. 11-28-95, cert. ef. 12-1-95; FWC 1-1996(Temp), f. 1-11-96, cert. ef. 1-13-96; DFW 51-1998(Temp), f. 6-29-98, cert. ef. 7-1-98 thru 9-15-98; DFW 54-1998(Temp), f. & cert. ef. 7-24-98 thru 9-15-98; DFW 40-1999, f. & cert. ef. 5-26-99; DFW 70-2000, f. & cert. ef. 10-23-00; DFW 77-2000(Temp), f. 11-27-00, cert. ef. 12-1-00 thru 12-14-00; DFW 39-2002, f. & cert. ef. 4-26-02; DFW 128-2002(Temp), f. & cert. ef. 11-15-02 thru 1-31-03; DFW 129-2002(Temp), f. & cert. ef. 11-20-02 thru 1-31-03; DFW 132-2002(Temp), f. & cert. ef. 11-25-02 thru 1-31-03 (Suspended by DFW 133-2002(Temp)); DFW 133-2002(Temp), f. & cert. ef. 12-6-02 thru 1-31-03; DFW 117-2003(Temp), f. 11-25-03, cert. ef. 12-1-03 thru 2-29-04; Administrative correction 10-26-04; DFW 113-2004(Temp), f. 11-23-04, cert. ef. 12-1-04 thru 3-1-05; DFW 116-2004(Temp), f. & cert. ef. 12-8-04 thru 3-1-05; DFW 126-2004(Temp), f. & cert. ef. 12-21-04 thru 3-1-05; DFW 132-2004(Temp), f. & cert. ef. 12-30-04 thru 3-1-05; Administrative correction, 3-18-05; DFW 129-2005(Temp), f. & cert. ef. 11-29-05 thru 12-31-05; DFW 140-2005(Temp), f. 12-12-05, cert. ef. 12-30-05 thru 5-31-06; Administrative correction 7-20-06; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 161-2010(Temp), f. 12-9-10, cert. ef. 12-10-10 thru 2-16-11; Administrative correction, 3-29-11; DFW 155-2011(Temp), f. 11-18-11, cert. ef. 12-1-11 thru 12-31-11; DFW 156-2011(Temp), f. 12-9-11, cert. ef. 12-15-11 thru 1-31-12; Administrative correction 4-24-12; DFW 37-2012, f. 4-24-12, cert. ef. 5-1-12; Renumbered from 635-005-0045, DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12; DFW 145-2012(Temp), f. 11-14-12, cert. ef. 12-1-12 thru 12-31-12; DFW 146-2012(Temp), f. 12-11-12, cert. ef. 12-12-12 thru 6-9-13; Administrative correction, 6-27-13; DFW 118-2013, f. 10-11-13, cert. ef. 10-15-13; DFW 129-2013(Temp), f. 11-25-13, cert. ef. 12-1-13 thru 12-31-13; Administrative correction, 2-5-14; DFW 113-2014, f. 8-5-14, cert. ef. 8-15-14; DFW 157-2014(Temp), f. 11-24-14, cert. ef. 11-25-14 thru 5-23-15; Administrative correction, 6-23-15; DFW 150-2015, f. & cert. ef. 10-29-15; DFW 157-2015(Temp), f. & cert. ef. 11-20-15 thru 1-31-16; DFW 166-2015(Temp), f. 12-29-15, cert. ef. 1-1-16 thru 6-28-16; DFW 146-2016(Temp), f. & cert. ef. 11-23-16 thru 5-21-17; DFW 150-2016(Temp), f. 12-13-16, cert. ef. 12-18-16 thru 6-15-17; DFW 152-2016(Temp), f. & cert. ef. 12-22-16 thru 6-19-17

Rule Caption: Amend Rules Related to 2017 Oregon Sport Fishing Regulations.

Adm. Order No.: DFW 153-2016

Filed with Sec. of State: 12-28-2016

Certified to be Effective: 1-1-17

Notice Publication Date: 7-1-2016

Rules Amended: 635-011-0100, 635-013-0004, 635-014-0080, 635-014-0090, 635-016-0080, 635-016-0090, 635-017-0080, 635-017-0090, 635-017-0095, 635-018-0080, 635-018-0090, 635-019-0080, 635-019-0090, 635-021-0080, 635-021-0090, 635-023-0080, 635-023-0090, 635-023-0095, 635-023-0125, 635-023-0128, 635-023-0130, 635-023-0134, 635-023-0140, 635-039-0080, 635-039-0090

Subject: These amended rules include modifications to sport fishing regulations for finfish, shellfish, and marine invertebrates that were adopted by the Oregon Fish and Wildlife Commission for 2017. Housekeeping and technical corrections were made to ensure rule consistency.

Rules Coordinator: Michelle Tate—(503) 947-6044

635-011-0100

General Rule

It is *unlawful* to take any fish, shellfish, or marine invertebrates for personal use except as provided in these rules which include and incorporate the **2017 Oregon Sport Fishing Regulations** by reference. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2017 Oregon Sport Fishing Regulations**.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: FWC 11-1982, f. & ef. 2-9-82; FWC 2-1984, f. & ef. 1-10-84; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-

05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 153-2011(Temp), f. 11-7-11, cert. ef. 11-15-11 thru 5-12-12; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 142-2012(Temp), f. 11-6-12, cert. ef. 11-15-12 thru 5-12-13; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 130-2013(Temp), f. 12-9-13, cert. ef. 12-10-13 thru 6-8-14; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15; DFW 167-2015, f. 12-29-15, cert. ef. 1-1-16; DFW 24-2016(Temp), f. 3-30-16, cert. ef. 4-1-16 thru 9-27-16; DFW 105-2016, f. & cert. ef. 8-10-16; DFW 153-2016, f. 12-28-16, cert. ef. 1-1-17

635-013-0004

Inclusions and Modifications

(1) OAR 635-013-0005 through OAR 635-013-0009 modify or are in addition to provisions contained in **Code of Federal Regulations**, Title 50, Part 660, Subparts A and H, and the 2017 Oregon Sport Fishing Regulations.

(2) The Code of Federal Regulations (CFR), Title 50, Part 660, Subparts A and H, and the 2017 Oregon Sport Fishing Regulations contain requirements for sport salmon angling in the Pacific Ocean off the Oregon coast. However, additional regulations may be adopted from time to time, and, to the extent of any inconsistency, they supersede the published federal regulations and the **2017 Oregon Sport Fishing Regulations**. This means that persons must consult not only the federal regulations and the published sport fishing regulations but also the Department's web page to determine all applicable sport fishing regulations.

(3) This rule contains requirements that modify sport salmon angling regulations off the Oregon coast. The following modifications are organized in sections that apply to the ocean sport salmon fishery in general and within management zones established by the Pacific Fishery Management Council and enacted by Federal Regulations (CFR, Title 50, Part 660, Subparts A and H).

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 29-1989, f. 4-28-89, cert. ef. 5-1-89; FWC 31-1992, f. 4-29-92, cert. ef. 5-1-92; FWC 25-1994, f. & cert. ef. 5-2-94; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 39-1995, f. 5-10-95, cert. ef. 5-12-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 72-1996, f. 12-21-96, cert. ef. 1-1-97; FWC 19-1997(Temp), f. 3-17-97, cert. ef. 4-15-97; FWC 30-1997, f. & cert. ef. 5-5-97; FWC 43-1997(Temp), f. 8-8-97, cert. ef. 8-10-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 59-1998(Temp), f. & cert. ef. 8-10-98 thru 8-21-98; DFW 66-1998(Temp), f. & cert. ef. 8-21-98 thru 9-24-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 20-1999(Temp), f. 3-29-99, cert. ef. 4-1-99 thru 4-30-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 61-1999(Temp), f. 8-31-99, cert. ef. 9-3-99 thru 9-17-99; DFW 66-1999(Temp), f. & cert. ef. 9-17-99 thru 9-30-99; Administrative correction 11-17-99; DFW 16-2000(Temp), f. 3-31-00, cert. ef. 4-1-00 thru 4-30-00; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 47-2000(Temp), f. 8-10-00, cert. ef. 8-13-00 thru 9-30-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 16-2001(Temp), f. 3-28-01, cert. ef. 4-1-01 thru 4-30-01; Administrative correction 6-20-01; DFW 59-2001(Temp), f. 7-18-01, cert. ef. 7-19-01 thru 10-31-01; DFW 20-2002(Temp), f. 3-19-02, cert. ef. 4-1-01 thru 4-30-02; DFW 75-2002(Temp), f. 7-19-02, cert. ef. 7-21-02 thru 12-31-02; DFW 80-2002(Temp), f. 7-31-02, cert. ef. 8-1-02 thru 12-31-02; DFW 85-2002(Temp), f. 8-8-02, cert. ef. 8-11-02 thru 12-31-02; DFW 99-2002(Temp), f. 8-30-02, cert. ef. 9-2-02 thru 12-31-02; DFW 100-2002(Temp), f. & cert. ef. 9-6-02 thru 12-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 18-2003(Temp), f. 2-28-03, cert. ef. 3-1-03 thru 4-30-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 69-2003(Temp), f. 7-21-03, cert. ef. 7-25-03 thru 12-31-03; DFW 78-2003(Temp), f. 8-14-03, cert. ef. 8-20-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 75-2004(Temp), f. 7-20-04, cert. ef. 7-23-04 thru 12-31-04; DFW 80-2004(Temp), f. 8-12-04, cert. ef. 8-13-04 thru 12-31-04; DFW 93-2004(Temp), f. 9-2-04, cert. ef. 9-4-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 81-2005(Temp), f. 7-25-05, cert. ef. 7-29-05 thru 12-31-05; DFW 103-2005(Temp), f. 9-7-05, cert. ef. 9-9-05 thru 12-31-05; DFW 106-2005(Temp), f. 9-14-05, cert. ef. 9-17-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 67-2006(Temp), f. 7-25-06, cert. ef. 8-11-06 thru 12-31-06; DFW 87-2006(Temp), f. 8-18-06, cert. ef. 8-19-06 thru 12-31-06; DFW 90-2006(Temp), f. 8-25-06, cert. ef. 8-26-06 thru 12-31-06; Administrative correction 1-16-07; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 80-2007(Temp), f. 8-23-07, cert. ef. 8-25-07 thru 12-31-07; DFW 81-2007(Temp), f. 8-31-07, cert. ef. 9-2-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 25-2008(Temp), f. 3-13-08, cert. ef. 3-15-08 thru 9-10-08; DFW 66-2008(Temp), f. 6-20-08, cert. ef. 6-21-08 thru 10-31-08; DFW 96-2008(Temp), f. & cert. ef. 8-15-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15; DFW 167-2015, f. 12-29-15, cert. ef. 1-1-16; DFW 153-2016, f. 12-28-16, cert. ef. 1-1-17

635-014-0080

Purpose and Scope

(1) The purpose of Division 014 is to provide for management of sport fisheries in the Northwest Zone over which the State has jurisdiction.

(2) Division 014 incorporates by reference the **2017 Oregon Sport Fishing Regulations**. Therefore, persons must consult the 2017 Oregon Sport Fishing Regulations in addition to Division 011 and Division 014 to determine all applicable sport fishing requirements for the Northwest Zone.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

ADMINISTRATIVE RULES

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

635-023-0128

Summer Sport Fishery

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.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 52-2005(Temp), f. 6-3-05, cert. ef. 6-16-05 thru 7-31-05; DFW 64-2005(Temp), f. 6-30-05, cert. ef. 7-1-05 thru 7-31-05; Administrative correction 8-17-05; DFW 26-2006(Temp), f. 4-20-06, cert. ef. 5-1-06 thru 10-27-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 51-2007(Temp), f. 6-29-07, cert. ef. 7-2-07 thru 7-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 36-2008, f. 4-21-08, cert. ef. 5-1-08; DFW 61-2008(Temp), f. 6-13-08, cert. ef. 6-16-08 thru 7-31-08; DFW 68-2008(Temp), f. 6-20-08, cert. ef. 6-21-08 thru 8-31-08; DFW 71-2008(Temp), f. 6-27-08, cert. ef. 6-28-08 thru 8-31-08; Administrative correction 9-29-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 52-2009, f. & cert. ef. 5-18-09; DFW 69-2009(Temp), f. 6-11-09, cert. ef. 6-16-09 thru 7-31-09; Administrative correction 8-21-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 77-2010, f. 6-8-10, cert. ef. 6-16-10; DFW 88-2010(Temp), f. 6-25-10, cert. ef. 6-26-10 thru 7-31-10; Administrative correction 8-18-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 65-2011(Temp), f. 6-14-11, cert. ef. 6-16-11 thru 7-31-11; DFW 95-2011(Temp), f. 7-15-11, cert. ef. 7-18-11 thru 7-31-11; Administrative correction 9-23-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 64-2012(Temp), f. 6-12-12, cert. ef. 6-16-12 thru 7-31-12; [DFW 85-2012(Temp), f. 7-6-12, cert. ef. 7-9-12 thru 8-31-12; Temporary Suspended by DFW 100-2012(Temp), f. 7-31-12, cert. ef. 8-1-12 thru 12-31-12]; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 55-2013(Temp), f. 6-12-13, cert. ef. 6-16-13 thru 7-31-13; DFW 66-2013(Temp), f. & cert. ef. 6-27-13 thru 7-31-13; DFW 70-2013(Temp), f. 7-11-13, cert. ef. 7-13-13 thru 7-31-13; Administrative correction, 8-21-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 68-2014(Temp), f. 6-12-14, cert. ef. 6-16-14 thru 7-31-14; DFW 85-2014(Temp), f. 7-2-14, cert. ef. 7-3-14 thru 7-31-14; DFW 92-2014(Temp), f. 7-10-14, cert. ef. 7-11-14 thru 7-31-14; Administrative correction, 8-28-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15; DFW 61-2015(Temp), f. 6-8-15, cert. ef. 6-16-15 thru 7-31-15; DFW 79-2015(Temp), f. 6-30-15, cert. ef. 7-3-15 thru 7-31-15; Administrative correction, 8-18-15; DFW 167-2015, f. 12-29-15, cert. ef. 1-1-16; DFW 77-2016(Temp), f. 6-15-16, cert. ef. 6-16-16 thru 7-31-16; Administrative correction, 8-29-16; DFW 153-2016, f. 12-28-16, cert. ef. 1-1-17

635-023-0130

Fall Sport Fishery

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.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162

Hist.: DFW 32-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 92-2004(Temp), f. 9-2-04 cert. ef. 9-6-04 thru 12-31-04; DFW 96-2004(Temp), f. 9-20-04, cert. ef. 9-30-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 25-2005, f. & cert. ef. 4-15-05; DFW 84-2005(Temp), f. & cert. ef. 8-1-05 thru 12-31-05; DFW 108-2005(Temp), f. 9-15-05, cert. ef. 9-17-05 thru 12-31-05; DFW 112-2005(Temp), f. 9-28-05, cert. ef. 9-30-05 thru 12-31-05; DFW 123-2005(Temp), f. 10-18-05, cert. ef. 10-20-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 26-2006(Temp), f. 4-20-06, cert. ef. 5-1-06 thru 10-27-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 100-2006(Temp), f. & cert. ef. 9-14-06 thru 12-31-06; DFW 109-2006(Temp), f. 9-29-06, cert. ef. 9-30-06 thru 12-31-06; DFW 113-2006(Temp), f. 10-12-06, cert. ef. 10-13-06 thru 12-31-06; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 92-2007(Temp), f. 9-18-07, cert. ef. 9-19-07 thru 12-31-07; DFW 96-2007(Temp), f. 9-21-07, cert. ef. 9-22-07 thru 12-31-07; DFW 101-2007(Temp), f. 9-28-07, cert. ef. 9-29-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 36-2008, f. 4-21-08, cert. ef. 5-1-08; DFW 99-2008(Temp), f. 8-22-08, cert. ef. 8-25-08 thru 12-31-08; DFW 104-2008(Temp), f. 8-29-08, cert. ef. 8-31-08 thru 12-31-08; DFW 115-2008(Temp), f. & cert. ef. 9-18-08 thru 12-31-08; DFW 118-2008(Temp), f. 9-24-08, cert. ef. 9-25-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 52-2009, f. & cert. ef. 5-18-09; DFW 133-2009(Temp), f. 10-20-09, cert. ef. 10-22-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 77-2010, f. 6-8-10, cert. ef. 6-16-10, DFW 131-2010(Temp), f. 9-21-10, cert. ef. 9-22-10 thru 10-31-10; DFW 145-2010(Temp), f. 10-13-10, cert. ef. 10-15-10 thru 12-31-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 100-2011(Temp), f. 7-27-11, cert. ef. 8-1-11 thru 12-31-11; DFW 127-2011(Temp), f. 9-14-11, cert. ef. 9-16-11 thru 12-31-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 100-2012(Temp), f. 7-31-12, cert. ef. 8-1-12 thru 12-31-12; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 81-2013(Temp), f. 7-26-13, cert. ef. 8-1-13 thru 12-31-13; DFW 92-2013(Temp), f. 8-22-13, cert. ef. 8-23-13 thru 12-31-13; DFW 100-2013(Temp), f. 9-12-13, cert. ef. 9-13-13 thru 12-31-13; DFW 107-2013(Temp), f. 9-25-13, cert. ef. 9-26-13 thru 12-31-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 96-2014(Temp), f. 7-18-14, cert. ef. 8-1-14 thru 12-31-14; DFW 100-2014(Temp), f. 7-22-14, cert. ef. 8-1-14 thru 12-31-14; DFW 128-2014(Temp), f. 9-3-14, cert. ef. 9-6-14 thru 9-30-14; DFW 143-2014(Temp), f. 10-2-14, cert. ef. 10-3-14 thru 12-31-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15; DFW 95-2015(Temp), f. 7-29-15, cert. ef. 8-1-15 thru 12-31-15; DFW 113-2015(Temp), f. 8-21-15, cert. ef. 8-23-15 thru 12-31-15; DFW 115-2015(Temp), f. 8-28-15, cert. ef. 8-29-15 thru 12-31-15; DFW 167-2015, f. 12-29-15, cert. ef. 1-1-16; DFW 95-2016(Temp), f. 7-27-16, cert. ef. 8-1-16 thru 12-31-16; DFW 110-2016(Temp), f. 8-29-16, cert. ef. 9-1-16 thru 12-31-16; DFW 112-2016(Temp), f. 8-31-16, cert. ef. 9-6-16 thru 12-31-16; DFW 119-2016(Temp), f. 9-14-16, cert. ef. 9-15-16

thru 12-31-16; DFW 122-2016(Temp), f. 9-22-16, cert. ef. 9-23-16 thru 12-31-16; DFW 135-2016(Temp), f. 10-20-16, cert. ef. 10-22-16 thru 12-31-16; DFW 142-2016(Temp), f. 11-4-16, cert. ef. 11-5-16 thru 12-31-16; DFW 153-2016, f. 12-28-16, cert. ef. 1-1-17

635-023-0134

Snake River Fishery

The **2017 Oregon Sport Fishing Regulations** provide requirements for 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.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 47-2005(Temp), f. 5-19-05, cert. ef. 5-21-05 thru 6-20-05; Administrative correction 7-20-05; DFW 31-2006(Temp), f. 5-18-06, cert. ef. 5-20-06 thru 6-19-06; Administrative correction 7-21-06; DFW 31-2007(Temp), f. 5-9-07, cert. ef. 5-11-07 thru 6-18-07; DFW 43-2007(Temp), f. 6-14-07, cert. ef. 6-19-07 thru 7-2-07; Administrative correction 2-8-08; DFW 43-2008(Temp), f. 4-25-08, cert. ef. 4-26-08 thru 7-20-08; DFW 64-2008(Temp), f. 6-18-08, cert. ef. 6-21-08 thru 7-31-08; Administrative correction 8-21-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 58-2009(Temp), f. 5-27-09, cert. ef. 5-30-09 thru 7-12-09; DFW 80-2009(Temp), f. 6-30-09, cert. ef. 7-1-09 thru 7-17-09; Administrative correction 7-21-09; DFW 128-2009(Temp), f. 10-12-09, cert. ef. 10-18-09 thru 4-15-10; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 42-2010(Temp), f. 4-13-10, cert. ef. 4-24-10 thru 7-31-10; DFW 107-2010(Temp), f. 7-26-10, cert. ef. 7-31-10 thru 8-4-10; Administrative correction, 8-18-10; DFW 119-2010(Temp), f. 8-18-10, cert. ef. 9-1-10 thru 12-31-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 29-2011(Temp), f. 4-12-11, cert. ef. 4-23-11 thru 10-19-11; DFW 118-2011(Temp), f. 8-23-11, cert. ef. 9-1-11 thru 12-31-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 35-2012(Temp), f. 4-16-12, cert. ef. 4-22-12 thru 9-30-12; DFW 93-2012(Temp), f. 7-24-12, cert. ef. 8-5-12 thru 9-30-12; DFW 109-2012(Temp), f. 8-21-12, cert. ef. 9-1-12 thru 12-31-12; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 29-2013(Temp), f. 4-25-13, cert. ef. 5-4-13 thru 9-30-13; DFW 76-2013(Temp), f. 7-16-13, cert. ef. 7-21-13 thru 9-30-13; DFW 94-2013(Temp), f. 8-23-13, cert. ef. 9-1-13 thru 11-30-13; Administrative correction, 12-19-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 33-2014(Temp), f. 4-21-14, cert. ef. 4-26-14 thru 9-30-14; DFW 98-2014(Temp), f. 7-18-14, cert. ef. 7-21-14 thru 9-30-14; DFW 122-2014(Temp), f. 8-4-14, cert. ef. 9-1-14 thru 12-31-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15; DFW 32-2015(Temp), f. 4-27-15, cert. ef. 5-2-15 thru 9-30-15; DFW 96-2015(Temp), f. 7-29-15, cert. ef. 8-2-15 thru 9-30-15; DFW 103-2015(Temp), f. 8-12-15, cert. ef. 9-1-15 thru 11-30-15; Administrative correction, 12-22-15; DFW 167-2015, f. 12-29-15, cert. ef. 1-1-16; DFW 27-2016(Temp), f. 4-6-16, cert. ef. 4-23-16 thru 9-30-16; DFW 61-2016(Temp), f. 5-31-16, cert. ef. 6-2-16 thru 6-15-16; DFW 107-2016(Temp), f. 8-10-16, cert. ef. 9-1-16 thru 11-30-16; DFW 153-2016, f. 12-28-16, cert. ef. 1-1-17

635-023-0140

Youngs Bay Control Zone

(1) The **2017 Oregon Sport Fishing Regulations** provide requirements for the Columbia 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 Youngs Bay Control Zone is closed to recreational angling from August 1 through September 15.

(a) The Youngs Bay Control Zone is defined as those waters southerly of a line originating on the Oregon shore at the east end of the seawall at the Warrenton Fiber log yard (approximately river mile 10.1) northeasterly through green navigation buoys 29, 31, 33, and 35A to the center of the Astoria-Megler Bridge abutment adjacent to, and north of the ship channel, and continuing southerly in line with the center of the Megler Bridge span to the Oregon shore.

(b) The Youngs Bay Control Zone includes all waters from the line defined in section (2)(a) above south to the Highway 101 Bridge.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162, 506.129 & SB 830 (2013)

Hist.: DFW 4-2014(Temp), f. 1-23-14, cert. ef. 2-1-14 thru 7-30-14; DFW 9-2014, f. & cert. ef. 2-10-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15; DFW 167-2015, f. 12-29-15, cert. ef. 1-1-16; DFW 153-2016, f. 12-28-16, cert. ef. 1-1-17

635-039-0080

Purpose and Scope

(1) The purpose of Division 039 is to provide for management of sport fisheries for marine fish, shellfish, and marine invertebrates in the Pacific Ocean, coastal bays, and beaches over which the State has jurisdiction.

(2) Division 039 incorporates into Oregon Administrative Rules, by reference:

(a) The sport fishing regulations of the State, included in the document entitled **2017 Oregon Sport Fishing Regulations**;

(b) Title 50 of the Code of Federal Regulations, Part 300, Subpart E (October 1, 2015 ed.), as amended;

(c) Title 50 of the Code of Federal Regulations, Part 660, Subpart G (October 1, 2015 ed.), as amended; and

(d) Federal Register Vol. 80, No. 46, dated March 10, 2015 (80 FR 12567).

(3) Therefore, persons must consult all publications referenced in this rule in addition to Division 011 and Division 039 to determine all applica-

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ble sport fishing requirements for marine fish, shellfish and marine invertebrates.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146, 506.119
Stats. Implemented: ORS 496.162 & 506.129
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-39-105 - 635-39-135; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 25-1997, f. 4-22-97, cert. ef. 5-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 91-1998, f. & cert. ef. 11-25-98; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 98-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 81-2000, f. 12-22-00, cert. ef. 1-1-01; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 120-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 33-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 54-2005(Temp), f. 6-10-05, cert. ef. 6-12-05 thru 11-30-05; DFW 56-2005, f. 6-21-05, cert. ef. 7-1-05; DFW 71-2005(Temp), f. & cert. ef. 7-7-05 thru 11-30-05; DFW 89-2005(Temp), f. & cert. ef. 8-12-05 thru 12-12-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 138-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 134-2006(Temp), f. 12-21-06, cert. ef. 1-1-07 thru 6-29-07; DFW 3-2007, f. & cert. ef. 1-12-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 39-2009, f. & cert. ef. 4-27-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 32-2010, f. & cert. ef. 3-15-10; DFW 37-2010, f. 3-30-10, cert. ef. 4-1-10; DFW 157-2010, f. 12-6-10, cert. ef. 1-1-11; DFW 24-2011, f. & cert. ef. 3-22-11; DFW 164-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 39-2012, f. & cert. ef. 4-24-12; DFW 1-2013, f. & cert. ef. 1-3-13; DFW 25-2013(Temp), f. 4-2-13, cert. ef. 5-1-13 thru 5-31-13; DFW 32-2013, f. & cert. ef. 5-14-13; DFW 136-2013, f. 12-19-13, f. 1-1-14; DFW 36-2014, f. 4-29-14, cert. ef. 5-1-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15; DFW 18-2015, f. & cert. ef. 3-10-15; DFW 167-2015, f. 12-29-15, cert. ef. 1-1-16; DFW 3-2016, f. & cert. ef. 1-19-16; DFW 153-2016, f. 12-28-16, cert. ef. 1-1-17

635-039-0090

Inclusions and Modifications

(1) The 2017 Oregon Sport Fishing Regulations provide requirements for sport fisheries for marine fish, shellfish, and marine invertebrates in the Pacific Ocean, coastal bays, and beaches, commonly referred to as the Marine 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) For the purposes of this rule, a "sport harvest guideline" is defined as a specified numerical harvest objective that is not a quota. Attainment of a harvest guideline does not automatically close a fishery. Upon attainment of a sport harvest guideline, the Department shall initiate consultation to determine if additional regulatory actions are necessary to achieve management objectives.

The following sport harvest guidelines include the combined landings and other fishery related mortality by the Oregon sport fishery in a single calendar year:

(a) Black rockfish, 400.1 metric tons.

(b) Cabezon, 16.8 metric tons.

(c) Blue rockfish, deacon rockfish, and other nearshore rockfish combined, 33.1 metric tons.

(d) Greenling, 56.3 metric tons.

(3) For the purposes of this rule, "Other nearshore rockfish" means the following rockfish species: black and yellow (Sebastes chrysomelas); brown (S. auriculatus); calico (S. dalli); China (S. nebulosus); copper (S. caurinus); gopher (S. carnatus); grass (S. rastrelliger); kelp (S. atrovirens); olive (S. serranoides); quillback (S. maliger); and treefish (S. serripes).

(4) In addition to the regulations for Marine Fish in the 2017 Oregon Sport Fishing Regulations, the following apply for the sport fishery in the Marine Zone:

(a) Lingcod (including green colored lingcod): 2 fish daily bag limit.

(b) All rockfish ("sea bass" "snapper"), greenling ("sea trout"), cabezon, skates, and other marine fish species not listed in the 2017 Oregon Sport Fishing Regulations in the Marine Zone, located under the category of Species Name, Marine Fish: 7 fish daily bag limit in aggregate (total sum or number), of which no more than six may be black rockfish, no more than four may be blue rockfish, deacon rockfish, China rockfish, copper rockfish, or quillback rockfish in aggregate, and no more than one may be a cabezon. Retention of the following species is prohibited:

(A) Yelloweye rockfish; and

(B) Cabezon from January 1 through June 30.

(c) Flatfish (flounder, sole, sanddabs, turbot, and all halibut species except Pacific halibut): 25 fish daily bag limit in aggregate (total sum or number).

(d) Retention of all marine fish listed under the category of Species Name, Marine Fish, except Pacific cod, sablefish, flatfish, herring, anchovy, smelt, sardine, striped bass, hybrid bass, and offshore pelagic species (excluding leopard shark and soupfin shark), is prohibited when Pacific halibut is retained on the vessel during open days for the all-depth sport fishery for Pacific halibut. Persons must also consult all publications referenced in OAR 635-039-0080 to determine all rules applicable to the taking of Pacific halibut.

(e) Harvest methods and other specifications for marine fish in subsections (4)(a), (4)(b) and (4)(c) including the following:

(A) Minimum length for lingcod, 22 inches.

(B) Minimum length for cabezon, 16 inches.

(C) May be taken by angling, hand, bow and arrow, spear, gaff hook, snag hook and herring jigs.

(D) Mutilating the fish so the size or species cannot be determined prior to landing or transporting mutilated fish across state waters is prohibited.

(E) All vessels engaged in sport fishing activities shall have a functional descending device on board when fishing for groundfish in the Pacific Ocean or when in possession of groundfish. A descending device shall be used when releasing any rockfish outside of the 30-fathom curve (defined by latitude and longitude) as shown in Title 50 Code of Federal Regulations Part 660 Section 71, except that it is not required for black rockfish (Sebastes melanops), blue rockfish (S. mystinus), Deacon rockfish (S. diaconus), yellowtail rockfish (S. flavidus), or widow rockfish (S. entomelas). Upon request, a descending device shall be presented for inspection by any person authorized to enforce the recreational fishing laws of Oregon or a representative of the Department. In this subsection, "descending device" means a device capable of returning a rockfish back to a depth of at least 100 feet to assist the fish in recompression and to improve the fish's chance of survival.

(f) Sport fisheries for species in subsections (4)(a), (4)(b) and (4)(c) and including leopard shark and soupfin shark are open January 1 through December 31, twenty-four hours per day, except as provided in subsections 4(b) and (4)(d). Ocean waters are closed for these species during April 1 through September 30, outside of the 30-fathom curve (defined by latitude and longitude) as shown in Title 50 Code of Federal Regulations Part 660 Section 71, except as provided in subsection 4(d). A 20-fathom, 25-fathom, or 30-fathom curve, as shown on Title 50 Code of Federal Regulations Part 660 Section 71 may be implemented as the management line as in-season modifications necessitate. In addition, the following management lines may be used to set area specific regulations for inseason action only:

(A) Cape Lookout (45°20'30" N latitude); and

(B) Cape Blanco (42°50'20" N latitude).

(g) The Stonewall Bank Yelloweye Rockfish Conservation Area (YRCA) is defined by coordinates specified in Title 50 Code of Federal Regulations Part 660 Section 70 (October 1, 2015 ed.). Within the YRCA, it is unlawful to fish for, take, or retain species listed in subsections (4)(a), (4)(b) and (4)(c) of this rule, leopard shark, soupfin shark, and Pacific halibut using recreational fishing gear. A vessel engaged in recreational fishing within the YRCA is prohibited from possessing any species listed in subsections (4)(a), (4)(b) and (4)(c) of this rule, leopard shark, soupfin shark, and Pacific halibut. Recreational fishing vessels in possession of species listed in subsections (4)(a), (4)(b) and (4)(c) and including leopard shark, soupfin shark, and Pacific halibut may transit the YRCA without fishing gear in the water.

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 22-1994, f. 4-29-94, cert. ef. 5-2-94; FWC 29-1994(Temp), f. 5-20-94, cert. ef. 5-21-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 43-1994(Temp), f. & cert. ef. 7-19-94; FWC 83-1994(Temp), f. 10-28-94, cert. ef. 11-1-94; FWC 95-1994, f. 12-28-94, cert. ef. 1-1-95; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 25-1995, f. 3-29-95, cert. ef. 4-1-95; FWC 26-1995, 3-29-95, cert. ef. 4-2-95; FWC 36-1995, f. 5-3-95, cert. ef. 5-5-95; FWC 43-1995(Temp), f. 5-26-95, cert. ef. 5-28-95; FWC 46-1995(Temp), f. & cert. ef. 6-2-95; FWC 58-1995(Temp), f. 7-3-95, cert. ef. 7-5-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 28-1996(Temp), f. 5-24-96, cert. ef. 5-26-96; FWC 30-1996(Temp), f. 5-31-96, cert. ef. 6-2-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 68-1999(Temp), f. & cert. ef. 9-17-99 thru 9-30-99; administrative correction 11-11-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 114-2003(Temp), f. 11-18-03, cert. ef. 11-21-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04; DFW 83-2004(Temp), f. 8-17-04, cert. ef. 8-18-04 thru 12-31-04; DFW 91-2004(Temp), f. 8-31-04, cert. ef. 9-2-04 thru 12-31-04; DFW 97-2004(Temp), f. 9-22-04, cert. ef. 9-30-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 34-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 75-2005(Temp), f. 7-13-05, cert. ef. 7-16-05 thru 12-31-05; DFW 87-2005(Temp), f. 8-8-05, cert. ef. 8-11-05 thru 12-31-05; DFW 121-2005(Temp), f. 10-12-05, cert. ef. 10-18-05 thru 12-31-05; DFW 129-2005(Temp), f. & cert. ef. 11-29-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 138-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 141-2005(Temp), f. 12-12-05, cert. ef. 12-30-05 thru 12-31-05; Administrative correction 1-19-06; DFW 61-2006, f. 7-13-06, cert. ef. 10-1-06; DFW 65-2006(Temp), f. 7-21-06, cert. ef. 7-24-06 thru 12-31-06; DFW 105-2006(Temp), f. 9-21-06, cert. ef. 9-22-06 thru 12-31-06; DFW 134-2006(Temp), f. 12-21-06, cert. ef. 1-1-07 thru 6-29-07; DFW 3-2007, f. & cert. ef. 1-12-07; DFW 10-2007, f. & cert. ef. 2-14-07; DFW 66-2007(Temp), f. 8-6-07, cert. ef. 8-11-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 73-2008(Temp), f. 6-30-08, cert. ef. 7-7-08 thru 12-31-08; DFW 97-2008(Temp), f. 8-18-08, cert. ef. 8-21-08 thru 12-31-08; DFW 105-2008(Temp), f. 9-4-08, cert. ef. 9-7-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 7-2009(Temp), f. & cert. ef. 2-2-09 thru 7-31-09; DFW 39-2009, f. & cert. ef. 4-27-09; DFW 110-2009(Temp), f. 9-10-09, cert. ef. 9-13-09 thru 12-31-09; DFW 144-2009, f. 12-8-09,

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cert. ef. 1-1-10; DFW 103-2010(Temp), f. 7-21-10, cert. ef. 7-23-10 thru 12-31-10; DFW 157-2010, f. 12-6-10, cert. ef. 1-1-11; DFW 24-2011, f. & cert. ef. 3-22-11; DFW 97-2011(Temp), f. & cert. ef. 7-20-11 thru 12-31-11; DFW 135-2011(Temp), f. 9-21-11, cert. ef. 10-1-11 thru 12-31-11; DFW 155-2011(Temp), f. 11-18-11, cert. ef. 12-1-11 thru 12-31-11; DFW 156-2011(Temp), f. 12-9-11, cert. ef. 12-15-11 thru 1-31-12; DFW 164-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 90-2012(Temp), f. 7-17-12, cert. ef. 9-20-12 thru 12-31-12; DFW 151-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 155-2012(Temp), f. 12-28-12, cert. ef. 1-1-13 thru 6-29-13; DFW 23-2013(Temp), f. 3-20-13, cert. ef. 4-1-13 thru 9-27-13; DFW 32-2013, f. & cert. ef. 5-14-13; DFW 112-2013(Temp), f. & cert. ef. 9-27-13 thru 12-31-13; DFW 136-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15; DFW 4-2015, f. 1-13-15, cert. ef. 1-15-15; DFW 5-2015(Temp), f. 1-13-15, cert. ef. 1-15-15 thru 7-13-15; Temporary suspended by DFW 18-2015, f. & cert. ef. 3-10-15; DFW 34-2015, f. & cert. ef. 4-28-15; DFW 167-2015, f. 12-29-15, cert. ef. 1-1-16; DFW 3-2016, f. & cert. ef. 1-19-16; DFW 24-2016(Temp), f. 3-30-16, cert. ef. 4-1-16 thru 9-27-16; DFW 35-2016, f. & cert. ef. 4-26-16; DFW 38-2016(Temp), f. & cert. ef. 4-26-16 thru 10-22-16; DFW 91-2016(Temp), f. 7-12-16, cert. ef. 7-14-16 thru 12-31-16; DFW 105-2016, f. & cert. ef. 8-10-16; DFW 117-2016(Temp), f. 9-14-16, cert. ef. 10-1-16 thru 12-31-16; DFW 148-2016, f. 12-7-16, cert. ef. 1-1-17; DFW 153-2016, f. 12-28-16, cert. ef. 1-1-17

Department of Human Services, Administrative Services Division and Director's Office Chapter 407

Rule Caption: Additional Process for Review of Substantiated Abuse Finding

Adm. Order No.: DHSD 1-2017(Temp)

Filed with Sec. of State: 1-13-2017

Certified to be Effective: 1-13-17 thru 7-11-17

Notice Publication Date:

Rules Amended: 407-045-0940

Subject: The Department of Human Services (Department) needs to immediately amend OAR 407-045-0940 to provide the Department's Director or designee the opportunity for good cause, to reconsider a substantiated abuse finding regarding a person or child caring agency (CCA) investigated by the Office of Adult Abuse Prevention and Investigations (OAAPI). Recent legislation mandates the Department to take certain actions when abuse is founded, which may include placing conditions, suspension or revocation of a license, certificate or authorization of the CCA. This temporary rule amendment outlines the Director's or designee's ability to initiate action that may affirm, modify, reverse or remand a substantiated abuse finding. This temporary rule amendment does not affect current rule provisions that affords a person or CCA with a substantiated abuse finding the right to request an administrative review of the OAAPI determination by the Substantiation Review Committee, as stated in OAR 407-045-0800 through 407-045-0955.

Temporary 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

407-045-0940

Review of Substantiated Abuse Finding

(1) When OAAPI has determined abuse has occurred, the person with substantiated abuse or a CCA against whom the finding has been made, has the right to request an administrative review of the OAAPI decision by the OSRC. The OSRC must consist of Department employees who are knowledgeable about the dynamics of child abuse and neglect, including the assessment or investigation of child abuse, and Department employees with knowledge of abuse investigations, especially where abuse is alleged to have occurred in out-of-home settings.

(2) A person with substantiated abuse or CCA requesting a review must use information contained in the notice of OAAPI substantiation to either meet with the OSRC or prepare a written request for review. The written request for review must be received by OAAPI within 30 calendar days of the receipt of the notice of OAAPI substantiation. If the request is submitted by mail, it must be postmarked within 30 calendar days. The request must include the following:

- Date the request for review is written;
- Case number found on the notice of OAAPI substantiation;
- Full name of the person with substantiated abuse or CCA;
- The person with substantiated abuse or CCA's current name (if it has changed from the name noted in section (c) of this rule);
- A full explanation, responsive to the information provided in the Department's notice, explaining why the person with substantiated abuse or CCA believes the OAAPI substantiation is wrong and any additional information and documents the person with substantiated abuse or CCA wants considered during the review;

information and documents the person with substantiated abuse or CCA wants considered during the review;

(f) The person with substantiated abuse or CCA's current street address and telephone number; and

(g) The person with substantiated abuse signature or the signature of a CCA employee authorized to sign on behalf of the organization.

(3) Except as provided in OAR 407-045-0950, within 60 calendar days of OAAPI's receipt of a completed request for review, the OSRC must conduct a review and issue a notice of OSRC decision that includes the following:

- Whether there is reasonable cause to believe that abuse occurred;
- Whether there is reasonable cause to believe that the person with substantiated abuse or CCA was responsible for the abuse;
- Whether the OSRC is changing the OAAPI substantiation;
- If the OAAPI substantiation is changed, whether the changed conclusion is being changed to "unsubstantiated" or "inconclusive;" and
- A summary of the information used by the OSRC and its reasoning in reaching its decision.

(4) The OSRC must operate as follows:

(a) The OSRC must consider relevant documentary information contained in the OAAPI investigation file, investigative report and exhibits, and information provided by the person with substantiated abuse.

(b) The OSRC may not re-interview the victim; interview or meet with others associated with the person with substantiated abuse or CCA, or with others mentioned in the report; or conduct a field assessment or investigation of the allegation of abuse.

(c) All OSRC decisions must be decided by majority vote of the three participating committee members, all of whom must be present.

(d) The OSRC must make a determination as to:

(A) Whether there is reasonable cause to believe that abuse occurred; and

(B) Whether there is reasonable cause to believe that the person with substantiated abuse or CCA is responsible for the abuse.

(e) The OSRC must decide to either uphold the OAAPI substantiation, or change that conclusion to unsubstantiated or inconclusive.

(5) OSRC must send the notice of OSRC decision to the person with substantiated abuse or CCA, the OAAPI investigator who conducted the investigation, applicable public agencies, other entities or individuals who received notice of the original substantiation, and the OAAPI Director.

(6) The Department must provide the person with substantiated abuse a notice of rights to appeal the OSRC determination.

(7) Notwithstanding the other provisions of this rule, the Director or Director's designee on his or her own initiative and for good cause, within 60 days of a finding of substantiated abuse, may affirm, modify, reverse, or remand a substantiated finding of abuse regarding a person or CCA.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 418.005 & OL 2016, Ch. 106

Hist.: DHSD 12-2007(Temp), f. & cert. ef. 12-3-07 thru 5-30-08; DHSD 4-2008, f. & cert. ef. 5-30-08; DHSD 5-2010, f. 6-30-10, cert. ef. 7-1-10; DHSD 7-2016(Temp), f. & cert. ef. 7-1-16 thru 12-27-16; DHSD 8-2016, f. & cert. ef. 12-1-16; DHSD 1-2017(Temp), f. & cert. ef. 1-13-17 thru 7-11-17

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

Rule Caption: ODDS: Agency Background Checks to Provide Developmental Disabilities Services in Community-Based Settings

Adm. Order No.: APD 42-2016(Temp)

Filed with Sec. of State: 12-16-2016

Certified to be Effective: 12-16-16 thru 4-27-17

Notice Publication Date:

Rules Amended: 411-323-0050

Rules Suspended: 411-323-0050(T)

Subject: The Department of Human Services (Department), Office of Developmental Disabilities Services (ODDS) is temporarily amending OAR 411-323-0050 to assure background rechecks are performed in accordance with OAR 407-007-0220.

Rules Coordinator: Kimberly Colkitt-Hallman—(503) 945-6398

411-323-0050

Agency Management and Personnel Practices

(1) NON-DISCRIMINATION. The agency must comply with all applicable state and federal statutes, rules, and regulations in regard to non-discrimination in employment policies and practices.

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(2) **BASIC PERSONNEL POLICIES AND PROCEDURES.** The agency must have in place and implement personnel policies and procedures that address suspension, increased supervision, or other appropriate disciplinary employment procedures when a staff member, provider, or subcontractor, including relief providers and volunteers, has been identified as an accused person in an abuse investigation or when an allegation of abuse has been substantiated.

(3) **PROHIBITION AGAINST RETALIATION.** The agency or provider may not retaliate against any staff member or subcontractor including relief providers and volunteers that report in good faith suspected abuse or retaliate against the individual with respect to any report. An accused person may not self-report solely for the purpose of claiming retaliation.

(a) Any agency, provider, or person that retaliates against any person because of a report of suspected abuse or neglect is liable according to ORS 430.755 in a private action to the reporting person for actual damages and, in addition, is subject to a penalty up to \$1000, notwithstanding any other remedy provided by law.

(b) Any adverse action is evidence of retaliation if taken within 90 days of a report of abuse. For purposes of this section, "adverse action" means any action taken by an agency, provider, or person involved in a report against the person making the report or against the individual because of the report and includes, but is not limited to:

- (A) Discharge or transfer from the agency, except for clinical reasons;
- (B) Discharge from or termination of employment;
- (C) Demotion or reduction in remuneration for program services; or
- (D) Restriction or prohibition of access to the agency or the individuals receiving services by the agency.

(4) **MANDATORY ABUSE REPORTING PERSONNEL POLICIES AND PROCEDURES.**

(a) Any staff, providers, substitute caregivers, independent contractors of the agency, and volunteers are mandatory reporters.

(b) The agency must notify all staff, providers, substitute caregivers, independent contractors of the agency, and volunteers of mandatory reporting status at least annually on forms provided by the Department.

(c) The agency must provide all staff, providers, substitute caregivers, independent contractors of the agency, and volunteers with a Department produced card regarding abuse reporting status and abuse reporting requirements.

(d) Agencies providing services to adults must report suspected abuse to the CDDP where the adult resides. A report must also be made to law enforcement if there is reason to believe a crime has been committed.

(e) Agencies providing services to children must report suspected abuse to the Department or law enforcement in the county where the child resides.

(5) **APPLICATION FOR EMPLOYMENT.** An application for employment at the agency must inquire whether an applicant has had any founded reports of child abuse or substantiated adult abuse.

(6) **BACKGROUND CHECKS.** Any staff, volunteer, provider, relief care provider, crisis provider, advisor, or any subject individual defined by OAR 407-007-0210, including staff who are not identified in this rule but use public funds intended for the operation of an agency, who has or shall have contact with an individual in services, must have an approved background check in accordance with OAR 407-007-0200 to 407-007-0370 and ORS 181A.190.

(a) The agency may not use public funds to support, in whole or in part, any person described above in section (6) of this rule in any capacity who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(b) Subsection (a) of this section does not apply to agency staff who were hired prior to July 28, 2009 that remain in the current position for which the staff member was hired.

(c) Any person described above in section (6) of this rule must self-report any potentially disqualifying crimes under OAR 125-007-0270 and potentially disqualifying conditions under OAR 407-007-0290. The person must notify the Department or the designee of the Department within 24 hours.

(7) **EXECUTIVE DIRECTOR QUALIFICATIONS.** The agency must be operated under the supervision of an Executive Director who has a minimum of a bachelor's degree and two years of experience, including supervision, in intellectual or developmental disabilities, mental health, rehabilitation, social services, or a related field. Six years of experience in the identified fields may be substituted for a degree.

(8) **GENERAL STAFF QUALIFICATIONS.** Any staff member providing services to individuals must meet the following criteria:

(a) Be at least 18 years of age.

(b) Consent to a background check by the Department as described in OAR 407-007-0200 to 407-007-0370 and section (6) of this rule, resulting in a final fitness determination of approval or restricted approval.

(A) Background rechecks must be performed biennially and in accordance with OAR 407-007-0220.

(B) **PORTABILITY OF BACKGROUND CHECK APPROVAL.** A subject individual as defined in OAR 407-007-0210 may be approved for one position to work in multiple locations within the qualified entity as defined in OAR 407-007-0210. The Background Check Request form must be completed by the subject individual to show intent to work at various locations.

(c) If hired on or after July 28, 2009, not have been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(d) Be legally eligible to work in the United States.

(e) Hold a current, valid, and unrestricted professional license or certification where services and supervision requires specific professional education, training, and skill.

(f) Understand requirements of maintaining confidentiality and safeguarding individual information.

(g) Not be on the list of excluded or debarred providers maintained by the Office of the Inspector General.

(h) Be literate and capable of understanding written and oral orders.

(i) Be able to communicate with individuals, health care providers, case managers, and appropriate others.

(j) Be able to respond to emergency situations at all times that services are being delivered.

(k) Be certified in CPR and First Aid by a recognized training agency within 90 days of employment.

(l) Receive 12 hours of job-related in-service training annually.

(m) Have clear job responsibilities as described in a current signed and dated job description.

(n) If transporting individuals, have a valid license to drive and vehicle insurance in compliance with the laws of the Department of Motor Vehicles.

(o) Additional qualifications in the applicable program rules for the staff of an agency endorsed to those rules.

(9) **PERSONNEL FILES AND QUALIFICATION RECORDS.** The agency must maintain up-to-date written job descriptions for all staff as well as a file available to the Department or the designee of the Department for inspection that includes written documentation of the following for each staff member:

(a) Written documentation that references and qualifications were checked.

(b) Written documentation by the Department of an approved background check in accordance with OAR 407-007-0200 to 407-007-0370.

(c) Written documentation of staff notification of mandatory abuse training and reporter status prior to supervising individuals and annually thereafter.

(d) Written documentation of any complaints filed against the staff member and the results of the complaint process, including, if any, disciplinary action.

(e) Written documentation of any founded report of child abuse or substantiated adult abuse.

(f) Written documentation of 12 hours of job-related in-service training annually.

(g) Documentation that the staff member has been certified in CPR and First Aid by a recognized training agency within 90 days of employment and that certification is kept current.

(h) For staff operating vehicles that transport individuals, documentation of a valid license to drive and proof of vehicle insurance in compliance with the laws of the Department of Motor Vehicles.

(10) **DISSOLUTION OF AN AGENCY.** A representative of the governing body or owner of an agency must notify the Department in writing 30 days prior to the dissolution of the agency and make appropriate arrangements for the transfer of individual records.

Stat. Auth. ORS 409.050

Stats. Implemented: ORS 409.050

Hist.: SPD 12-2011, 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; 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 25-2016, f. & cert. ef. 6-29-16; APD 40-2016(Temp), f. & cert. ef. 10-24-16 thru 4-21-17; APD 42-2016(Temp), f. & cert. ef. 12-16-16 thru 4-27-17

ADMINISTRATIVE RULES

Rule Caption: ODDS: Family Support Services

Adm. Order No.: APD 43-2016

Filed with Sec. of State: 12-16-2016

Certified to be Effective: 1-1-17

Notice Publication Date: 11-1-2016

Rules Repealed: 411-305-0027, 411-305-0050, 411-305-0105, 411-305-0110, 411-305-0115, 411-305-0160, 411-305-0170, 411-305-0180

Rules Ren. & Amend: 411-305-0010 to 411-305-0200, 411-305-0020 to 411-305-0205, 411-305-0023 to 411-305-0210, 411-305-0025 to 411-305-0215, 411-305-0030 to 411-305-0220, 411-305-0080 to 411-305-0225, 411-305-0090 to 411-305-0230, 411-305-0120 to 411-305-0235, 411-305-0140 to 411-305-0240

Subject: The Department of Human Services, Office of Developmental Disabilities Services (Department) has permanently updated the rules for family support services in OAR chapter 411, division 305 to —

- Clarify the intent of the program and required family support services;

- Align with current program and definition changes in OAR chapter 411;

- Remove general definitions that exist in OAR chapter 411, division 317;

- Align program administration and operation requirements with the rules for Community Developmental Disabilities Programs (CDDPs) in OAR chapter 411, division 320;

- Repeal OAR 411-305-0105 regarding waits lists. The CDDP is responsible to have a service prioritization plan and refer families to other programs and services if family support funds are not available;

- Align the conditions of purchase with the rules for community living supports in OAR chapter 411, division 450 and the rules for ancillary services in OAR chapter 411, division 435;

- Update supports and services to reflect current practice and clarify respite and community inclusion services;

- Align the standards for providers;

- Renumber the rules to improve readability; and

- Make minor grammar, formatting, and housekeeping changes.

Rules Coordinator: Kimberly Colkitt-Hallman—(503) 945-6398

411-305-0200

Statement of Purpose

(1) The rules in OAR chapter 411, division 305 prescribe standards, responsibilities, and procedures for Community Developmental Disabilities Programs to partner with families and other community-based networks in the coordination of supports and services to:

(a) Maximize independence and increase the ability of a child to engage in a life that is fully integrated into the community;

(b) Increase the ability of a family to care for their child in the family home; and

(c) Strengthen the role of the family as the primary caregiver.

(2) Family support services include the supports and services described in OAR 411-305-0235.

(3) Family support services are individualized and built on family support and child and family-centered planning.

Stat. Auth.: ORS 409.050, 417.342, 430.662

Stats. Implemented: ORS 417.342, 427.005, 427.007, 427.104, 430.610, 430.620, 430.662-430.670

Hist.: MHD 5-2003, f. & cert. ef. 7-1-03; Renumbered from 309-041-2000, SPD 20-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 4-2009, f. & cert. ef. 6-1-09; 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; Renumbered from 411-305-0010, APD 43-2016, f. 12-16-16, cert. ef. 1-1-17

411-305-0205

Definitions and Acronyms

OAR 411-317-0000 includes general definitions for words and terms frequently used in OAR chapter 411, division 305. In addition to the definitions in OAR 411-317-0000, the following definitions apply specifically to the rules in OAR chapter 411, division 305. 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) “Child and Family-Centered Planning”:

(a) Means a timely process, formal or informal, that includes persons chosen by the child (as age appropriate) and the parent or legal representative to ensure informed choices and decisions made for supports and services are consistent with 42 CFR 441.540.

(b) The process includes gathering and organizing information to reflect what is important to and for the child and the family and to help:

(A) Determine and describe choices about the goals, desired outcomes, activities, providers, service settings, risks, and preferences of the child;

(B) Design strategies and networks of support to achieve goals and desired outcomes using the strengths, relationships, and resources of the child and family; and

(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 child and the family.

(3) “Family”:

(a) Means a unit of two or more people that includes at least one child, found to be eligible for developmental disabilities services, where the primary caregiver is a family member as defined in OAR 411-317-0000.

(b) The term “family” is defined as described above for the following purposes:

(A) Determining the eligibility of a child for enrollment into family support services as a resident in the family home.

(B) Identifying people who may apply, plan, and arrange for individual services.

(C) Determining who may receive family training.

(4) “Family Home” means the residence for a child that is not contracted with the Department to provide services such as a certified foster home, a licensed residential care facility, assisted living facility, or nursing facility, or any other licensed or certified residential setting. A child who is placed in a certified foster home does not qualify for family support services.

(5) “Family Support Funds” mean the public funds contracted by the Department to the CDDP to assist families with the purchase of supports and services for children enrolled in the family support program, according to the assessed needs of the child and their Annual Plan.

(6) “Family Support Services” means individualized planning and coordination of available supports and services provided to children and their families. Services, supports, and other assistance are built on the principles of family support and child and family-centered planning.

(7) “Family Support Policy Oversight Group” means a group appointed by the CDDP to provide consumer-based leadership and advice regarding family support issues such as development of policy, evaluation of services, and use of resources. The Family Support Policy Oversight Group may be a subgroup of an advisory body that has a broader scope or it may be a separate body with a specific focus on family support services.

(8) “ISP” means “Individual Support Plan”.

(9) “ODDS” means the “Office of Developmental Disabilities Services”.

(10) “These Rules” mean the rules in OAR chapter 411, division 305. Stat. Auth.: ORS 409.050, 417.346, 427.104, 430.662

Stats. Implemented: ORS 417.340-417.344, 417.346-417.350, 427.005, 427.007, 427.104, 430.610, 430.620, 430.662-430.670

Hist.: MHD 5-2003, f. & cert. ef. 7-1-03; MHD 6-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-2010, SPD 20-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 4-2009, f. & cert. ef. 6-1-09; 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; Renumbered from 411-305-0020, APD 43-2016, f. 12-16-16, cert. ef. 1-1-17

411-305-0210

Program Administration and Operation

(1) FAMILY LEADERSHIP. The CDDP may appoint a Family Support Policy Oversight Group to advise and assist the CDDP in matters related to family support services such as evaluating the effectiveness of family support services, evaluating family satisfaction with family support services, improving availability of resources to meet the support needs, and developing the plan for managing family support funds required by OAR 411-305-0230. When the CDDP elects to appoint a Family Support Oversight Group, the CDDP must develop and have available for review brief written descriptions of the purpose and scope of the Group, how membership is determined, and what process is used to resolve concerns or disagreements between the CDDP and the Group.

(2) PROGRAM MANAGEMENT. The CDDP must ensure the provision of family support services are in accordance with the program

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management and responsibilities described in OAR 411-320-0030 and 411-320-0040.

(3) **SERVICE RECORDS.** In addition to the service record requirements described in OAR 411-320-0070, the CDDP must maintain the following documentation specific to family support services:

(a) The date a child is enrolled in the family support program for case management only.

(b) The date when a child is referred to other programs and services, if family support funds are not available.

(4) **COMMUNITY DEVELOPMENT.** The CDDP may coordinate with other agencies and community partners to develop and manage expansion of resources required to meet the support needs of children and families. Assurance of agency coordination is in accordance with OAR 411-320-0040.

(5) **QUALITY ASSURANCE.** The CDDP must participate in statewide quality assurance, service evaluation, and program regulation activities as directed by the Department in OAR 411-320-0045.

(6) **VARIANCES.** The Department may grant a variance as described in OAR 411-320-0200.

Stat. Auth.: ORS 409.050, 417.346, 427.104, 430.662
Stats. Implemented: ORS 417.340-417.344, 417.346-417.350, 427.005, 427.007, 427.104, 430.610, 430.620, 430.662-430.670
Hist.: MHD 5-2003, f. & cert. ef. 7-1-03; MHD 6-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-2150, SPD 20-2003, f. 12-22-03, cert. ef. 12-28-03; Renumbered from 411-305-0150, SPD 4-2009, f. & cert. ef. 6-1-09; 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; Renumbered from 411-305-0023, APD 43-2016, f. 12-16-16, cert. ef. 1-1-17

411-305-0215

Required Services

(1) In addition to the assistance provided by a CDDP as described in OAR 411-415-0080, the CDDP must provide or arrange for the following services to support all children enrolled in family support services:

(a) **ACCESS TO FAMILY SUPPORT FUNDING.** The CDDP must assist families and children to access family support funds when available.

(b) **CASE MANAGEMENT.** The CDDP must provide case management services in accordance with the standards described in OAR 411-415-0050.

(c) **SUPPORT NEEDS ASSESSMENT.** The CDDP must assist a family to determine the support needs of their child and to assist the family to care for the child in the family home and community.

(A) An assessment for family support services must be conducted as described in OAR 411-305-0225 when a child:

(i) Is enrolled in developmental disabilities services as described in OAR 411-305-0220 and is only accessing family support services, including case management only;

(ii) Enters case management services as described in OAR 411-415-0030; and

(iii) Is not expected to have a functional needs assessment, as described in OAR 411-415-0060, to access other ODDS-funded services.

(B) Assessments used to determine required supports and services, preferences, and resources, may include documentation of an eligibility determination for developmental disabilities services as described in OAR 411-320-0080, including evaluations and plans available from other service systems.

(2) When a child is determined eligible for developmental disabilities services consistent with OAR 411-320-0080, the CDDP must inform the family about family support services, including Department policy and the In-Home Expenditure Guidelines when applicable. The CDDP must provide accurate, up-to-date information that must include the following:

(a) The process for accessing family support funds and for determining the amount available to purchase supports.

(b) Common processes encountered in using family support services, including how to raise and resolve concerns.

(c) The responsibility of providers of family support services and CDDP employees as mandatory reporters of suspected child abuse.

(d) A description of the responsibilities of the family in regard to the use of public funds.

(e) An explanation of the rights of the family to select and direct providers, qualified according to OAR 411-305-0240, to provide supports and services authorized through an Annual Plan and purchased with family support funds.

(f) Procedures to address complaints regarding the delivery of family support services that have not been resolved using the complaint procedures (informal or formal) of a provider agency. The complaint procedures must be consistent with the requirements in OAR 411-318-0015.

(g) An assurance that additional information about family support services shall be made available at the request of the family. Additional information may include, but is not limited to, the following:

(A) A description of the organizational structure of the CDDP.

(B) A description of any contractual relationships the CDDP has in place or may establish to accomplish the family support service functions required by these rules.

(C) If applicable, a description of the relationship between the CDDP and the Family Support Policy Oversight Group.

(3) The CDDP must make information required in sections (1) and (2) of this rule available using language, format, and presentation methods appropriate for effective communication according to the needs and abilities of each family.

Stat. Auth.: ORS 409.050, 417.346, 427.104, 430.662
Stats. Implemented: ORS 417.340-417.344, 417.346-417.350, 427.005, 427.007, 427.104, 430.610, 430.620, 430.662-430.670
Hist.: MHD 5-2003, f. & cert. ef. 7-1-03; Renumbered from 309-041-2060, SPD 20-2003, f. 12-22-03, cert. ef. 12-28-03; Renumbered from 411-305-0070, SPD 4-2009, f. & cert. ef. 6-1-09; Renumbered from 411-305-0025, APD 43-2016, f. 12-16-16, cert. ef. 1-1-17

411-305-0220

Eligibility, Enrollment, and Exit

(1) **NON-DISCRIMINATION.** Children determined eligible according to section (2) of this rule may not be denied family support services or otherwise discriminated against on the basis of age, diagnostic or disability category, race, color, creed, national origin, citizenship, income, or duration of Oregon residence.

(2) **ELIGIBILITY.** To be eligible for family support services, a child must:

(a) Be under the age of 18;

(b) Be determined eligible for developmental disabilities services by the CDDP and enrolled into case management services;

(c) Reside in the family home; and

(d) Not receive other ODDS-funded services, other than State Plan personal care services as described in OAR chapter 411, division 034, or adoption or guardianship assistance through Child Welfare.

(3) **CONCURRENT ELIGIBILITY.** A child is not eligible for family support services from more than one CDDP unless the concurrent service:

(a) Is necessary to transition from one county to another with a change of residence;

(b) Is part of a collaborative plan developed by both CDDPs; and

(c) Does not duplicate services and expenditures.

(4) **ENROLLMENT.** A child, who meets the eligibility requirements in section (2) of this rule, is considered enrolled in family support services when the child:

(a) Is enrolled in case management services;

(b) Has an Annual Plan that reflects current support needs; and

(c) Is not enrolled in other ODDS-funded services, other than State Plan personal care services as described in OAR chapter 411, division 034, or adoption or guardianship assistance through Child Welfare.

(5) **EXIT.**

(a) A child must exit family support services when any of the following occurs:

(A) The child turns 18 years of age.

(B) The child is no longer eligible for developmental disabilities services determined by the CDDP of the county of origin as described in OAR 411-320-0080.

(C) The child no longer resides in the family home.

(D) The child is enrolled in other ODDS-funded services.

(E) The parent or legal representative either cannot be located or has not responded after 30 days of repeated attempts by CDDP staff to complete the Annual Plan development and monitoring activities, and does not respond to a notice of intent to terminate.

(F) The CDDP has sufficient evidence that the parent or legal representative has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the Annual Plan, refused to cooperate with documenting expenses of family support funds, or otherwise knowingly misused public funds associated with family support services.

(b) When a child is being exited from family support services, a written Notification of Planned Action must be provided as described in OAR 411-318-0020.

Stat. Auth.: ORS 409.050, 417.346, 427.104, 430.662
Stats. Implemented: ORS 417.340-417.344, 417.346-417.350, 427.005, 427.007, 427.104, 430.610, 430.620, 430.662-430.670
Hist.: MHD 5-2003, f. & cert. ef. 7-1-03; Renumbered from 309-041-2020, SPD 20-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 4-2009, f. & cert. ef. 6-1-09; Renumbered from 411-305-0030, APD 43-2016, f. 12-16-16, cert. ef. 1-1-17

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411-305-0225

Needs Assessment and Service Planning

(1) The CDDP must provide or arrange for an annual child and family-centered planning process within 90 days of enrollment and annually thereafter as long as the child is enrolled in family support services. The initial annual meeting must be face-to-face. Follow-up contacts to complete the Annual Plan may be made by telephone or by other interactive methods if the child or their parent or legal representative agrees.

(2) **NEEDS ASSESSMENT.** The CDDP must determine and document the support needs of a child and family using a Department approved form which may include the functional needs assessment, in addition to other person-centered planning tools.

(3) **ANNUAL PLAN.** The CDDP, the child (as age appropriate), and the family must develop a written Annual Plan as a result of the annual planning process. The Annual Plan must be conducted on a Department approved form, which may include using an ISP in place of an Annual Plan.

(a) When using the ISP, accompanying documents used to develop the ISP and any supporting documents (as applicable) must also be used.

(b) The Annual Plan and records supporting development of the Annual Plan must include evidence of the following:

(A) Family members, the child (as age appropriate), and others of the family or legal representative's choosing have participated in the planning process.

(B) Family support funds are used only to purchase supports or services tied to identified outcomes and necessary for the child to be supported in the family home.

(C) A services coordinator has assessed the availability of other public, private, formal, and informal resources for providing supports and services to the child and family before using family support funds.

(D) The services coordinator is working with the family to develop new resources whenever possible.

(E) Identification of risks, including risk of serious neglect, intimidation, and exploitation.

(F) Informed decisions by the parent or legal representative regarding the nature of supports and services or other steps taken to address any identified risks.

(G) Education and support for the child and the family to recognize and report abuse.

(c) The CDDP may not commit family support funds through the Annual Plan beyond the period for which family support funds have been allocated to the CDDP.

(4) **SERVICE MONITORING.** The services coordinator must conduct and document reviews of the Annual Plan and available resources with the parent or legal representative in accordance with OAR 411-415-0090.

Stat. Auth.: ORS 409.050, 417.346, 427.104, 430.662
Stats. Implemented: ORS 417.340-417.344, 417.346-417.350, 427.005, 427.007, 427.104, 430.610, 430.620, 430.662-430.670
Hist.: MHD 5-2003, f. & cert. ef. 7-1-03; MHD 6-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-2070, SPD 20-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 4-2009, f. & cert. ef. 6-1-09; SPD 10-2009(Temp), f. & cert. ef. 7-28-09 thru 1-23-10; SPD 12-2009, f. 9-28-09 cert. ef. 10-1-09; Renumbered from 411-305-0080, APD 43-2016, f. 12-16-16, cert. ef. 1-1-17

411-305-0230

Managing Family Support Funds and Conditions of Purchase

(1) The CDDP must develop and implement a written plan for managing access to family support funds using forms and procedures prescribed by the Department that includes, but is not limited to the following:

(a) The number of children anticipated to receive family support funding each year.

(b) The plan for prioritization and aim to serve more children with allocated funds.

(2) In any plan year, the CDDP determines the actual amount a family may access from family support funds, consistent with the program intent to serve as many children as possible and not to exceed the maximum limits established by the Department. Family support funds are made available on a first-come, first-served basis unless the CDDP submits an alternative practice approved by the Department. Unique financial limits may apply to individual service categories.

(3) Estimates used to establish the annual limits of family support funds for specific services in the Annual Plan must be based on the In-Home Expenditure Guidelines.

(a) Family support services may only be delivered in accordance with applicable state and federal wage and hour regulations.

(b) The CDDP must establish a process for review and approval of all purchases to ensure program intent and monitor authorized Annual Plans for continued cost effectiveness.

(4) The CDDP must review family support fund purchases and obligations at least every 90 days.

(5) Purchase of supports and services through family support funds must:

(a) Be tied to the identified support needs and desired outcomes of the child, consistent with their Annual Plan developed in accordance with OAR 411-305-0225;

(b) Be an allowable support and service as listed in OAR 411-305-0235;

(c) Meet the conditions outlined in section (6) of this rule;

(d) Be consistent with the In-Home Expenditure Guidelines;

(e) Not exceed the maximum annual amount per plan year in accordance with section (2) of this rule; and

(f) Be considered full payment for the authorized supports and services.

(6) **CONDITIONS OF PURCHASES.** Family support funds must be authorized for the purpose defined in OAR 411-305-0200 and in an Annual Plan that meets the requirements described in OAR 411-305-0225.

(a) To be authorized and eligible for payment with family support funds, all supports and services must be determined by the services coordinator to be:

(A) Directly related to the developmental disability and support needs of the eligible child;

(B) Used only to purchase supports or services necessary for a child to continue to be supported in the family home;

(C) Cost effective;

(D) Not typical for a family to provide a child of the same age; and

(E) Included in the approved Annual Plan and supporting documents or otherwise allowed in these rules.

(b) Supports and services purchased with family support funds must be provided only as a social benefit as defined in OAR 411-317-0000, and are not typical for a parent or legal representative to provide to a child of the same age.

(c) Additional conditions of purchases are described in OAR 411-435-0040 and 411-450-0050.

Stat. Auth.: ORS 409.050, 417.346, 427.104, 430.662

Stats. Implemented: ORS 417.340-417.344, 417.346-417.350, 427.005, 427.007, 427.104, 430.610, 430.620, 430.662-430.670

Hist.: MHD 5-2003, f. & cert. ef. 7-1-03; MHD 6-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-2080, SPD 20-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; Renumbered from 411-305-0090, APD 43-2016, f. 12-16-16, cert. ef. 1-1-17

411-305-0235

Supports and Services

(1) Family support funds may be used to purchase a combination of the following supports and services:

(a) Assistive devices as described in section (2) of this rule.

(b) Assistive technology as described in section (3) of this rule.

(c) Attendant care as described in section (4) of this rule.

(d) Behavior support services as described in section (5) of this rule.

(e) Community inclusion as described in section (6) of this rule.

(f) Community transportation as described in section (7) of this rule.

(g) Environmental modifications as described in section (8) of this rule.

(h) Environmental safety modifications as described in section (9) of this rule.

(i) Family training as described in section (10) of this rule.

(j) Respite as described in section (11) of this rule.

(k) Skills training as described in section (12) of this rule.

(l) Specialized medical supplies as described in section (13) of this rule.

(2) **ASSISTIVE DEVICES.** Assistive devices must be authorized in accordance with the criteria for assistive devices described in OAR 411-435-0050 and not to exceed the maximum limit established annually per child as described in OAR 411-305-0230.

(3) **ASSISTIVE TECHNOLOGY.** Assistive technology must be authorized in accordance with the criteria for assistive technology described in OAR 411-435-0050 and not to exceed the maximum limit established annually per child as described in OAR 411-305-0230.

(4) **ATTENDANT CARE SERVICES.** Attendant care services must be authorized in accordance with OAR 411-450-0060.

(5) **BEHAVIOR SUPPORT SERVICES.** Behavior support services must be provided in accordance with the criteria for behavior support services described in OAR 411-435-0050.

(6) **COMMUNITY INCLUSION.** Community inclusion supports encourage a child to participate in organized group recreation and leisure

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activities that assist the child to acquire, retain, or improve skills that enhance independence and integration.

(a) Community inclusion supports purchased with family support funds may include:

(A) Cost of individualized provider support required by the child to participate in an organized activity; and

(B) The participation or registration cost of an organized activity that meets the purpose of community inclusion, and supports are based on an individualized Annual Plan. Costs may include the registration and participation fees up to a maximum of \$150 per plan year, individualized Annual Plan and the usual and customary payment rate of the provider agency.

(b) Community inclusion supports exclude the following:

(A) Supports that replace normal family roles and responsibilities in the acquisition and retention of communication, socialization, recreation, and self-help skills of the child.

(B) Supports that replace normal family responsibility for child care while the primary caregiver works or goes to school.

(C) Educational and supportive services provided by schools as part of a free and appropriate public education for children under the Individuals with Disabilities Education Act.

(D) Child care as defined under OAR 414-300-0005 for certified child care centers, OAR 414-350-0010 for certified family child care homes, or OAR 414-205-0010 for registered family child care homes, while the primary caregiver works or goes to school.

(E) Tuition to private schools or payment of programs or services in lieu of public school.

(F) Private lessons or memberships.

(c) Community inclusion supports may be provided by a personal support worker or a provider agency according to the provider standards described in OAR 411-305-0240.

(7) COMMUNITY TRANSPORTATION. Community transportation must be authorized in accordance with the criteria for community transportation described in OAR 411-435-0050 and not to exceed the maximum limit established annually per child as described in OAR 411-305-0230.

(8) ENVIRONMENTAL MODIFICATIONS. Environmental modifications must be authorized in accordance with the criteria for environmental modifications described in OAR 411-435-0050 and not to exceed the maximum limit established annually per child as described in OAR 411-305-0230.

(9) ENVIRONMENTAL SAFETY MODIFICATIONS. Environmental safety modifications must be authorized in accordance with the criteria for environmental safety modifications described in OAR 411-435-0060(3)(b) to (q) and not to exceed the maximum limit established annually per child as described in OAR 411-305-0230.

(10) FAMILY TRAINING. Family training must be authorized in accordance with the criteria for family training described in OAR 411-435-0060(2)(b) to (d).

(11) RESPITE. Respite is provided for the short-term relief of the primary caregiver from the demands of ongoing care for a child with an intellectual or developmental disability on a periodic or intermittent basis.

(a) Respite may include both hourly and daily services that may be provided in:

(A) The family home;

(B) A licensed or certified setting;

(C) The home of a qualified provider, chosen by the parent or legal representative, that is a safe setting for the child; or

(D) The community.

(b) Respite services are not authorized for the following:

(A) Solely to allow the primary caregiver of the child to attend school or work;

(B) For vacation travel and lodging expenses; or

(C) To pay for room and board.

(c) Respite may be provided by a personal support worker or a provider agency according to the provider standards described in OAR 411-305-0240.

(12) SKILLS TRAINING. Skills training must be authorized in accordance with the criteria for skills training described in OAR 411-450-0060.

(13) SPECIALIZED MEDICAL SUPPLIES. Specialized medical supplies must be authorized in accordance with the criteria for specialized medical supplies described in OAR 411-435-0060, except for the general eligibility criteria in OAR 411-435-0030.

Stat. Auth.: ORS 409.050, 417.346, 427.104, 430.662

Stats. Implemented: ORS 417.340-417.344, 417.346-417.350, 427.005, 427.007, 427.104, 430.610, 430.620, 430.662-430.670

Hist.: MHD 5-2003, f. & cert. ef. 7-1-03; MHD 6-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-2120, SPD 20-2003, f. 12-22-03, cert. ef. 12-28-03; SPD

4-2009, f. & cert. ef. 6-1-09; Renumbered from 411-305-0120, APD 43-2016, f. 12-16-16, cert. ef. 1-1-17

411-305-0240

Standards for Providers

(1) Independent providers, provider agencies, and general business providers paid with family support funds must be qualified as provider types as described in OAR 411-450-0070, excluding adult foster home providers.

(2) Provider agencies paid with family support funds must meet the standards described in OAR 411-450-0080.

(3) Provider agencies for respite and community inclusion may also be licensed under ORS 446.330.

Stat. Auth.: ORS 409.050, 417.346, 427.104, 430.662

Stats. Implemented: ORS 417.340-417.344, 417.346-417.350, 427.005, 427.007, 427.104, 430.610, 430.620, 430.662-430.670

Hist.: MHD 5-2003, f. & cert. ef. 7-1-03; Renumbered from 309-041-2140, SPD 20-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 4-2009, f. & cert. ef. 6-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; Renumbered from 411-305-0140, APD 43-2016, f. 12-16-16, cert. ef. 1-1-17

Rule Caption: In-Home Services

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Notice Publication Date: 11-1-2016

Rules Amended: 411-030-0033, 411-030-0068, 411-030-0070

Subject: The Department of Human Services (Department) is permanently updating OAR 411-030 to make permanent temporary changes that became effective July 1, 2016 to:

- Limit live-in services to individuals currently receiving the service.

- Add qualifications to receive a differential rate for homecare workers.

- Modify the amount of hours a homecare worker may work in the in-home hourly service program.

- Update rule to clarify in-home service settings in which an individual may reside.

- Remove rules regarding exceptions for live-in services.

- Fix minor grammar, formatting, punctuation, and housekeeping issues in the rules.

Rules Coordinator: Kimberly Colkitt-Hallman—(503) 945-6398

411-030-0033

In-Home Service Living Arrangements

(1) The following terms are used in this rule:

(a) "Informal arrangement" means a paid or unpaid arrangement for shelter or utility costs that does not include the elements of a property manager's rental agreement.

(b) "Property manager's rental agreement" means a payment arrangement for shelter or utility costs with a property owner, property manager, or landlord that includes all of the following elements:

(A) The name and contact information for the property manager, landlord, or leaser.

(B) The period or term of the agreement and method for terminating the agreement.

(C) The number of tenants or occupants.

(D) The rental fee and any other charges (such as security deposits).

(E) The frequency of payments (such as monthly).

(F) What costs are covered by the amount of rent charged (such as shelter, utilities, or other expenses).

(G) The duties and responsibilities of the property manager and the tenant, such as:

(i) The person responsible for maintenance;

(ii) If the property is furnished or unfurnished; and

(iii) Advance notice requirements prior to an increase in rent.

(c) "Provider-owned dwelling" means a dwelling that is owned by a provider or the provider's spouse, when the provider is proposing to be paid for providing Medicaid home and community-based services, and the provider or the provider's spouse is not related to an individual by blood, marriage, or adoption. Provider-owned dwellings include, but are not limited to:

(A) Houses, apartments, and condominiums.

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(B) A portion of a house such as basement or a garage even when remodeled to be used as a separate dwelling.

(C) Trailers and mobile homes.

(D) Duplexes, unless the structure displays a separate address from the other residential unit and was originally built as a duplex.

(d) "Provider-rented dwelling" means a dwelling that is rented or leased by a provider or the provider's spouse, when the provider is proposing to be paid for providing Medicaid home and community-based services, and the provider or the provider's spouse is not related to an individual by blood, marriage, or adoption.

(2) An individual is eligible for Medicaid in-home services if the individual resides in a:

(a) Dwelling the individual owns or rents;

(b) Provider-owned dwelling and the individual's name is on the property deed, mortgage, or title;

(c) Provider-rented dwelling and the individual's name is on the property manager's rental agreement;

(d) Dwelling, either through an informal arrangement or property manager's rental agreement, owned or rented by a relative as defined in OAR 411-030-0020.

(3) An individual is not eligible for Medicaid in-home services if the individual resides in a provider-owned or rented dwelling through an informal or formal arrangement. A provider-owned or rented dwelling may meet the requirements for a limited adult foster home as described in OAR 411-050-0605.

Stat. Auth.: ORS 409.050, 410.070 & 410.090

Stats. Implemented: ORS 410.010, 410.020 & 410.070

Hist.: SSD 4-1993, f. 4-30-93, cert. ef. 6-1-93; SPD 14-2003, f. & cert. ef. 7-31-03; SPD 15-2003 f. & cert. ef. 9-30-03; SPD 18-2003(Temp), f. & cert. ef. 12-11-03 thru 6-7-04; SPD 15-2004, f. 5-28-04, cert. ef. 6-7-04; SPD 18-2005(Temp), f. 12-20-05, cert. ef. 12-21-05 thru 6-1-06; SPD 20-2006, f. 5-26-06, cert. ef. 6-1-06; SPD 15-2008, f. 12-26-08, cert. ef. 1-1-09; SPD 10-2013(Temp), f. & cert. ef. 5-23-13 thru 11-19-13; SPD 43-2013, f. 10-31-13, cert. ef. 11-1-13; APD 44-2016, f. 12-20-16, cert. ef. 12-28-16

411-030-0068

Live-In Services and Shift Services

(1) As of July 1, 2016, no individual may be approved to receive live-in services who did not receive live-in services on June 30, 2016.

(2) An individual is only eligible for live-in services or shift services if the assessment determines the individual meets the criteria described in section (3) of this rule.

(3) Individuals with service plans that meet the definition of live-in services or shift services must meet subsections (a) and either (b) or (c) of this section of the rule.

(a) The provision of assistance with at least one ADL or IADL task must be required sometime during each hour the individual is awake in order to ensure the safety and well-being of the individual.

(b) The individual is assessed as full assist in mobility or elimination as defined in OAR 411-015-0006, and has at least one of the following conditions:

(A) A debilitating medical condition that includes, but is not limited to, any of the following symptoms:

(i) Cachexia;

(ii) Severe neuropathy;

(iii) Coma;

(iv) Persistent or reoccurring stage 3 or 4 wounds;

(v) Late stage cancer;

(vi) Frequent and unpredictable seizures; or

(vii) Debilitating muscle spasms.

(B) A spinal cord injury or similar disability with permanent impairment.

(C) An acute care or hospice need that is expected to last no more than six months.

(c) The individual is assessed as full assist in cognition as defined in OAR 411-015-0006 and meets all of the following criteria:

(A) A diagnosis of traumatic brain injury, dementia or a related disorder, or a debilitating mental health disorder that meets the criteria described in OAR 411-015-0015(2); and

(B) Has one of the following assessed needs as defined in OAR 411-015-0006:

(i) Full assist in danger to self or others.

(ii) Full assist in wandering.

(iii) Full assist in awareness.

(iv) Full assist in judgment.

(4) The following limitations apply:

(a) A homecare worker providing live-in services must be available to address the service needs of an eligible individual as they arise throughout

an entire 24-hour period. A homecare worker is not providing live-in services if the homecare worker is outside the individual's home or building during the homecare worker's on-duty hours and the homecare worker engages in activities that are unrelated to the provision of the individual's ADL or IADL services and supports. A homecare worker is not providing live-in services if they are offsite and are not performing direct ADL or IADL services.

(b) Hourly services by another homecare worker or contracted in-home agency may be authorized in addition to live-in services for any task that requires more than one homecare worker to simultaneously perform the task, or to allow a live-in homecare worker to sleep for at least five continuous hours during a 24-hour work period.

(c) A homecare worker who is providing live-in services for an individual may not also provide hourly services for the same individual.

(5) Individuals who received live-in services on June 30, 2016 may continue receiving live-in services until one of the following occurs:

(a) The individual moves from an in-home setting that does not meet the requirements of OAR 411-030-0033 for more than 30 days and later moves to an in-home setting that meets the requirements of OAR 411-030-0033.

(b) The individual ends his or her live-in services for more than 30 days.

(c) An assessment determines the individual does not meet the criteria described in section (3) of this rule unless an exception was previously granted.

(d) Exceptions previously granted for live-in services must end when the primary homecare worker or the primary provider under the Independent Choices Program providing live-in services at the time the exception was granted is no longer employed by the individual.

(6) Effective November 1, 2016, an exception to section (3) of this rule may no longer be granted.

(7) An individual may employ homecare workers with a differential rate in accordance with the terms of the ratified collective bargaining agreement described in OAR 411-031-0020, if the following applies:

(a) The individual is diagnosed with quadriplegia or a condition that is substantially similar;

(b) The individual is dependent on a ventilator;

(c) The individual is eligible for and receives shift services;

(d) The individual requires 24-hour awake care, of which, at least 16 hours must be paid shift care; and

(e) The plan is approved by the Department.

Stat. Auth.: ORS 409.050, 410.070 & 410.090

Stats. Implemented: ORS 410.010, 410.020 & 410.070

Hist.: APD 19-2015(Temp), f. & cert. ef. 9-21-15 thru 3-18-16; APD 5-2016, f. 3-15-16, cert. ef. 3-18-16; APD 12-2016(Temp), f. 6-27-16, cert. ef. 7-1-16 thru 12-27-16; APD 44-2016, f. 12-20-16, cert. ef. 12-28-16

411-030-0070

Maximum Hours of Service

(1) LEVELS OF ASSISTANCE FOR DETERMINING SERVICE PLAN HOURS.

(a) "Minimal Assistance" means an individual is able to perform the majority of an activity but requires some assistance from another person.

(b) "Substantial Assistance" means an individual is able to perform only a small portion of the tasks that comprise an activity without assistance from another person.

(c) "Full Assistance" means an individual needs assistance from another person through all phases of an activity every time the activity is attempted.

(2) MAXIMUM MONTHLY HOURS FOR ADL.

(a) The planning process uses the following limitations for time allotments for ADL tasks. Hours authorized must be based on the service needs of an individual. Case managers may authorize up to the amount of hours identified in these assistance levels (minimal, substantial, or full assist).

(A) Eating:

(i) Minimal assistance, 5 hours;

(ii) Substantial assistance, 20 hours;

(iii) Full assistance, 30 hours.

(B) Dressing and Grooming:

(i) Minimal assistance, 5 hours;

(ii) Substantial assistance, 15 hours;

(iii) Full assistance, 20 hours.

(C) Bathing and Personal Hygiene:

(i) Minimal assistance, 10 hours;

(ii) Substantial assistance, 15 hours;

(iii) Full assistance, 25 hours.

(D) Mobility:

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- (i) Minimal assistance, 10 hours;
- (ii) Substantial assistance, 15 hours;
- (iii) Full assistance, 25 hours.
- (E) Elimination (Toileting, Bowel, and Bladder):
 - (i) Minimal assistance, 10 hours;
 - (ii) Substantial assistance, 20 hours;
 - (iii) Full assistance, 25 hours.
- (F) Cognition and Behaviors:
 - (i) Minimal assistance, 5 hours;
 - (ii) Substantial assistance, 10 hours;
 - (iii) Full assistance, 20 hours.

(b) Service plan hours for ADL may only be authorized for an individual if the individual requires assistance (minimal, substantial, or full assist) from another person in that activity of daily living as determined by a service assessment applying the parameters in OAR 411-015-0006.

(c) For households with two or more eligible individuals, each individual's ADL service needs must be considered separately. In accordance with section (3)(c) of this rule, authorization of IADL hours is limited for each additional individual in the home.

(d) Hours authorized for ADL are paid at the rates in accordance with the rate schedule. The Independent Choices Program cash benefit is based on the hours authorized for ADLs paid at the rates in accordance with the rate schedule. Participants of the Independent Choices Program may determine their own employee provider pay rates, but must follow all applicable wage and hour rules and regulations.

(3) MAXIMUM MONTHLY HOURS FOR IADL.

(a) The planning process uses the following limitations for time allotments for IADL tasks. Hours authorized must be based on the service needs of an individual. Case managers may authorize up to the amount of hours identified in these assistance levels (minimal, substantial, or full assist).

(A) Medication and Oxygen Management:

- (i) Minimal assistance, 2 hours;
- (ii) Substantial assistance, 4 hours;
- (iii) Full assistance, 6 hours.

(B) Transportation or Escort Assistance:

- (i) Minimal assistance, 2 hours;
- (ii) Substantial assistance, 3 hours;
- (iii) Full assistance, 5 hours.

(C) Meal Preparation:

- (i) Minimal assistance:
 - (I) Breakfast, 4 hours;
 - (II) Lunch, 4 hours;
 - (III) Supper, 8 hours.
- (ii) Substantial assistance:
 - (I) Breakfast, 8 hours;
 - (II) Lunch, 8 hours;
 - (III) Supper, 16 hours.
- (iii) Full assistance:

- (I) Breakfast, 12 hours;
- (II) Lunch, 12 hours;
- (III) Supper, 24 hours.

(D) Shopping:

- (i) Minimal assistance, 2 hours;
- (ii) Substantial assistance, 4 hours;
- (iii) Full assistance, 6 hours.

(E) Housecleaning:

- (i) Minimal assistance, 5 hours.
- (ii) Substantial assistance, 10 hours.
- (iii) Full assistance, 20 hours.

(b) Hours authorized for IADL are paid at the rates in accordance with the rate schedule. The Independent Choices Program cash benefit is based on the hours authorized for IADLs paid at the rates in accordance with the rate schedule. Participants of the Independent Choices Program may determine their own employee provider pay rates, but must follow all applicable wage and hour rules and regulations.

(c) When two or more individuals eligible for IADL task hours live in the same household, the assessed IADL need of each individual must be calculated. Payment is made for the highest of the allotments and a total of four additional IADL hours per month for each additional individual to allow for the specific IADL needs of the other individuals.

(d) Service plan hours for IADL tasks may only be authorized for an individual if the individual requires assistance (minimal, substantial, or full assist) from another person in that IADL task as determined by a service assessment applying the parameters in OAR 411-015-0007.

(4) PAYMENT FOR LIVE-IN SERVICES.

(a) Payment for live-in services is authorized only when an individual employs a live-in homecare worker or enrolls in the Independent Choices Program and meets the requirements of OAR 411-030-0068.

(b) Effective January 1, 2016, payment for live-in services is authorized only when an individual employs a live-in homecare worker or enrolls in the Independent Choices Program and meets the requirements of OAR 411-030-0068. Individuals that meet these criteria will be authorized to receive at least 16 hours per day (496 hours per month). Additional hours may be authorized by the Department to meet the needs of the individual during the hours of the homecare worker's scheduled sleep period if the homecare worker's scheduled sleep period is routinely disrupted.

(c) Rates for live-in services are paid in accordance with the rate schedule.

(d) When a live-in homecare worker is employed less than seven days per week, the total service hours must be prorated.

(5) When one or more eligible individuals in the same household is eligible for and receiving in-home services, the amount of hours authorized is subject to the following maximums:

(a) If any eligible individual in a specific household is receiving live-in services, the combined authorized hours for all eligible individuals in the same household may not exceed 19 hours within any 24-hour period or 589 hours per month.

(b) Hourly and shift service plans may not exceed 24 hours within any 24-hour period or 744 hours per month in the same household.

(6) For the creation of a new service plan (resulting from an assessment) beginning September 1, 2016, and for all service plans beginning July 1, 2017, subsection (a) and either subsection (b) or (c) of this rule will apply to a homecare worker:

(a) Hourly or shift services provided are limited to 16 hours of awake care during a 24-hour work period.

(b) Hourly services provided are limited to 220 hours per month, and may not exceed 50 hours per workweek if the homecare worker's average paid workweek hours in the months of March, April, and May 2016 equals or exceeds 40 hours per workweek. Under this subsection, homecare workers that provide live-in and hourly services within the same workweek may not exceed 50 hours per workweek.

(c) Hourly services provided are limited to 176 hours per month, and may not exceed 40 hours per workweek if the homecare worker's average paid workweek hours in the months of March, April, and May 2016 is less than 40 hours per workweek or if the homecare worker became an enrolled provider after May 2016. Under this subsection, homecare workers that provide live-in and hourly services within the same workweek may not exceed 40 hours per workweek.

(7) A provider may not receive payment from the Department for more than the total amount authorized by the Department on the service plan authorization form under any circumstances. All service payments must be prior-authorized by a case manager.

(8) Case managers must assess and utilize as appropriate, natural supports, cost-effective assistive devices, durable medical equipment, housing accommodations, and alternative service resources (as defined in OAR 411-015-0005) that may reduce the need for paid assistance.

(9) The Department may authorize paid in-home services only to the extent necessary to supplement potential or existing resources within an individual's natural supports system.

(10) Payment by the Department for Medicaid home and community-based services are only made for the tasks described in this rule as ADL, IADL tasks, and live-in services. Services must be authorized to meet the needs of an eligible individual and may not be provided to benefit an entire household.

(11) EXCEPTIONS TO MAXIMUM HOURS OF SERVICE.

(a) To meet an extraordinary ADL service need that has been documented, the hours authorized for ADL may exceed the full assistance hours (described in section (2) of this rule) as long as the total number of ADL hours in the service plan does not exceed 145 hours per month.

(b) Monthly service payments that exceed 145 ADL hours per month may be approved by the Department when the exceptional payment criteria identified in OAR 411-027-0020 and OAR 411-027-0050 is met.

(c) As long as the total number of IADL task hours in the service plan does not exceed 85 hours per month and the service need is documented, the hours authorized for IADL tasks may exceed the hours for full assistance (as described in section (3) of this rule) for the following tasks and circumstances:

(A) Housekeeping based on medical need (such as immune deficiency);

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(B) Short-term extraordinary housekeeping services necessary to reverse unsanitary conditions that jeopardize the health of an individual; or

(C) Extraordinary IADL needs in medication management or service-related transportation.

(d) Monthly service plans that exceed 85 hours per month in IADL tasks may be approved by the Department when an individual meets the exceptional payment criteria identified in OAR 411-027-0020 and OAR 411-027-0050.

(e) One or more individuals in the same household may exceed the maximums in section (5) of this rule in the following circumstances:

(A) The service plan authorizes payment that requires the assistance of more than one homemaker worker to simultaneously perform a specific task.

(B) The service plan authorizes an additional hourly provider when the individual requires care throughout a 24 hour period and the live-in homemaker worker is not able to receive five continuous hours of sleep.

(C) The ADLs of two or more individuals in the same household require a homemaker worker for each individual at the same time.

(f) A homemaker worker may be authorized to provide services totaling more than the hours established by section (6) of this rule if they are prior authorized by the Department. In emergency situations, when the Department is not available, a homemaker worker may work critical hours, but must notify the Department within two business days.

(g) A homemaker worker may be authorized by the Department to work more than 16 hours of hourly services during a 24-hour work period if an unanticipated need arises that requires the homemaker worker to remain awake in order to provide the necessary care.

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

Stat. Auth.: ORS 409.050, 410.070 & 410.090

Stats. Implemented: ORS 410.010, 410.020 & 410.070

Hist.: SSD 4-1993, f. 4-30-93, cert. ef. 6-1-93; SSD 6-1994, f. & cert. ef. 11-15-94; SDSD 8-1999(Temp), f. & cert. ef. 10-15-99 thru 4-11-00; SDSD 3-2000, f. 4-11-00, cert. ef. 4-12-00; SPD 14-2003, f. & cert. ef. 7-31-03; SPD 15-2003 f. & cert. ef. 9-30-03; SPD 15-2004, f. 5-28-04, cert. ef. 6-7-04; SPD 15-2004, f. 5-28-04, cert. ef. 6-7-04; SPD 18-2005(Temp), f. 12-20-05, cert. ef. 12-21-05 thru 6-1-06; SPD 20-2006, f. 5-26-06, cert. ef. 6-1-06; SPD 4-2008(Temp), f. & cert. ef. 4-1-08 thru 9-24-08; SPD 13-2008, f. & cert. ef. 9-24-08; SPD 15-2008, f. 12-26-08, cert. ef. 1-1-09; SPD 24-2011(Temp), f. 11-15-11, cert. ef. 1-1-12 thru 6-29-12; SPD 6-2012, f. 5-31-12, cert. ef. 6-1-12; SPD 14-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 44-2013, f. 12-13-13, cert. ef. 12-15-13; APD 11-2014, f. & cert. ef. 5-1-14; APD 19-2015(Temp), f. & cert. ef. 9-21-15 thru 3-18-16; APD 12-2016(Temp), f. 6-27-16, cert. ef. 7-1-16 thru 12-27-16; APD 44-2016, f. 12-20-16, cert. ef. 12-28-16

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Rule Caption: Individually-Based Limitations Implementation Date Change

Adm. Order No.: APD 45-2016

Filed with Sec. of State: 12-22-2016

Certified to be Effective: 12-28-16

Notice Publication Date: 11-1-2016

Rules Amended: 411-004-0040

Subject: OAR 411-004-0040 is being permanently updated to make permanent temporary changes that became effective July 1, 2016 that delay the initial effective date of the rule by six months. The Department needs to amend the rules to change the effective date and allow stakeholders, providers, and state and county employees additional time to prepare for implementation of the rule.

Rules Coordinator: Kimberly Colkitt-Hallman—(503) 945-6398

411-004-0040

Individually-Based Limitations

This rule will begin being implemented January 1, 2017. The requirements in this rule must be in place no later than February 28, 2018.

(1) When conditions under OAR 411-004-0020(2)(d) to (2)(j) may not be met due to threats to the health and safety of an individual or others, provider owned, controlled, or operated residential settings must apply individually-based limitations as described in this rule.

(2) An individually-based limitation must be supported by a specific assessed need and documented in the person-centered service plan by completing and signing a program approved form documenting the consent to the appropriate limitation. The form identifies and documents:

(a) The specific and individualized assessed need justifying the individually-based limitation;

(b) The positive interventions and supports used prior to any individually-based limitation;

(c) Less intrusive methods that have been tried 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. The individually-based limitation must be reviewed at least annually;

(g) The informed consent of the individual or, as applicable, the legal representative 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.

(3) Providers are responsible for:

(a) Maintaining a copy of the completed and signed form documenting the consent to the appropriate limitation. The form must be signed by the individual, or, if applicable, the legal representative of the individual;

(b) Regular collection and review of data to measure the ongoing effectiveness of and the continued need for the individually-based limitation; and

(c) Requesting a review of the individually-based limitation when a new individually-based limitation is indicated, or change or removal of an individually-based limitation is needed.

Stat. Auth.: ORS 409.050, 413.042, 413.085

Stats. Implemented: ORS 409.050, 413.042, 413.085

Hist.: APD 23-2015, f. 12-15-15, cert. ef. 1-1-16; APD 11-2016(Temp), f. 6-27-16, cert. ef. 7-1-16 thru 12-27-16; APD 45-2016, f. 12-22-16, cert. ef. 12-28-16

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Department of Human Services, Child Welfare Programs Chapter 413

Rule Caption: Amending rules relating to child welfare

Adm. Order No.: CWP 24-2016

Filed with Sec. of State: 12-23-2016

Certified to be Effective: 1-1-17

Notice Publication Date: 12-1-2016

Rules Amended: 413-010-0035, 413-070-0516, 413-070-0518, 413-070-0670, 413-070-0900, 413-070-0917, 413-070-0959, 413-070-1020, 413-080-0053, 413-080-0062

Rules Repealed: 413-010-0035(T), 413-030-0300, 413-030-0310, 413-030-0320, 413-070-0900(T), 413-070-0917(T), 413-070-0959(T), 413-080-0053(T), 413-080-0062(T), 413-110-0280, 413-110-0282, 413-110-0286, 413-110-0288, 413-110-0290, 413-110-0291, 413-110-0292, 413-110-0293, 413-110-0295, 413-110-0297, 413-110-0299

Subject: OAR 413-010-0035 relating to prohibited disclosure of client information is being amended to remove the requirement for explicit law enforcement approval prior to disclosing records that include investigatory information compiled for criminal law purposes. The amended rule prohibits disclosure of this information unless the Department determines after consultation with law enforcement or a prosecutor that the information can be disclosed without interfering in an ongoing law enforcement investigation or prosecution of a case or disclosure is required under ORS 419B.035. Disclosure will still need to be approved by the manager or designee. These changes were adopted by temporary rule on August 25, 2016.

OAR 413-030-0300 to 413-030-0320 relating to adoption program eligibility are being repealed.

OAR 413-070-0516, 413-070-0518, 413-070-0670, and 413-070-1020 relating to permanency planning are being amended to state the requirements to change a permanency plan to guardianship or placement with a fit and willing relative before a provider has been identified. Current rules require that the Department: identify a guardianship or fit and willing relative resource; have the child in the home the required length of time; schedule a permanent committee to review both the alternative permanency plan and the provider's ability to provide for the long-term needs of the child; approve the plan and provider; and then go to court to ask for the plan to be changed. However, sometimes a court will either change a permanency plan prior to the required process or direct the Department to recommend a plan change. The rules are amended to state the requirement when that occurs. Specifically, the Department will hold

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two permanency committees: one to review the plan change directed by the court, and a later one to approve the provider once identified and once they meet eligibility requirements.

OAR 413-070-0900, 413-070-0917, and 413-070-0959 relating to eligibility for guardianship assistance are being amended to state that to be eligible for guardianship assistance, a child must be determined to have special needs or be placed with a potential guardian who indicates an economic need to care for the child, consistent with state law (see ORS 418.330). These rules are also amended to allow the Director of the Department to waive some of the eligibility requirements for state-funded guardianship assistance when certain requirements are met. These changes were adopted by temporary rule on September 2, 2016.

OAR 413-080-0053 and 413-080-0062 are being amended to implement section 104 of the Preventing Sex Trafficking and Strengthening Families Act of 2014 relating to the Department's responsibilities when a child or young adult in substitute care is missing, may be a sex trafficking victim, or is determined to be a sex trafficking victim. Specifically, the amendments require caseworkers to ensure law enforcement and the National Center for Missing and Exploited Children (NCMEC) are notified. These changes were adopted by temporary rule on November 1, 2016.

OAR 413-110-0280 to 413-110-0299 relating to consultation with parents considering adoption are being repealed.

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

Rules Coordinator: Kris Skaro—(503) 945-6067

413-010-0035

Prohibited Disclosures

(1) If a court order or a specific statute requires the Department to disclose information that this rule protects, the Department must disclose the information.

(2) The Department may not disclose client information:

(a) For purposes not directly connected with the administration of child welfare laws; or

(b) When disclosure is not required nor authorized by:

(A) ORS 419B.035 (governing confidentiality of child abuse records), set out in section (11) of this rule;

(B) ORS 419A.255 (governing confidentiality of juvenile court records) set out in section (12) of this rule; or

(C) Another statute.

(3) The Department may not disclose investigatory information compiled for criminal law purposes, including the record of an arrest or a report of a crime, unless:

(a) The Department determines after consultation with law enforcement or a prosecutor that the information can be disclosed without interfering with an ongoing law enforcement investigation or prosecution of a case; or

(b) The Department determines that disclosure is required by ORS 419B.035(1)(i) because a child, as the result of abuse, died or suffered serious physical injury taking into account the factors listed in ORS 419B.035(2)(a).

(4) Department employees may not disclose the information described in section (3) of this rule unless authorized to do so by the manager or designee.

(5) A person authorized to review client records may not review the complete case file if the complete file contains confidential information about other persons, including, but not limited to other clients, ex-spouses, battering partners, housemates, and half-siblings unless the other person provides written consent that meets the requirements of OAR 413-010-0045(2)(a).

(6) The Department may not disclose the records of a patient at a drug and alcohol abuse treatment facility to any person without the consent of the patient.

(7) The Department may not disclose client information contained in a record sealed by a court order of expunction or any part of the expunged record.

(8) Department Adoption Records.

(a) The Department must seal Department adoption records in its possession consistent with ORS 109.319.

(b) The Department may not access, use, or disclose Department adoption records in its possession except as provided in ORS 109.319.

(c) Subject to subsection (d) of this section, the Department may, without a court order, access, use, or disclose Department adoption records in its possession for the purpose of providing adoption services or administering child welfare services that the Department is authorized to provide under federal or state law.

(d) The Child Permanency or Post-Adoption Program Manager, or their designee, must authorize the unsealing of and access to, use of, or disclosure of Department adoption records by other Department employees.

(e) The Department may, upon request and if available, disclose the county in which an adoption was finalized and the case number of the adoption proceeding as provided in section 6 of HB 2365 (2015).

(9) Reporter of Abuse. The identity of the person making a report of suspected child abuse, and any identifying information about the reporting person, must be removed from the records or shielded from view before records are viewed or copied. The name, address or other identifying information may only be disclosed to a law enforcement officer or district attorney in order to complete an investigation report of child abuse.

(10) Reports and Records Compiled Pursuant to the Child Abuse Reporting Law.

(a) Each report of suspected child abuse must be immediately reported to a law enforcement agency.

(b) The Department must assist in the protection of a child who is believed to have been abused or neglected by providing information as needed to:

(A) The juvenile court;

(B) The district attorney;

(C) Any law enforcement agency or a child abuse registry in another state investigating a child abuse report;

(D) Members of a child protection team or consultants involved in assessing whether or not abuse occurred and determining appropriate treatment for the child and family;

(E) A physician who is examining a child or providing care or treatment, and needs information about the child's history of abuse; and

(F) A non-abusing parent, foster parent, or other non-abusing person responsible for the care of the child.

(c) A report, record, or findings of an assessment of child abuse may not be disclosed until the assessment is completed, except for the reasons stated in paragraphs (e)(A) and (B) of this section. An assessment will not be considered completed while either a protective service assessment or a related criminal investigation is in process. The Department determines when the protective service assessment is completed. The district attorney determines when a criminal investigation is completed.

(d) Records or findings of completed child abuse assessments must be released upon request to the following:

(A) Attorneys of record for the child or child's parent or guardian in a juvenile court proceeding for use in that proceeding; and

(B) A citizen review board established by the Department or by a juvenile court to review the status of children under the jurisdiction of the court for the purpose of completing a case review. Before providing information to a citizen review board, the Department must assure that the board has informed participants of their statutory responsibility to keep the information confidential, and will maintain records in an official, confidential file.

(e) Records or information from records of abuse and neglect assessments may be disclosed to other interested parties if the Department determines that disclosure to a person or organization is necessary to:

(A) Administer child welfare services and is in the best interests of the affected child. When disclosure is made for the administration of child welfare services, the Department will release only the information necessary to serve its purpose; and

(B) Prevent abuse and neglect, assess reports of abuse or neglect, or protect children from further abuse or neglect.

(11) Juvenile Court Records in Department Files.

(a) The Department may not disclose records and information in its possession that are also contained in the juvenile court's record of the case or supplemental confidential file, defined in subsections (b) and (c) of this section, except as provided in ORS 419A.255 and other federal and state confidentiality laws pertaining to client records.

(b) Record of the Case.

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(A) The juvenile court's "record of the case", as defined in ORS 419A.252, includes but is not limited to the summons, the petition, papers in the nature of pleadings, answers, motions, affidavits, and other papers filed with the court, orders and judgments, including supporting documentation, exhibits and materials offered as exhibits whether or not received in evidence, and other records listed in ORS 419A.252.

(B) The record of the case is unavailable for public inspection, but is open to inspection and copying as provided in ORS 419A.255.

(c) Supplemental Confidential File.

(A) The juvenile court's "supplemental confidential file", as defined in ORS 419A.252, includes reports and other material relating to the child's history and prognosis, including but not limited to reports filed under ORS 419B.440, that are not or do not become part of the record of the case and are not offered or received as evidence in the case.

(B) The supplemental confidential file is unavailable for public inspection, but is open to inspection and copying as provided in ORS 419A.255.

(C) The Department is entitled to copies of material maintained in the supplemental confidential file and if such material is obtained, the Department must ensure the confidentiality of that material as provided in ORS 419A.255.

(d) Reports and other materials relating to the child's history and prognosis in the record of the case or in the supplemental confidential file are privileged and except at the request of the child, are unavailable for public inspection but are open to inspection and copying as provided in ORS 419A.255.

(e) When the Department inspects or obtains copies of reports, materials, or documents pursuant to ORS 419A.255(4), the Department may not use or disclose the reports, materials, or documents except as provided in ORS 419A.255.

(12) Records Received from the Oregon Youth Authority or the Juvenile Department. The Department must preserve the confidentiality of reports and other materials it receives from the Oregon Youth Authority or the juvenile department relating to the child, ward, youth or youth offender's history and prognosis, as provided in ORS 419A.257.

Stat. Auth.: ORS 409.050, 418.005, 418.340
Stats. Implemented: ORS 109.319, 109.329, 109.331, 192.501, 409.010, 409.194, 409.225, 418.005, 419A.102, 419A.252, 419A.255, 419A.263, 419B.035, 432.420
Hist.: SOSCF 9-1999, f. 5-24-99, cert. ef. 6-1-99; CWP 18-2011, f. & cert. ef. 9-2-11; CWP 12-2013, f. 12-31-13, cert. ef. 1-1-14; CWP 2-2016, f. & cert. ef. 2-1-16; CWP 14-2016(Temp), f. & cert. ef. 8-25-16 thru 2-20-17; CWP 24-2016, f. 12-23-16, cert. ef. 1-1-17

413-070-0516

Composition, Scheduling, Responsibilities, and Recommendations of the Permanency Committee

(1) A permanency committee is composed of the following individuals:

(a) Two individuals who have been appointed by a Child Welfare Program Manager to attend a permanency committee.

(A) A committee facilitator, who must be a Department staff member and who must ensure all of the following:

(i) The meeting is held according to the requirements of OAR chapter 413.

(ii) Individuals are informed of the responsibilities of the committee and the confidentiality of information presented during the meeting.

(iii) Committee recommendations are thoroughly and accurately documented.

(B) A second individual who may be either a community partner or another Department staff member.

(C) The individuals in this subsection must meet the following requirements:

(i) Be knowledgeable about permanency issues.

(ii) Be knowledgeable of the importance of lifelong family attachment and cultural connections.

(iii) Have no current personal or professional relationship to the child or a potential placement resource or potential adoptive resource being considered.

(b) The following members of the child's team:

(A) The caseworker of the child or young adult;

(B) The attorney of the child or young adult;

(C) The CASA of the child or young adult;

(D) A tribal representative, if the child or young adult is an Indian child; and

(E) A member of the RCWAC, if the child or young adult is a refugee child.

(2) The substitute caregiver of the child or young adult, or any other individual from the child's team who a caseworker, in consultation with the

supervisor, believes can provide important input into the issue before the permanency committee, may be invited to come and present information to the permanency committee, but is excused after presenting information and responding to questions.

(3) The Child Welfare Program Manager or designee responsible for making the decision on behalf of the Department attends the permanency committee and may ask clarifying questions, but does not participate in the deliberation and recommendation.

(4) The Department is responsible for scheduling and notifying the following individuals of the date, time, and location of the permanency committee:

(a) Appointed permanency committee members;

(b) The Child Welfare Program Manager or designee making a recommendation or decision on the issue before the permanency committee;

(c) Each member of the child's or young adult's team identified in subsection (1)(b) of this rule; and

(d) Any other individual invited to present specific information to the permanency committee.

(5) Each individual attending a permanency committee is bound by Oregon statutes regarding confidentiality and OAR 413-010-0010 to 413-010-0075.

(6) Consideration, review, and recommendation.

(a) The permanency committee must consider and review the information presented by any individual invited to the permanency committee, whether the information is presented in person, by phone, through other electronic communication, or in writing.

(b) The permanency committee may seek clarification of information presented, and may request additional information during the presentations.

(c) The permanency committee must consider the safety, permanency, and well-being needs of the child or young adult and, when there are siblings, the safety, permanency, and well-being needs of each sibling and make a recommendation regarding the issue brought before the committee to the Child Welfare Program Manager or designee as follows:

(A) When the caseworker recommends a change in permanency plan to guardianship, the permanency committee provides a recommendation based upon the considerations in OAR 413-070-0660 and OAR 413-070-0665 subject to OAR 413-070-0518.

(B) When the caseworker recommends a change in permanency plan to placement with a fit and willing relative, the permanency committee provides a recommendation based upon the considerations in OAR 413-070-1020 subject to OAR 413-070-0518.

(C) When a caseworker recommends a change in permanency plan to APPLA, the permanency committee provides a recommendation based upon the considerations in OAR 413-070-0550(1).

(D) When a caseworker considers the separation of siblings in adoption under OAR 413-110-0132, the permanency committee provides a recommendation based upon the considerations in OAR 413-110-0132(2).

(E) When the caseworker requests that a permanency committee review the relationship between a general applicant and a child whose permanency plan is adoption, the permanency committee provides a recommendation based upon the considerations in OAR 413-120-0750(6)(b).

(d) When members of the permanency committee have not come to consensus on a recommendation, the committee facilitator must document all recommendations and the basis provided by the permanency committee member for that recommendation.

(e) The committee facilitator must provide the written documentation of the permanency committee's recommendation or recommendations to the Child Welfare Program Manager or designee within three business days of the date on which the permanency committee was held.

(7) For the purpose of OAR 413-070-0514(4), a current caretaker or relative caregiver request for consideration as an adoptive resource, the following also apply:

(a) The permanency committee is composed of the individuals in sections (1) and (3) of this rule, and:

(A) The assigned certifier for the current caretaker or relative caregiver.

(B) The assigned adoption worker for the current caretaker or relative caregiver.

(b) The current caretaker or relative caregiver of the child or sibling group under consideration for adoption, or any other individual from the child's team who a caseworker, in consultation with the supervisor, believes can provide important input into the issue before the permanency committee, may be invited to present information to the permanency committee, but is excused after presenting information and responding to questions.

(c) The permanency committee must review the following:

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(A) The safety, attachment, and well-being needs of the child or sibling group under consideration for adoption together and how the current caretaker or relative caregiver has met those needs to date;

(B) The current caretaker's or relative caregiver's history of meeting the standards of certification pursuant to OAR 413-200-0301 to 413-200-0396;

(C) Any child abuse and neglect reports made to the Department that were assigned for assessment, closed at screening, or documented in the Department's paper or electronic information system;

(D) Recommendations for continued contact with birth parents, birth family, or other significant persons for the child or sibling group under consideration for adoption; and

(E) Any other information pertinent to the evaluation of the ability of the current caretaker or relative caregiver to meet the lifelong safety, attachment, and well-being needs of the child or sibling group under consideration.

(d) The permanency committee must document and provide to the assigned adoption worker any specific information they determine must be explored in the adoption home study for the current caretaker or relative caregiver.

Stat. Auth.: ORS 418.005

Stats Implemented: ORS 418.005

Hist.: CWP 27-2010, f. & cert. ef. 12-29-10; CWP 3-2011(Temp), f. & cert. ef. 3-22-11 thru 9-18-11; CWP 23-2011, f. & cert. ef. 9-19-11; CWP 12-2015, f. & cert. ef. 7-17-15; CWP 16-2015(Temp), f. & cert. ef. 9-1-15 thru 2-27-16; CWP 17-2015, f. 9-28-15, cert. ef. 10-1-15; CWP 24-2016, f. 12-23-16, cert. ef. 1-1-17

413-070-0518

Approving a Permanency Plan Prior to a Resource Being Identified

(1) A permanency plan may be changed to guardianship or placement with a fit and willing relative prior to a resource having been identified when:

(a) The court changes a permanency plan for a child or young adult before the Department makes a recommendation pursuant to OAR 413-070-0512 to 413-070-0516; or

(b) The Department must make a recommendation to change the permanency plan for a child or young adult to guardianship or placement with a fit and willing relative because a child or young adult's current permanency plan is no longer in the best interest of the child or young adult.

(2) When subsection (1)(a) of this rule applies, the caseworker does the following:

(a) If the new permanency plan for the child or young adult is guardianship:

(A) Change the permanency plan to guardianship;

(B) Diligently recruit and identify a potential guardian resource for the child or young adult; and

(C) Approve the guardian for the child or young adult as outlined in OAR 413-070-0665 and 413-070-0670.

(b) If the new permanency plan for a child or young adult is placement with a fit and willing relative:

(A) Change the permanency plan to placement with a fit and willing relative;

(B) Diligently recruit and identify a potential relative resource for the child or young adult; and

(C) Approve the relative for placement with a fit and willing relative as outlined in OAR 413-070-1020.

(3) After complying with OAR 413-070-0512 to 413-070-0516, if the Department recommendation is something other than the court-approved permanency plan, the Department must schedule a judicial review of the permanency plan of the child or young adult.

(4) When subsection (1)(b) of this rule applies, the caseworker must comply with the following requirements:

(a) If the recommendation is to change the permanency plan to guardianship:

(A) Comply with OAR 413-070-0660;

(B) Schedule a permanency committee and comply with the sections of OAR 413-070-0670 that pertain to approving the permanency plan of guardianship; and

(C) Diligently recruit and identify the substitute caregiver as a potential guardian as outlined in OAR 413-070-0665.

(b) If the recommendation is to change the permanency plan to placement with a fit and willing relative:

(A) Comply with the sections of OAR 413-070-1000 that pertain to considering the permanency plan of placement with a fit and willing relative;

(B) Schedule a permanency committee and comply with the sections of OAR 413-070-1020 that pertain to approving the permanency plan of placement with a fit and willing relative;

(C) Diligently recruit and identify the proposed fit and willing relative resource that meets the eligibility as outlined in OAR 413-070-1010; and

(D) Schedule a second permanency committee and comply with the sections of OAR 413-070-1020 that pertain to approving the proposed resource as a fit and willing relative.

Stat. Auth.: ORS 418.005

Stats Implemented: ORS 418.005

Hist.: CWP 27-2010, f. & cert. ef. 12-29-10; CWP 3-2011(Temp), f. & cert. ef. 3-22-11 thru 9-18-11; CWP 23-2011, f. & cert. ef. 9-19-11; CWP 12-2015, f. & cert. ef. 7-17-15; CWP 16-2015(Temp), f. & cert. ef. 9-1-15 thru 2-27-16; CWP 17-2015, f. 9-28-15, cert. ef. 10-1-15; CWP 24-2016, f. 12-23-16, cert. ef. 1-1-17

413-070-0670

Approval and Implementation of a Guardianship Permanency Plan

(1) Subject to OAR 413-070-0518, when the Department is considering a change in a child's permanency plan, the Department makes the determination pursuant to OAR 413-070-0500 to 413-070-0519, and the child's caseworker schedules a permanency committee.

(2) The permanency committee must review all of the information presented to the committee and make recommendations to the Child Welfare Program Manager or designee regarding:

(a) Whether guardianship is an appropriate permanency plan for the child; and

(b) Whether the substitute caregiver can meet the child's needs as described in subsection (3)(c) of this rule and should be considered as a potential guardian.

(3) The Child Welfare Program Manager or designee must decide whether guardianship is the appropriate permanency plan for the child based upon:

(a) How a permanency plan of guardianship meets the child's needs, and the requirements of OAR 413-070-0660(1) and (2) and OAR 413-070-0665(2) and (3);

(b) Whether the Department has provided the child and the child's parents an opportunity to identify available permanency; and

(c) Whether the substitute caregiver being considered as the potential guardian is able to meet the child's needs pursuant to OAR 413-070-0640.

(4) Following the Child Welfare Program Manager or designee decision to approve guardianship as a permanency plan, the caseworker must:

(a) Request a permanency hearing before the court within 30 days of the decision.

(b) Prior to the court hearing, provide the court with supporting written documentation regarding the Department's position that:

(A) Guardianship is in the child's best interest; and

(B) Neither placement with parents nor adoption is an appropriate plan.

(5) At the court hearing, the caseworker must:

(a) Recommend that the court approve changing the child's permanency plan to guardianship;

(b) Inform the court whether or not the potential guardian is applying for guardianship assistance; and

(c) When guardianship assistance is being requested, inform the court that after the Department has negotiated the amount or type of guardianship assistance with the potential guardian, a subsequent court hearing will be requested to allow the order of guardianship to be entered.

(6) Prior to the court hearing to request the final order of guardianship, the Department must document in the case record that the caseworker, supervising worker, if any, and the certifier for the potential guardian recommends the finalization of the guardianship.

Stat. Auth.: ORS 418.005

Stats Implemented: ORS 418.005

Hist.: CWP 36-2010(Temp), f. & cert. ef. 12-29-10 thru 6-27-11; CWP 7-2011, f. & cert. ef. 6-28-11; CWP 12-2015, f. & cert. ef. 7-17-15; CWP 13-2016, f. & cert. ef. 8-1-16; CWP 24-2016, f. 12-23-16, cert. ef. 1-1-17

413-070-0900

Purpose

(1) The purpose of OAR 413-070-0900 to 413-070-0974 is to describe Department criteria for eligibility and receipt of guardianship assistance for:

(a) A child in the care or custody of the Department or a participating tribe;

(b) A young adult on whose behalf an initial guardianship assistance agreement was entered into when the young adult was a child of age 16 or 17;

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(c) A young adult who qualifies for disability services and on whose behalf an initial guardianship assistance agreement was entered into when the young adult was a child;

(d) A subsequent legal guardianship of a child in the care of a successor legal guardian as described in OAR 413-070-0925; or

(e) A child whose eligibility was determined by the Director of the Department pursuant to OAR 413-070-0917(5).

(2) Guardianship assistance for a child or young adult placed for guardianship in Oregon by a public child welfare agency other than the Department is not the responsibility of the state of Oregon.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.010, 411.141, 418.005

Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 8-2004, f. & cert. ef. 4-1-04; CWP 5-2009(Temp), f. & cert. ef. 3-31-09 thru 9-27-09; CWP 7-2009(Temp), f. & cert. ef. 7-1-09 thru 9-27-09; CWP 12-2009, f. & cert. ef. 9-28-09; CWP 18-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10; CWP 6-2010, f. & cert. ef. 6-15-10; CWP 11-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11; CWP 24-2011(Temp), f. 9-30-11, cert. ef. 10-1-11 thru 12-27-11; CWP 30-2011, f. 12-27-11, cert. ef. 12-28-11; CWP 1-2014, f. 1-31-14, cert. ef. 2-1-14; CWP 12-2015, f. & cert. ef. 7-17-15; CWP 16-2016(Temp), f. & cert. ef. 9-2-16 thru 2-28-17; CWP 24-2016, f. 12-23-16, cert. ef. 1-1-17

413-070-0917

Eligibility for Guardianship Assistance

(1) To be eligible for Title IV-E guardianship assistance, a child must meet all of the following:

(a) Be a United States citizen or qualified non-citizen as described in OAR 413-100-0210 and in 8 USC section 1641(b) or (c).

(b) Be placed in the United States or a possession thereof.

(c) Have resided in the home of the potential guardian for a period of at least six consecutive months during which the potential guardian was fully licensed, certified, or approved by the state or a participating tribe as meeting the licensure or certification requirements for a foster family home in the state where the home is located.

(d) Be placed with the potential guardian who meets the relative definition as described in OAR 413-070-0000(78)(a) to (c).

(e) Demonstrate a strong attachment to the potential guardian.

(f) Be removed from his or her home pursuant to a voluntary placement or as a result of a judicial determination that continuation in the home would be contrary to the welfare of the child.

(g) Be eligible for Title IV-E foster care maintenance payments.

(h) Be in the care or custody of the Department or participating tribe.

(i) Have special needs or be placed with a potential guardian who indicates an economic need to care for the child.

(2) Each sibling of a child or young adult eligible for Title IV-E guardianship assistance is also eligible for Title IV-E guardianship assistance without meeting the eligibility requirements in subsections (c) to (g) of section (1) of this rule when:

(a) The sibling is placed in a guardianship with the same potential guardian or guardian, whether the siblings are placed at the same time or not; and

(b) The potential guardian or guardian and the Department or participating tribe agree that placing the child's sibling in the home of the potential guardian or guardian is appropriate.

(3) To be eligible for state-funded guardianship assistance, a child must:

(a) Be ineligible for Title IV-E funded guardianship assistance;

(b) Except as provided in section (5) of this rule, meet the eligibility requirements in subsections (a) to (e) and (i) of section (1) of this rule; and

(c) Except as provided in section (5) of this rule, be in the care or custody of the Department.

(4) Each sibling of a child or young adult eligible for state-funded guardianship assistance as described in section (3) of this rule is also eligible for state-funded guardianship assistance without meeting the eligibility requirements in subsections (b) to (f) of section (1) of this rule when:

(a) The sibling is placed in a guardianship with the same potential guardian or guardian, whether the siblings are placed at the same time or not; and

(b) The potential guardian or guardian and the Department agree that placing the child's sibling in the home of the potential guardian or guardian is appropriate.

(5) For state-funded guardianships, the Director of the Department may authorize a waiver of the eligibility requirements in subsections (1)(c) to (h) of this rule under the following circumstances:

(a) The child has or had an open assessment or open case with the Department;

(b) The Department recommends the guardianship be established to prevent the child from entering Oregon foster care or to expedite the child leaving Oregon foster care;

(c) Pursuant to OAR 413-120-0440 to 413-120-0475, the guardian and all adults living in the home of the guardian have been approved through a Department-approved, fingerprint-based criminal records check of the National Crime Information Databases (NCID) and a Child Abuse and Neglect (CAN) registry check; and

(d) The Department reviews known information regarding the guardian and all adults living in the home and determines they have the ability to meet the safety, well-being, and permanency needs of the child.

(6) For consideration of guardianship assistance under section (5) of this rule, the Child Welfare Program Manager must submit a written recommendation to the Child Permanency Program Manager outlining why it is in the best interest of the child to receive guardianship assistance pursuant to section (5) of this rule.

(7) When a recommendation outlined in section (6) of this rule is received, the Child Permanency Program Manager must submit it to the Director of the Department for review and consideration.

(8) The child must be consulted regarding the guardianship arrangement when the child has attained 14 years of age.

(9) In the event of the death or incapacity of the guardian, a child eligible for Title IV-E or state-funded guardianship assistance remains eligible if a successor legal guardian is named in the guardianship assistance agreement, including any amendments to the agreement, prior to the death or incapacity of the guardian, and the requirements of OAR 413-070-0925(2) are met.

(10) All of the following must be documented in the child's case plan:

(a) How the child meets the eligibility requirements.

(b) The steps the Department or participating tribe has taken to determine that return to the home or adoption is not appropriate.

(c) The efforts the Department or participating tribe has made to discuss adoption with the child's relative caregiver and the reasons adoption is not an option.

(d) The efforts the Department or participating tribe has made to discuss kinship guardianship with the child's parent or parents or the reasons why efforts were not made.

(e) The reason a permanent placement with a potential relative guardian and receipt of a kinship guardian assistance payment is in the child's best interests.

(f) The reasons for any separation of siblings during placement. If the child's placement with the potential relative guardian does not include siblings, the case plan must also include a description of the reasons the child is separated from siblings during placement.

(11) A guardianship assistance agreement must be signed by the potential guardian and a Department representative before guardianship has been legally established by a state or participating tribal court.

Stat. Auth.: ORS 409.050, 418.005, OL 2015, ch 840

Stats. Implemented: ORS 409.010, 411.141, 418.005, OL 2015, ch 840

Hist.: SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 8-2004, f. & cert. ef. 4-1-04; CWP 5-2009(Temp), f. & cert. ef. 3-31-09 thru 9-27-09; CWP 7-2009(Temp), f. & cert. ef. 7-1-09 thru 9-27-09; CWP 12-2009, f. & cert. ef. 9-28-09; CWP 18-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10; CWP 6-2010, f. & cert. ef. 6-15-10; CWP 11-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11; CWP 24-2011(Temp), f. 9-30-11, cert. ef. 10-1-11 thru 12-27-11; CWP 30-2011, f. 12-27-11, cert. ef. 12-28-11; CWP 1-2014, f. 1-31-14, cert. ef. 2-1-14; CWP 4-2015(Temp), f. & cert. ef. 1-21-15 thru 7-19-15; CWP 12-2015, f. & cert. ef. 7-17-15; CWP 14-2015(Temp), f. & cert. ef. 8-19-15 thru 2-14-16; CWP 17-2015, f. 9-28-15, cert. ef. 10-1-15; CWP 16-2016(Temp), f. & cert. ef. 9-2-16 thru 2-28-17; CWP 24-2016, f. 12-23-16, cert. ef. 1-1-17

413-070-0959

Court Order of Guardianship

(1) Except for guardianships established pursuant to OAR 413-070-0917(5), guardianship assistance may only be provided for a legal guardianship established under ORS 419B.365 or 419B.366, as provided under ORS 419B.367 to 419B.369, or as provided by the statutory code or laws of a participating tribe.

(2) The Department or participating tribe may not pursue a court order establishing an assisted guardianship until a guardianship assistance agreement between the Department and the potential guardian has been signed by all parties.

(3) The Department or participating tribe, through counsel if the child is in the care or custody of the Department, must move the court for an order establishing the guardianship and, when the child is in the care or custody of the Department or participating tribe, directing one of the following:

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(a) Termination of Department or participating tribe's care or custody and dismissal of the Department or participating tribe as a party to the case; or

(b) If the child has been committed permanently to the Department, an order setting aside the order of permanent commitment and relieving the Department of responsibility for the care, placement, and supervision of the child.

(4) The Department may not provide guardianship assistance if the court establishes guardianship but orders the Department or participating tribe to continue supervision of the child or guardian.

(5) The guardian is not eligible for payments provided under OAR 413-090-0000 to 413-090-0050 and OAR 413-090-0100 to 413-090-0210 once the guardianship is effective and the Department's or participating tribe's custody of the child is dismissed by court order.

Stat. Auth.: ORS 411.141 & 418.005

Stats. Implemented: ORS 409.010, 411.141, 418.005

Hist.: SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 49-2003(Temp), f. 12-31-03, cert. ef. 1-1-04 thru 4-28-04; CWP 8-2004, f. & cert. ef. 4-1-04; CWP 5-2009(Temp), f. & cert. ef. 3-31-09 thru 9-27-09; CWP 7-2009(Temp), f. & cert. ef. 7-1-09 thru 9-27-09; CWP 12-2009, f. & cert. ef. 9-28-09; Renumbered from 413-070-0937, CWP 18-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10; CWP 6-2010, f. & cert. ef. 6-15-10; CWP 11-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11; CWP 30-2011, f. 12-27-11, cert. ef. 12-28-11; CWP 1-2014, f. 1-31-14, cert. ef. 2-1-14; CWP 12-2015, f. & cert. ef. 7-17-15; CWP 16-2016(Temp), f. & cert. ef. 9-2-16 thru 2-28-17; CWP 24-2016, f. 12-23-16, cert. ef. 1-1-17

413-070-1020

Approval and Implementation of a Fit and Willing Relative Permanency Plan

(1) Subject to OAR 413-070-0518, when the Department is considering a change in the permanency plan of a child or young adult, the Department makes the determination pursuant to OAR 413-070-0500 to 413-070-0519.

(2) The permanency committee must consider the best interests of the child or young adult and each of the following factors when developing a recommendation regarding placement with fit and willing relative to the Child Welfare Program Manager or designee:

(a) The safety, permanency, and well-being needs of the child or young adult.

(b) The opportunities the Department has provided the child or young adult and his or her parents to identify permanency resources.

(c) The parents' acceptance of fit and willing relative as a permanency plan and their preference for continued contact with the child or young adult.

(d) The ability of the fit and willing relative to meet the needs of the child or young adult pursuant to OAR 413-070-0640.

(e) The compelling reasons placement with a parent, adoption, or guardianship cannot be achieved.

(f) The sufficiency of the plan for continued contact with siblings.

(3) The Child Welfare program manager or designee must consider all of the following when deciding whether placement with a fit and willing relative is the appropriate permanency plan for the child or young adult:

(a) The considerations in section (2) of this rule.

(b) The information presented to the permanency committee.

(c) The recommendation of the permanency committee.

(4) Within 30 days of a Department decision to approve a fit and willing relative permanency plan under OAR 413-070-0519, the caseworker must request a permanency hearing before the court.

(5) At the hearing, the caseworker must provide all of the following to the court:

(a) The intensive, ongoing efforts by the Department to return the child or young adult home, or secure a placement with an adoptive parent or guardian.

(b) The compelling reasons it would not be in the best interests of the child or young adult to return home, be placed for adoption, or be placed with a guardian.

(c) The type and amount of parent-child and child-sibling contact and involvement until a more preferred permanency plan is achieved, the child reaches age of majority, reaches independence, or the juvenile court relieves the Department of legal custody of the child or young adult.

(d) The reasonable services the Department may offer each parent to meet the best interests of the child or young adult until a more preferred permanency plan is achieved, the child reaches the age of majority, reaches independence, or the juvenile court relieves the Department of legal custody of the child or young adult.

(e) The steps the Department has taken to ensure the foster parent is following the reasonable and prudent parent standard, and opportunities the

child has had to engage in age-appropriate or developmentally appropriate activities.

(f) A recommendation that the court issue an order approving the placement with a fit and willing relative permanency plan.

(g) A timetable for placement of the child or young adult with a fit and willing relative.

(6) When the Department recommends that contact be limited or prohibited between a parent and child or young adult, or between a sibling and child or young adult, the caseworker must make the request to the court and include the reasons contact should be limited or prohibited in the court report.

(7) The caseworker must ensure the Placement with a Fit and Willing Relative Agreement is signed by the fit and willing relative and the Child Welfare program manager within a reasonable time after the court has approved the permanency plan and the relative resource has been identified and approved.

(8) Within 30 days of the Department or court decision not to approve the fit and willing relative permanency plan, the caseworker must:

(a) Inform the child or young adult and, at the option of the child or young adult, up to two members of the case planning team who are chosen by the child or young adult as described in OAR 413-040-0010(3)(c), the child or young adult's relative caregivers, parents, attorney, court appointed special advocate, and other persons with significant involvement in the life of the child or young adult; and

(b) Consult with the child's or young adult's case planning team to reconsider other permanency options.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.010, 409.050, 418.005

Hist.: CWP 17-2015, f. 9-28-15, cert. ef. 10-1-15; CWP 24-2016, f. 12-23-16, cert. ef. 1-1-17

413-080-0053

When a Child or Young Adult in Substitute Care Is Missing

(1) When a caseworker receives information that a child or young adult in substitute care is missing, the caseworker must:

(a) Make immediate efforts to locate the child or young adult;

(b) Ensure law enforcement and the National Center for Missing and Exploited Children are notified immediately and in no case later than 24 hours after receiving information on the missing child or young adult; and

(c) As soon as practicable, ensure the court and legal parties to the case are notified, unless notification may jeopardize the safety of the child or young adult or interfere with an investigation.

(2) When a child or young adult missing from substitute care is located, the caseworker must:

(a) Determine and, to the extent possible, address the primary factors that contributed to the missing status of the child or young adult;

(b) Determine the child or young adult's experiences when missing;

(c) Determine if the child or young adult is a sex trafficking victim or at risk of being a sex trafficking victim; and

(d) Ensure the court and legal parties to the case are notified the child or young adult has been located.

(3) Documentation.

(a) When a child or young adult in substitute care is missing, the caseworker must document the following in the Department's electronic information system:

(A) Efforts made to locate the missing child or young adult; and

(B) The notifications in subsection (b) of section (1) of this rule.

(b) When a missing child or young adult is located, the caseworker must document the following in the Department's electronic information system:

(A) The determinations and notifications made in subsections (a) to (d) of section (2) of this rule; and

(B) Any actions taken to address the primary factors that contributed to the missing status of the child or young adult.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 18-2015(Temp), f. 9-30-15, cert. ef. 10-1-15 thru 3-28-16; CWP 27-2015, f. 12-28-15, cert. ef. 1-1-16; CWP 20-2016(Temp), f. & cert. ef. 11-1-16 thru 4-29-17; CWP 24-2016, f. 12-23-16, cert. ef. 1-1-17

413-080-0062

Sex Trafficking Victim Identification

When information is gathered or observations made that indicate a child or young adult may be a victim of sex trafficking, the caseworker must determine whether a child or young adult is, or is at risk of being, a victim of sex trafficking.

(1) If a determination is made that a child or young adult is a victim of sex trafficking the caseworker must:

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- (a) Report to a screener the identification of a child or a young adult as a sex trafficking victim;
 - (b) Ensure law enforcement and the National Center for Missing and Exploited Children are notified immediately and in no case later than 24 hours after determination that the child or young adult is a sex trafficking victim;
 - (c) Identify and refer to appropriate services; and
 - (d) Document the child or young adult is a sex trafficking victim in the Department's Electronic Information System.
- (2) If a determination is made that a child or young adult is at risk of being a victim of sex trafficking the caseworker must identify and refer to appropriate services.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: CWP 17-2016, f. & cert. ef. 9-29-16; CWP 20-2016(Temp), f. & cert. ef. 11-1-16 thru 4-29-17; CWP 24-2016, f. 12-23-16, cert. ef. 1-1-17

Department of Human Services, Self-Sufficiency Programs Chapter 461

Rule Caption: Amending rules relating to public assistance

Adm. Order No.: SSP 45-2016

Filed with Sec. of State: 12-20-2016

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Notice Publication Date: 12-1-2016

Rules Amended: 461-025-0310, 461-110-0370, 461-115-0020, 461-130-0305, 461-130-0310, 461-130-0315, 461-130-0330, 461-135-0520, 461-145-0540, 461-155-0150, 461-165-0010, 461-165-0180, 461-190-0360, 461-190-0500, 461-195-0501

Rules Repealed: 461-115-0020(T), 461-130-0305(T), 461-130-0310(T), 461-130-0315(T), 461-130-0330(T), 461-135-0520(T), 461-145-0540(T), 461-165-0180(T)

Subject: OAR 461-025-0310 about hearing requests is being amended to comply with federal regulations and place in rule the TANF state plan provisions about the use of the hearing process to resolve a complaint of an alleged violation by an employer of 45 CFR 261.70(a), prohibiting the displacement of other workers in favor of TANF work activity participants.

OAR 461-110-0370 about the SNAP filing group is being amended to comply with federal regulations regarding when a lodger may or must be included in the filing group with the rest of the household group member to whom the lodger pays room and board.

OAR 461-115-0020 about application requirements is being amended to clarify that the application and any additional information required for application be received by the Department in order to complete the application process. This clarification also applies to recertification requirements.

OAR 461-130-0305 about general provisions in employment programs is being amended to incorporate the SNAP definition of mandatory to include only those persons who are required to register for work as a SNAP eligibility requirement in accordance with OAR 461-130-0310. This makes permanent a temporary change adopted on October 19, 2016.

OAR 461-130-0310 about employment program participation classifications (exempt, mandatory, and volunteer) is being amended to divide the SNAP E&T exemption criteria list into two parts. One part is for the exemptions from work registration or any of the other E&T requirements. This includes an amendment to the definition of "chronically homeless" to align with federal guidance which requirements that homelessness must be tied to an inability to obtain employment. The second part is for those exemptions from participation in the E&T work-related activities due to employment or participation in another E&T program. Individuals meeting this second list are not exempt from work registration and the other E&T eligibility requirements: they are required to accept bone fide job offers and to maintain employment. This makes permanent temporary changes adopted on October 19, 2016.

OAR 461-130-0315 about the requirements for mandatory employment program clients is being amended to clarify which requirements apply to SNAP clients who are required to register for

work. This makes permanent temporary changes adopted on October 19, 2016.

OAR 461-130-0330 about disqualifications is being amended to clarify that any mandatory SNAP client who is required to register for work must comply with all requirements in OAR 461-130-0315 (described above) including register for work must register for work, assist the department in determining if they are mandatory or exempt, accept a bone fide job offer, and maintain employment. If they fail to do these things, they are subject to the E&T disqualifications. Participation in the SNAP work-related activities are not included here because they are voluntary for all except the ABAWD in the time limit counties. ABAWD residing in the time limit counties are subject to disqualification if they fail to do the E&T requirements and subject to the time limit if they fail to do the work related activities under OAR 461-135-0520. This makes permanent temporary changes adopted on October 19, 2016.

OAR 461-135-0520 about the SNAP time limit is being amended to reflect that an ABAWD may be exempt from the time limit under either list of exemption criteria in OAR 461-130-0310(3) described above. This makes permanent temporary changes adopted on October 19, 2016. This rule is also amended to add Clackamas as a county in which the federal ABAWD time limit applies. Oregon's waiver of the time limit in Clackamas County expires January 1, 2017. (OAR 461-190-0360 about special payments in SNAP E&T and OAR 461-190-0500 about Workfare in the SNAP program are being amended to reference the time limit counties listed in OAR 461-135-0520.)

OAR 461-145-0540 about the treatment of trusts when determining financial eligibility is being amended to change the treatment of revocable trust payments in the SNAP program to how they were treated in the SNAP program before January 1, 2016. Specifically, the total value of the trust will be considered a resource available to the client and payments made from the trust will be considered unearned income, consistent with 7 CFR 273.9. This makes permanent a temporary rule effective November 4, 2016.

OAR 461-155-0150 about child care eligibility standard, payment rates, and copayments is being amended to reflect provider rate increases approved and funded by the Legislature in HB 2015 (2015) and HB 5026 (2015) and negotiated with provider union representatives in the SEIU 2015-2019 Collective Bargaining Agreement. Specific rate changes based on the type of provider, location of the provider, age of the child in care, and type of billing used (hourly or monthly) are shown in the rule text available at http://www.dhs.state.or.us/policy/selfsufficiency/ar_proposed.htm.

OAR 461-165-0010 about the legal status of benefit payments and OAR 461-195-0501 about definitions and categories of overpayments are being amended to align with federal requirements relating to use of EBT (electronic benefit transfer) cards at prohibited locations. EBT cards are used by Department clients to access cash assistance through the REF (Refugee), SFPSS (State Family Pre-SSI/SSDI Program), and TANF (Temporary Assistance for Needy Families) programs. These rules were amended on July 1, 2015 to reflect the federal restriction on using or accessing benefits through an EBT card at a liquor store; casino, gambling casino, or gaming establishment; or retail establishment which provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment. The rules were further amended on July 1, 2016 to prohibit using or accessing benefits at marijuana dispensaries. These rule changes further align with federal regulations by clarifying that these restrictions apply to transactions that occur in Oregon, outside Oregon, and on tribal lands and when a private bank card is used to access cash assistance direct deposited into a private bank account.

OAR 461-165-0180 about child care provider eligibility requirements is being amended to reflect changes to federal requirements that apply to child care providers who receive Child Care Develop-

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ment Fund (CCDF) funds. Primary changes are summarized below and were adopted by temporary rule on November 1, 2016.

- Defining “legally exempt” and “legally exempt relative”.
- Stating that legally exempt providers who are not legally exempt relatives must meet the Office of Child Care (OCC) Regulated Subsidy Provider requirements, including the site visit requirement.
- Stating that legally exempt providers who are legally exempt relatives are not subject to the OCC Regulated Subsidy Provider requirements.
- Adding training and certification requirements for legally exempt providers who are not legally exempt relatives and requiring them to be completed prior to providing child care, unless a temporary waiver is approved.
- Stating staff-to-children ratios for certain child care centers or programs.

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

Rules Coordinator: Kris Skaro—(503) 945-6067

461-025-0310

Hearing Requests

(1) A claimant (see OAR 461-025-0305) has the right to a contested case hearing in the following situations upon the timely completion of a request for hearing:

(a) Except as provided in subsection (o) of this section, the Department has not approved or denied a request or application for public assistance or medical assistance within 45 days of the application.

(b) The Department has not acted timely on an application as follows:

(A) An application for SNAP program benefits, within 30 days of the filing date.

(B) An application for a JOBS support service payment, within the time frames established in OAR 461-115-0190(3).

(c) The Department acts to deny, reduce, close, or suspend SNAP program benefits, a grant of public assistance, a grant of aid, a support service payment authorized in the JOBS program by OAR 461-190-0211, medical assistance, or child care benefits authorized under Division 160 or 165 of this chapter of rules in the ERDC or TANF child care programs. When used in this subsection, grant of public assistance and grant of aid mean the grant of cash assistance calculated according to the client’s need.

(d) The Department has sent a decision notice (see OAR 461-001-0000) that the claimant is liable for an overpayment (see OAR 461-195-0501).

(e) The Department modifies a grant of public assistance or a grant of aid; or the claimant claims that the Department previously underissued public assistance, medical assistance, or SNAP program benefits and the Department denies, or denies in part, that claim.

(f) The household disputes its current level of SNAP program benefits.

(g) The filing group (see OAR 461-110-0370) is aggrieved by any action of the Department that affects the participation of the filing group in the SNAP program.

(h) The claimant asks for a hearing to determine if the waiver of an Intentional Program Violation hearing was signed under duress.

(i) The Department establishes or changes the client’s premium for the Oregon Health Plan.

(j) In the Pre-TANF program, the Department denies payment for a basic living expense (see OAR 461-135-0475) or other support service payment in the JOBS program (see subsection (c) of this section).

(k) In the TA-DVS program, when OAR 461-135-1235 provides a right to a hearing.

(l) A service re-assessment of a client conducted in accordance with OAR Division 411-015 has resulted in a reduction or termination of nursing facility services or home and community-based care (see OAR 461-001-0030).

(m) The claimant’s benefits are changed to vendor, protective, or two-party payments.

(n) Department has issued a notice seeking repayment under ORS 411.892 to an employer participating in the JOBS program.

(o) In the OSIP and OSIPM programs, when the Department has not approved or denied an application within the time frames established in OAR 461-115-0190.

(p) The right to a hearing is otherwise provided by statute or rule.

(q) To resolve a grievance under 45 CFR 261.70 against an employer. A hearing request under this subsection must be in writing with the claimant’s name, address, and daytime phone number (if available). The hearing request must be received by the Department within 45 days of the alleged violation or within 30 days after completion of an employer grievance process.

(2) A client is not entitled to a hearing on the question of the contents of a case plan (defined in OAR 461-190-0151) unless the right to hearing is specifically authorized by the Department’s rules. For a dispute about an activity in the JOBS program, the client is entitled to use the Department’s re-engagement process (see OAR 461-190-0231). In the TA-DVS program, a dispute about the contents of a TA-DVS case plan (see OAR 461-135-1205) is resolved through re-engagement if there is no right to a hearing under OAR 461-135-1235.

(3) A request for hearing is complete:

(a) In public assistance and SNAP programs, when the Department’s Administrative Hearing Request form (form DHS 443) is:

(A) Completed;

(B) Signed by the claimant, the claimant’s attorney, or the claimant’s authorized representative (see OAR 461-115-0090); and

(C) Received by the Department. OAR 137-003-0528(1)(a) (which allows hearing requests to be treated as timely based on the date of the post-mark) does not apply to hearing requests contesting a decision notice (see OAR 461-001-0000). The Department has adopted the exception to the Attorney General’s model rules set out in this paragraph due to operational conflicts.

(b) In the SNAP program, when the Department receives an oral or written statement from the claimant, the claimant’s attorney, or the claimant’s authorized representative that the claimant wishes to appeal a decision affecting the claimant’s SNAP program benefits to a higher authority.

(c) In the case of a provider of child care, when a written request for hearing from the provider is received by the Department.

(d) For medical assistance, when a hearing request is made in a manner permitted under OAR 410-200-0145 or this section.

(4) In the event a request for hearing is not timely, the Department may issue an order of dismissal if there is no factual dispute about whether sections (7) and (10) of this rule provide a right to a hearing. The Department may refer an untimely request to the Office of Administrative Hearings for a hearing on the question of timeliness.

(5) In the event the claimant has no right to a contested case hearing on an issue, the Department may enter an order accordingly. The Department may refer a hearing request to the Office of Administrative Hearings for a hearing on the question of whether the claimant has the right to a contested case hearing.

(6) For medical assistance, to be timely, a hearing request must be received by the Department or the OHP Customer Service in the time frame set out in OAR 410-200-0015 and 410-200-0145. In other programs, to be timely, a completed hearing request must be received by the Department not later than:

(a) Except as provided in subsection (b) of this section, the 45th day following the date of the decision notice (see OAR 461-001-0000) in public assistance programs.

(b) The 90th day following the effective date of the reduction or termination of benefits in a public assistance program if the reduction or termination of aid is a result of a JOBS disqualification (see OAR 461-130-0330) or a penalty for failure to seek treatment for substance abuse or mental health (see OAR 461-135-0085).

(c) The 90th day following the date of the decision notice in the SNAP program, except:

(A) A filing group may submit a hearing request at any time within a certification period (see OAR 461-001-0000) to dispute its current level of benefits.

(B) A filing group may submit a hearing request within 90 days of the denial of a request for restoration of benefits if not more than twelve months has expired since the loss of benefits.

(d) The 30th day following the date of notice from the Oregon Department of Revenue in cases covered by ORS 293.250.

(e) In a case described in subsection (1)(h) of this rule, the request must be made within 90 days of the date the waiver was signed.

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(7) When the Department receives a completed hearing request that is not filed within the timeframe required by section (6) of this rule but is filed no later than 120 days after a decision notice became a final order:

(a) The Department refers the hearing request to the Office of Administrative Hearings for a contested case hearing on the merits of the Department's action described in the notice:

(A) If the Department finds that the claimant and claimant's representative did not receive the decision notice and did not have actual knowledge of the notice; or

(B) If the Department finds that the claimant did not meet the timeframe required by section (6) of this rule due to excusable mistake, surprise, excusable neglect (which may include neglect due to significant cognitive or health issues), good cause (see OAR 461-025-0305), reasonable reliance on the statement of a Department employee relating to procedural requirements, or due to fraud, misrepresentation, or other misconduct of the Department.

(b) The Department refers the request for a hearing to the Office of Administrative Hearings for a contested case proceeding to determine whether the claimant is entitled to a hearing on the merits if there is a dispute between the claimant and the Department about either of the following paragraphs.

(A) The claimant or claimant's representative received the decision notice or had actual knowledge of the decision notice. At the hearing, the Department must show that the claimant or claimant's representative had actual knowledge of the notice or that the Department mailed or electronically mailed the notice to the correct address of the claimant or claimant's representative, as provided to the Department.

(B) The claimant qualifies for a contested case hearing on the merits under paragraph (a)(B) of this section.

(c) The Department may only dismiss such a request for hearing as untimely without a referral to the Office of Administrative Hearings if the following requirements are met:

(A) The undisputed facts show that the claimant does not qualify for a hearing under this section; and

(B) The decision notice was served personally or by registered or certified mail.

(8) In computing the time periods provided by this rule, see OAR 461-025-0300(1).

(9) In the REF and REFM programs, a client is not eligible for a contested case hearing when assistance is terminated because the eligibility time period imposed by OAR 461-135-0900 has been reached. If the issue is the date of entry into the United States the Department provides for prompt resolution of the issue by inspection of the individual's documentation issued by the US Citizenship and Immigration Services (USCIS) or by information obtained from USCIS, rather than by contested case hearing.

(10) If the Department receives a hearing request more than 120 days after an overpayment notice became a final order by default:

(a) The Department verifies whether its records indicate that the liable adult requesting the hearing was sent the overpayment notice.

(b) If no overpayment notice was sent to that liable adult, the overpayment hearing request is timely. The Department will send the claimant a decision notice or a contested case notice.

(c) If the Department determines that an overpayment notice was sent to the liable adult, there is no hearing right based on the issue of whether or not the overpayment notice was received.

(d) Any hearing request is treated as timely when required under the Servicemembers Civil Relief Act.

(e) The Department may dismiss a request for hearing as untimely if the claimant does not qualify for a hearing under this section.

(11) If the Department receives a hearing request more than 120 days after a decision notice (other than an overpayment notice) became a final order by default:

(a) Any hearing request is treated as timely when required under the Servicemembers Civil Relief Act.

(b) The Department may dismiss a request for hearing as untimely if the claimant does not qualify for a hearing under subsection (a) of this section.

(12) Notwithstanding sections (7), (10), and (11) of this rule, for medical assistance, the time frame is the same as the one in OAR 410-200-0146 instead of 120 days.

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

Stat. Auth.: ORS 411.060, 411.095, 411.404, 411.408, 411.816, 411.892, 412.014, 412.049
Stats. Implemented: ORS 411.060, 411.095, 411.103, 411.117, 411.404, 411.408, 411.816, 411.892, 412.009, 412.014, 412.049, 412.069

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 4-1995, f. & ef. 2-1-95; AFS 26-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 3-2000, f. 1-31-2000, cert. ef. 2-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 22-2001, f. & cert. ef.

10-1-01; AFS 23-2002(Temp), f. 12-31-02, cert. ef. 1-1-03 thru 6-30-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 21-2004, f. & cert. ef. 10-1-04; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 8-2008, f. & cert. ef. 4-1-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 25-2011, f. 9-30-11, cert. ef. 10-1-11; SSP 4-2012(Temp), f. & cert. ef. 1-31-12 thru 7-29-12; SSP 25-2012, f. 6-29-12, cert. ef. 7-1-12; SSP 17-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SSP 24-2013, f. & cert. ef. 10-1-13; SSP 32-2013(Temp) f. & cert. ef. 10-2-13 thru 3-31-14; SSP 9-2014, f. & cert. ef. 4-1-14; SSP 40-2016, f. & cert. ef. 11-1-16; SSP 45-2016, f. 12-20-16, cert. ef. 1-1-17

461-110-0370

Filing Group; SNAP

In the SNAP program:

(1) Except as provided in this rule, the filing group (see OAR 461-110-0370) consists of members of a household group (see OAR 461-110-0210) who choose to apply together or customarily purchase and prepare meals together.

(2) Except as provided in sections (3) and (8) of this rule, the following household group members must be in the same filing group, even if they do not customarily purchase and prepare meals together:

(a) Each spouse (see OAR 461-001-0000).

(b) A parent (see OAR 461-001-0000) and his or her child under age 22 living with the parent.

(c) A household group member and any child under age 18 who lives with and is under "parental control" of that household group member. For the purposes of this subsection, "parental control" means the adult is responsible for the care, control, and supervision of the child or the child is financially dependent on the adult.

(3) In the following specific situations, the Department forms a filing group as indicated:

(a) An individual is not included in the filing group if, during the month the group applied for SNAP program benefits, the individual received SSI benefits through the state of California. This exclusion applies only in the month the group applied and, if necessary to meet notice requirements, in the month following the month the group applied.

(b) An individual is not included in the filing group if during the month the group applied for SNAP program benefits the individual received SNAP program benefits in another household and was not the head of household in the prior household. This exclusion applies only in the month the group applied and, if necessary to meet notice requirements, in the month following the month the group applied.

(c) An elderly (see OAR 461-001-0015) individual and his or her spouse may be considered a separate filing group from others with whom the elderly individual purchases and prepares meals, if:

(A) The elderly individual is unable to purchase or prepare food because of a permanent and severe disabling condition; and

(B) The combined income of the other members of the household group does not exceed the following limit: [Table not included. See ED. NOTE.]

(4) A paid live-in attendant may choose not to be in the filing group with the recipient of the services provided, unless required by section (2) of this rule to be in the same filing group.

(5) An individual in foster care, the individual's spouse, and each child under age 22 living with the individual are not eligible to participate in the SNAP program independently of the care or service provider's filing group, but may be included in the provider's filing group if the provider applies for benefits.

(6) Unless required under section (2) of this rule, the following household group members may form a separate filing group from other members of the household group:

(a) A resident of an alcohol or drug treatment and rehabilitation program certified by the Department for which an employee of the facility is the authorized representative (see OAR 461-135-0550). A resident's spouse in the same facility may be in a separate filing group, but a child of a resident must be in the same filing group as the resident.

(b) A resident in group living (see OAR 461-001-0015).

(c) A resident of a public or private non-profit homeless or domestic violence shelter (see OAR 461-135-0510).

(d) An individual who is a resident of federally subsidized housing for the elderly, an individual with a disability, or blind recipient of benefits under Title I, II, X, XIV, or XVI of the Social Security Act.

(7) A member of the household group who pays the filing group for room and board (lodger) is treated as follows:

(a) A lodger may not participate in the SNAP program independently of the household group.

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(b) A lodger may participate in the SNAP program with the household group when the lodger pays a reasonable amount (see subsection (d) of this section) for room and board.

(c) A lodger must participate in the SNAP program with the household group when the lodger does not pay a reasonable amount for room and board.

(d) A reasonable amount is:

(A) An amount that equals or exceeds the Thrifty Food Plan for the individual and anyone in that individual's filing group (see OAR 461-155-0190(2)), if more than two meals per day are provided; or

(B) An amount that equals or exceeds two-thirds of the Thrifty Food Plan for the individual and anyone in the individual's filing group, if two or fewer meals per day are provided.

(8) A household group member is not included in the filing group, if the member is:

(a) A resident of a commercial boarding house; or

(b) An ineligible student, as defined in OAR 461-135-0570.

(9) A household group member may be included in two filing groups in the same month, if the member:

(a) Is a resident of a domestic violence shelter (see OAR 461-001-0000) or safe home (see OAR 461-001-0000); and

(b) Recently left the household group containing the member's abuser.

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

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.816

Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.816, 411.825, 411.837
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 9-1991, f. 3-29-91, cert. ef. 4-1-91; AFS 20-1991, f. & cert. ef. 10-1-91; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 34-1996, f. 9-26-96, cert. ef. 10-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 15-1998(Temp), f. 9-15-98, cert. ef. 10-1-98 thru 10-31-98; AFS 22-1998, f. 10-30-98, cert. ef. 11-1-98; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 22-2001, F. & cert. ef. 10-1-01; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 5-2009, f. & cert. ef. 4-1-09; SSP 28-2009, f. & cert. ef. 10-1-09; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 10-2011, f. 3-31-11, cert. ef. 4-1-11; SSP 25-2011, f. 9-30-11, cert. ef. 10-1-11; SSP 30-2012, f. 9-28-12, cert. ef. 10-1-12; SSP 24-2013, f. & cert. ef. 10-1-13; SSP 24-2014, f. & cert. ef. 10-1-14; SSP 28-2015, f. 9-29-15, cert. ef. 10-1-15; SSP 35-2016, f. 9-30-16, cert. ef. 10-1-16; SSP 45-2016, f. 12-20-16, cert. ef. 1-1-17

461-115-0020

Application Requirements

(1) To complete the application process, the applicant or his or her authorized representative (see OAR 461-115-0090) must complete, sign, and submit (see section (2) of this rule) an application, apply at the appropriate location, submit necessary information to the Department within the time frames specified for each program, and meet the interview requirements of OAR 461-115-0230.

(2) As used in this rule and in OAR 461-175-0222, "submit" means that the Department has received the required documents and information.

Stat. Auth.: ORS 411.050, 411.060 & 411.070

Stats. Implemented: ORS 409.050, 411.060 & 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; SSP 39-2016(Temp), f. & cert. ef. 10-19-16 thru 4-16-17; SSP 45-2016, f. 12-20-16, cert. ef. 1-1-17

461-130-0305

General Provisions; Employment Programs

(1) This division of rules states:

(a) The requirements for a client participating in the employment programs of the Post-TANF, Pre-TANF, REF, SNAP, and TANF programs. The employment programs are the JOBS, REF (administered under division 193 of these rules), and SNAP Employment and Training (see OAR 461-001-0020) employment programs. (The employment and training requirements for ABAWD clients in the SNAP program are also covered in OAR 461-135-0520.)

(b) The effect of a labor strike on a client's eligibility for program benefits.

(2) The following definitions apply to OAR 461-130-0305 through 461-130-0335 and OAR 461-135-0520:

(a) "Exempt" means a client who the Department determines is not mandatory (see subsection (b) of this section) for an employment program in accordance with OAR 461-130-0310.

(b) "Mandatory" means:

(A) In all programs except the SNAP program, a client in the need group (see OAR 461-110-0630) who the Department determines must participate in an employment program in accordance with OAR 461-130-0310.

(B) In the SNAP program, a client in the need group who the Department determines must register for an employment program in accordance with OAR 461-130-0310.

(c) "Volunteer" means:

(A) A client who is an ABAWD living in one of the time limit exempt counties (see OAR 461-135-0520) who is either exempt (see subsection (a) of this section) or mandatory and chooses to participate in SNAP Employment and Training;

(B) A client who is not an ABAWD and is either exempt or mandatory and chooses to participate in SNAP Employment and Training; or

(C) A client who is not mandatory and chooses to participate in an employment program.

(3) A client must provide the information necessary for the Department to determine each of the following:

(a) The client's participation classification (see OAR 461-130-0310);

(b) The client's level of participation; and

(c) If applicable, whether a client had good cause (see OAR 461-130-0327) for any failure to meet a requirement of an employment program.

(4) In the SNAP program, a mandatory client (see OAR 461-130-0310(3)(b)) is registered for the employment program when a member of the filing group (see OAR 461-110-0370) or an authorized representative (see OAR 461-115-0090 and 461-115-0140) signs the SNAP program application.

Stat. Auth.: ORS 411.060, 411.816, 412.006, 412.009, 412.049

Stats. Implemented: ORS 411.060, 411.816, 412.006, 412.009, 412.049

Hist.: AFS 17-1998, f. & cert. ef. 10-1-98; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 35-2016, f. 9-30-16, cert. ef. 10-1-16; SSP 38-2016(Temp), f. & cert. ef. 10-19-16 thru 4-16-17; SSP 45-2016, f. 12-20-16, cert. ef. 1-1-17

461-130-0310

Participation Classifications: Exempt, Mandatory, and Volunteer

(1) In the Post-TANF, Pre-TANF, REF, SNAP, and TANF programs:

(a) The Department assigns an individual to one or more employment program participation classifications, exempt, mandatory, and volunteer (see OAR 461-130-0305 for definitions of all three terms).

(b) In the Post-TANF program or while receiving Employment Payments (see OAR 461-001-0025) under OAR 461-135-1270, an individual is classified as a volunteer.

(2) In the Pre-TANF, REF, and TANF programs:

(a) An individual is exempt from employment program participation and disqualification if the individual meets the requirements of at least one of the following paragraphs. The individual is:

(A) Pregnant and in the last month of the pregnancy.

(B) Pregnant and experiencing medical complications due to the pregnancy that prohibit participation in activities of the program and are documented by a qualified and appropriate professional.

(C) A parent (see OAR 461-001-0000) during the first six months after the birth of the parent's dependent child (see OAR 461-001-0000) except that the Department may require the parent to participate in parenting classes or a family stability activity (see OAR 461-001-0000). An exemption allowed under this paragraph may apply only to one mandatory participant in each filing group (see OAR 461-110-0310, 461-110-0330, and 461-110-0430).

(D) Under 20 years of age during the first 16 weeks after giving birth except that the individual may be required to participate in suitable activities with a preference for educational activities, parenting classes, and family stability activity.

(E) A parent providing care for a family member who is an individual with a disability (see OAR 461-001-0000) and is in the household group (see OAR 461-110-0210) with the parent. Medical documentation to support the need for the care is required.

(F) An REF client 65 years of age or older.

(G) A TANF client 60 years of age or older.

(H) A noncitizen who is not authorized to work in the United States.

(I) An individual who is eligible for and receives supplemental security income (SSI) from the Social Security Administration.

(J) A caretaker relative (see OAR 461-001-0000) who is non-needy.

(K) An individual whose participation is likely to cause undue hardship or is contrary to the best interests of the dependent child or needy caretaker relative.

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(L) Pregnant and participating more than 10 hours per week during the first two months of the third trimester.

(M) A VISTA volunteer.

(b) A caretaker relative of a dependent child or unborn who receives TANF program benefits is mandatory if the caretaker relative is in the same filing group with the dependent child or unborn (even if the caretaker relative is not in the TANF program benefit group under OAR 461-110-0750), unless the caretaker relative is otherwise exempt from participation under subsection (a) of this section.

(3) In the SNAP program:

(a) An individual is exempt from registration in an employment program and disqualification if the individual meets the requirements of one of the following paragraphs. The individual is:

(A) An individual with a physical or mental condition that prevents performance of any work.

(B) Responsible for the care of a child (see OAR 461-001-0000) in the filing group under 6 years of age.

(C) Responsible for the care of an individual in the household with a disability (see OAR 461-001-0015) that substantially reduces or eliminates the individual's ability to care for himself or herself.

(D) Enrolled at least half-time, as defined by the school, in any high school or equivalent program recognized by a school district or enrolled at least half-time in any school, training program, or institution of higher education. An individual remains exempt during normal periods of class attendance, vacation, and recess but no longer qualifies for the student exemption when a break in enrollment occurs due to graduation, suspension or expulsion, or when the student drops out of school or does not enroll in classes for the next regular school term (excluding summer term).

(E) Participating in a drug or alcohol treatment and rehabilitation program.

(F) Pregnant.

(G) Chronically homeless. For purposes of this rule, "chronically homeless" means the individual is currently homeless (see OAR 461-001-0015), unable to obtain employment due to being homeless, and one of the following applies:

(i) The individual has been homeless for more than six months.

(ii) The individual has been homeless more than one time in the last 12 months.

(iii) The individual states that the individual is unable to meet the basic necessities of everyday life.

(b) An individual is mandatory for registration in an employment program and the requirements in OAR 461-130-0315 if the individual meets the requirements of one of the following paragraphs. These individuals may be disqualified under OAR 461-130-0330 for failing to meet the requirements in OAR 461-130-0315. The individual is:

(A) Working a minimum of 30 hours a week or earning money equal to at least the federal minimum wage multiplied by 30 hours per week multiplied by 4.3 weeks. An individual who is self-employed with allowable costs must meet the earnings threshold after allowing the 50 percent deduction. This includes migrant and seasonal farm workers (see OAR 461-001-0015) who are under contract or similar agreement with an employer or crew chief to begin employment within 30 days.

(B) Receiving REF or TANF program benefits under Title IV of the Social Security Act.

(C) In receipt of unemployment insurance benefits, has completed an application for unemployment insurance benefits and is waiting for an initial decision on the claim, or is participating in at least one of the following Employment Department training programs:

(i) The Trade Readjustment Allowance (TRA) program serving displaced workers under the Trade Act.

(ii) The Training Unemployment Insurance (TUI) program.

(iii) The Self-Employment Insurance (SEA) program.

(iv) The Apprenticeship Program (APT).

(c) A mandatory client is an individual in the need group (see OAR 461-110-0630); who is 16 or 17 years of age and a primary person (see OAR 461-001-0015), or 18 years of age and older and 59 years of age and younger; and who is not exempt under subsection (a) of this section.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.816, 412.006, 412.009, 412.014, 412.049
Stats. Implemented: ORS 409.010, 409.750, 411.060, 411.070, 411.816, 411.837, 412.006, 412.009, 412.014, 412.049

Hist.: AFS 17-1998, f. & cert. ef. 10-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 12-2000(Temp), f. 5-1-00, cert. ef. 5-1-00 thru 9-30-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 28-2009, f. & cert. ef. 10-1-09; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 18-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SSP 25-2011, f. 9-30-11, cert. ef. 10-1-11; SSP 39-2012(Temp), f. 12-28-12, cert. ef. 1-1-13 thru 6-30-13; SSP 8-2013, f. & cert. ef. 4-1-13; SSP

13-2013, f. & cert. ef. 7-1-13; SSP 24-2015, f. 9-29-15, cert. ef. 10-1-15; SSP 37-2015, f. 12-23-15, cert. ef. 1-1-16; SSP 1-2016(Temp), f. & cert. ef. 1-1-16 thru 6-28-16; SSP 15-2016, f. & cert. ef. 4-1-16; SSP 35-2016, f. 9-30-16, cert. ef. 10-1-16; SSP 38-2016(Temp), f. & cert. ef. 10-19-16 thru 4-16-17; SSP 45-2016, f. 12-20-16, cert. ef. 1-1-17

461-130-0315

Requirements for Mandatory Employment Program Clients; Pre-TANF, REF, SNAP, TANF

The following provisions apply to a mandatory (see OAR 461-130-0305) client:

(1) A mandatory client selected by the Department to participate in an employment program of the Pre-TANF, REF, SNAP, or TANF program must do all of the following:

(a) In the Pre-TANF, REF, or TANF programs:

(A) Accept a bona fide offer of employment, whether temporary, permanent, full time, part time, or seasonal.

(B) Schedule and keep required employment-related appointments and interviews.

(C) Notify the Department's case manager or the JOBS contractor of the reason for not keeping employment-related appointments and interviews, not attending scheduled classes and activities, or not completing case management activities. Notification must be made within three working days from the date of a missed appointment, interview, class, or activity.

(D) Provide the Department, in the manner the Department requires, with verifiable documentation of JOBS participation hours, including paid work, job search, and educational participation hours.

(E) In the REF and TANF programs, complete all activities (see OAR 461-001-0025) specified on the case plan (see OAR 461-001-0025).

(b) In the SNAP program:

(A) Register for the SNAP Employment and Training program (see OAR 461-001-0020).

(B) Assist the Department in the exempt (see OAR 461-130-0305) or mandatory determination.

(C) Accept a bona fide offer of employment, whether temporary, permanent, full-time, part-time, or seasonal.

(D) Maintain employment:

(i) A client meeting the requirements of subparagraph (iii) of this paragraph fails to maintain employment when the criteria in at least one of the following sub-subparagraphs is met:

(I) Voluntarily leaving a job 30 days or less prior to the filing date (see OAR 461-115-0040) for SNAP benefits as provided in OAR 461-135-0521 or at any time thereafter;

(II) Being dismissed for striking while a federal, state, or county employee; or

(III) Reducing hours of work to less than 30 each week as defined in OAR 461-135-0521.

(ii) The following changes in employment status do not constitute failure to maintain employment:

(I) An employer reduces a client's hours of work;

(II) An employer fires a client from a job;

(III) A client terminates a self employment enterprise; and

(IV) A client resigns from a job at the demand of the employer.

(iii) Subparagraph (i) of this paragraph applies only if the client meets at least one of the following requirements. The client:

(I) Had a job that averaged not less than 30 hours each week or had provided average weekly earnings not less than the federal minimum wage multiplied by 30 hours, and the client quit the job without good cause (see OAR 461-130-0327); or

(II) Quits working under a JOBS Plus agreement more than twice (see OAR 461 190 0426).

(E) An ABAWD residing in one of the time limit counties (see OAR 461-135-0520) must do all of the following:

(i) Schedule and keep required employment-related appointments and interviews.

(ii) Complete all work activities and components specified in the case plan (see OAR 461-001-0020).

(iii) Provide the Department, in the manner required, with verifiable documentation of participation hours.

(iv) Notify the Department or the SNAP Employment and Training contractor of the reason for not doing the employment-related activities as set forth on the case plan.

(2) In the Pre-TANF, REF, and TANF programs a mandatory client who fails to meet a participation requirement without good cause is subject to disqualification in accordance with OAR 461-130-0330 only after the re-engagement process under OAR 461-190-0231 has been completed.

Stat. Auth.: ORS 411.060, 418.045, 412.049

ADMINISTRATIVE RULES

Stats. Implemented: ORS 411.060, 418.045, 412.049

Hist.: AFS 17-1998, f. & cert. ef. 10-1-98; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 15-2016, f. & cert. ef. 4-1-16; SSP 35-2016, f. 9-30-16, cert. ef. 10-1-16; SSP 38-2016(Temp), f. & cert. ef. 10-19-16 thru 4-16-17; SSP 45-2016, f. 12-20-16, cert. ef. 1-1-17

f. 6-28-16, cert. ef. 7-1-16; SSP 35-2016, f. 9-30-16, cert. ef. 10-1-16; SSP 38-2016(Temp), f. & cert. ef. 10-19-16 thru 4-16-17; SSP 45-2016, f. 12-20-16, cert. ef. 1-1-17

461-130-0330

Disqualifications; Pre-TANF, REF, SNAP, TANF

(1) In the Pre-TANF, REF, SNAP, and TANF programs, the Department may not disqualify from program benefits a client who is a volunteer (see OAR 461-130-0305 and 461-130-0310) participant in an employment program.

(2) In the Pre-TANF and TANF programs, a mandatory (see OAR 461-130-0305) individual who fails to comply with an employment program participation requirement or an exempt (see OAR 461-130-0305 and 461-130-0310) individual who fails to comply with the requirements of OAR 461-135-0085, and does not have good cause (see OAR 461-130-0327) for the failure to comply is subject to disqualification under this rule only after the client has had the opportunity to participate in the re-engagement process under OAR 461-190-0231.

(3) In the REF program, a mandatory client who fails to comply with an employment program participation requirement and does not have good cause for failure to comply is subject to disqualification under this rule only after the client has had the opportunity to participate in the re-engagement process under OAR 461-190-0231.

(4) In the REF program, the effects of a disqualification are progressive. There are two levels of disqualification:

(a) At the first level of disqualification, the penalty is the removal of the disqualified client from the need group (see OAR 461-110-0630) for three months. If the disqualified client is the only member of the filing group (see OAR 461-110-0310 and 461-110-0430), the assistance is terminated.

(b) At the second level, the penalty is the removal of the disqualified client from the need group for six months. If the disqualified client is the only member of the filing group, the assistance is terminated.

(5) In the TANF program, the effects of a JOBS disqualification or a disqualification imposed under OAR 461-135-0085 are progressive. There are four levels of disqualification. Once a disqualification is imposed, it affects benefits according to the following schedule until the disqualification ends in accordance with OAR 461-130-0335:

(a) At the first level, the penalty is a 25 percent reduction in benefits.

(b) At the second level, the penalty is a 50 percent reduction in benefits.

(c) At the third level, the penalty is a 75 percent reduction in benefits.

(d) At the fourth level, the penalty is a 100 percent reduction in benefits.

(e) At the end of the fourth level, program benefits are closed and the filing group (see OAR 461-110-0310 and 461-110-0330) may not receive program benefits for the following two consecutive months.

(6) In the SNAP program:

(a) A mandatory client not covered under subsection (b) of this section who fails to comply with the requirements of an employment program (see OAR 461-130-0315) without good cause (see OAR 461-130-0327) is subject to disqualification. A disqualified client is removed from the need group until he or she meets the employment program requirements and serves the applicable progressive disqualification under the following subsections:

(A) One calendar month for the first failure to comply.

(B) Three calendar months for the second failure to comply.

(C) Six calendar months for the third and subsequent failures to comply.

(b) A mandatory client who is an ABAWD (see OAR 461-135-0520) residing in one of the time limit exempt counties (see OAR 461-135-0520) or a mandatory client who is served by an office that does not offer OFSET (see OAR 461-190-0310) who fails to comply with the requirements in OAR 461-130-0315(1)(b)(A) to (D) is subject to disqualification as provided in subsection (a) of this section. See OAR 461-135-0520 for additional employment participation requirements for ABAWD clients.

Stat. Auth.: ORS 411.060, 411.816, 412.009, 412.049

Stats. Implemented: ORS 411.060, 411.816, 411.837, 412.009, 412.049

Hist.: AFS 17-1998, f. & cert. ef. 10-1-98; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 26-2011(Temp), f. 9-30-11, cert. ef. 10-1-11 thru 3-29-12; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12; SSP 25-2012, f. 6-29-12, cert. ef. 7-1-12; SSP 37-2012, f. 12-28-12, cert. ef. 1-1-13; SSP 37-2015, f. 12-23-15, cert. ef. 1-1-16; SSP 15-2016, f. & cert. ef. 4-1-16; SSP 23-2016,

461-135-0520

Time Limit and Special Requirements for ABAWD; SNAP

This rule establishes the time limit and special requirements for receipt of SNAP benefits for certain adults.

(1) Unless the context indicates otherwise, the following definitions apply to rules in OAR chapter 461:

(a) "Able-bodied adult without dependents (ABAWD)" means an individual 18 years of age or over, but under the age of 50, without dependents. For the purpose of this definition, "without dependents" means there is no child (see OAR 461-001-0000) under the age of 18 years in the filing group (see OAR 461-110-0310 and 461-110-0370).

(b) "Time limit counties" means Oregon counties in which the limitation on eligibility (see OAR 461-001-0000) for SNAP benefits for ABAWD in section 6(o)(2) of the Food and Nutrition Act of 2008 (7 U.S.C. 2015(o)(2)) applies. "Time limit counties" are Clackamas, Multnomah, and Washington counties.

(c) "Time limit exempt counties" means Oregon counties in which the limitation on eligibility for SNAP benefits contained in section 6(o)(2) of the Food and Nutrition Act of 2008 (7 U.S.C. 2015(o)(2)) does not apply per a waiver approved by the United States Department of Agriculture. "Exempt counties" are Baker, Benton, Clatsop, Columbia, Coos, Crook, Curry, Deschutes, Douglas, Gilliam, Grant, Harney, Hood River, Jackson, Jefferson, Josephine, Klamath, Lake, Lane, Lincoln, Linn, Malheur, Marion, Marrow, Polk, Sherman, Tillamook, Umatilla, Union, Wallowa, Wasco, Wheeler, and Yamhill counties.

(2) Except as provided otherwise in this rule, an ABAWD who resides in one of the time limit counties (see section (1) of this rule) is ineligible to receive food benefits as a member of any household after the individual received food benefits for three countable months (see section (3) of this rule) during January 1, 2016 to December 31, 2018.

(3) "Countable months" means months within the 36-month period of January 1, 2016 to December 31, 2018 in which an individual as a member of any household receives SNAP benefits in Oregon or in any other state, unless at least one of the following applies:

(a) The individual resided for any part of the month in one of the time limit exempt counties (see section (1) of this rule).

(b) Benefits were prorated for the month.

(c) The individual was exempt from the time limit for any part of the month under OAR 461-130-0310(3)(a) or (b).

(d) The individual participated in one or more of the activities in paragraphs (A) to (D) of this subsection for 20 hours per week averaged over the month. For purposes of this rule, 20 hours per week averaged monthly means 80 hours per month. (Activities may be combined in one month to meet the 20 hours per week averaged monthly requirement.)

(A) Work for pay, in exchange for goods or services, or as a volunteer.

(i) Work in exchange for goods and services includes bartering and in-kind work.

(ii) Voluntary work hours must be verified by the employer.

(ii) For self-employed individuals, countable income after deducting the costs of producing income must average at least the federal minimum wage times 20 hours per week.

(B) Participate in a program under the Workforce Investment Act of 1998, Pub. L. No. 105 220, 112 Stat. 936 (1998).

(C) Participate in a program under section 236 of the Trade Act of 1974, Pub. L. 93 618, 88 Stat. 2023, (1975) (19 U.S.C. 2296).

(D) Comply with the employment and training requirements described in OAR 461-001-0020, 461-130-0305, and 461-130-0315. Work search activities must be combined with other work-related activities to equal 20 hours per week and may not exceed 9 hours per week.

(e) The individual complied with the Workfare requirements in OAR 461-190-0500.

(4) An ABAWD must submit evidence to the Department on the issue of whether a month is countable within 90 days following the last day of the month in question.

(5) An ABAWD who is ineligible under section (2) of this rule but otherwise eligible may regain eligibility if the requirements of subsections (a) or (b) of this section are met.

(a) The individual becomes exempt under OAR 461-130-0310(3)(a). Eligibility regained under this subsection begins on the date the individual files a new application and continues as long as the individual is exempt and is otherwise eligible. If not eligible on the filing date (see OAR 461-115-0040), eligibility begins the date all other eligibility requirements are met.

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(b) The individual, during a consecutive 30-day period during which the individual is ineligible, meets the requirements of subsection (3)(d) or (3)(e) of this rule.

(A) Eligibility regained under this subsection begins on the date the individual files a new application and continues as long as the individual meets the requirements of subsection (3)(d) or (3)(e) of this rule and is otherwise eligible. If not eligible on the filing date, eligibility begins the date all other eligibility requirements are met.

(B) There is no limit to how many times an individual may regain eligibility under this subsection during January 1, 2016 to December 31, 2018.

(c) See OAR 461-180-0010 to add an individual to an open SNAP case after the individual has regained eligibility under this section.

(6) An individual who regains eligibility under section (5) of this rule and later fails to comply with the participation requirements of subsection (3)(d) or (3)(e) of this rule may receive a second set of food benefits for three consecutive countable months. The countable months are determined as follows:

(a) If the individual stopped participation in a work program, countable months start when the Department notifies the individual he or she is no longer meeting the work requirement.

(b) If the individual stopped participation in a work program, countable months start when the individual notifies the Department he or she is no longer meeting the work requirement.

(c) If a change occurred which results in an individual becoming subject to the time limit in section (2) of this rule and the change was required to be reported under rules in OAR chapter 461, division 170, the countable months start when the change occurred.

(d) If a change occurred which results in an individual becoming subject to the time limit and the change was not required to be reported under rules in OAR chapter 461, division 170, countable months start when the Department notifies the individual he or she must meet the work requirement.

(e) An individual may only receive benefits without meeting the requirements of subsection (3)(d) or (3)(e) of this rule for a total of six countable months during January 1, 2016 to December 31, 2018.

(7) This section is a placeholder to establish criteria the Department will use to grant exemptions to ABAWD who are ineligible if the Department receives special exemptions from the Food and Nutrition Service.

(8) An ABAWD involved in the activities specified in subsection (3)(d) or (3)(e) of this rule or an activity listed in the individual's case plan (see OAR 461-001-0020) is eligible for support service payments necessary for transportation or other costs related to completing the activity as allowed by OAR 461-190-0360.

[Publication.: Publications referenced are available from the agency.]
Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.121, 411.816
Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.121, 411.816, 411.825, 411.837
Hist.: AFS 39-1996(Temp), f. 11-27-96, cert. ef. 12-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 6-1998(Temp), f. 3-30-98, cert. ef. 4-1-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 15-1998(Temp), f. 9-15-98, cert. ef. 10-1-98 thru 10-31-98; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 22-1998, f. 10-30-98, cert. ef. 11-1-98; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-999; AFS 12-2000(Temp), f. 5-1-00, cert. ef. 5-1-00 thru 9-30-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 8-2001, f. & cert. ef. 5-1-01; AFS 8-2002, f. & cert. ef. 5-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 37-2015, f. 12-23-15, cert. ef. 1-1-16; SSP 6-2016(Temp), f. & cert. ef. 2-5-16 thru 8-2-16; SSP 10-2016(Temp), f. & cert. ef. 3-2-16 thru 8-2-16; SSP 15-2016, f. & cert. ef. 4-1-16; SSP 16-2016(Temp), f. & cert. ef. 4-5-16 thru 4-30-16; SSP 18-2016(Temp), f. 4-29-16, cert. ef. 5-1-16 thru 6-30-16; Administrative correction, 7-28-16; SSP 35-2016, f. 9-30-16, cert. ef. 10-1-16; SSP 38-2016(Temp), f. & cert. ef. 10-19-16 thru 4-16-17; SSP 45-2016, f. 12-20-16, cert. ef. 1-1-17

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 all programs except the QMB-BAS, QMB-SMB, QMB-SMF, and SNAP 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 SNAP program:

(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.

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- (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.
- (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 OAR 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

461-155-0150

Child Care Eligibility Standard, Payment Rates, and Copayments

The following provisions apply to child care in the ERDC, JOBS, JOBS Plus, and TANF programs:

(1) The following definitions apply to the rules governing child care rates:

(a) Infant: For all providers other than licensed (registered or certified) care, a child aged newborn to 1 year. For licensed care, an infant is a child aged newborn to 2 years.

(b) Toddler: For all providers other than licensed (registered or certified) care, a child aged 1 year to 3 years. For licensed care, a toddler is a child aged 2 years to 3 years.

(c) Preschool: A child aged 3 years to 6 years.

(d) School: A child aged 6 years or older.

(e) Special Needs: A child who meets the age requirement of the program (ERDC or TANF) and who requires a level of care over and above the norm for his or her age due to a physical, behavioral, or mental disability. The need for a higher level of care must be determined by the provider and the disability must be verified by one of the following:

(A) A physician, nurse practitioner, clinical social worker, or any additional sources in OAR 461-125-0830.

(B) Eligibility for Early Intervention and Early Childhood Special Education Programs, or school-age Special Education Programs.

(C) Eligibility for SSI.

(2) The following definitions apply to the types of care specified in the child care rate charts in subsections (4)(a) through (4)(c) of this rule:

(a) The Standard Family Rate applies to child care provided in the provider's own home or in the home of the child when the provider does not qualify for the enhanced rate allowed by subsection (b) of this section.

(b) The Enhanced Family Rate applies to child care provided in the provider's own home or in the home of the child when the provider meets the training requirements of the Oregon Registry, established by the Oregon Center for Career Development in Childhood Care and Education.

(c) The Registered Family Rate applies to child care provided in the provider's own home when the provider meets criteria established by the Office of Child Care.

(d) The Certified Family Rate applies to child care provided in a residential dwelling that is certified by the Office of Child Care as a Certified Family Home. To earn this designation, the facility must be inspected, and both provider and facility are required to meet certain standards not required of a registered family provider.

(e) The Standard Center Rate applies to child care provided in a facility that is not located in a residential dwelling and is exempt from Office of Child Care Certification rules (see OAR 414-300-0000).

(f) The Enhanced Center Rate applies to child care provided in an exempt center whose staff meet the training requirements of the Oregon Registry established by the Oregon Center for Career Development in Childhood Care and Education. Eligibility to receive the enhanced center rate for care provided in an exempt center is subject to the following requirements:

(A) A minimum of one staff member for every 20 children in care must meet the Oregon Registry training requirements noted in subsection (b) of this section.

(B) New staff must meet the Oregon Registry training requirements within 90 days of hire, if necessary to maintain the trained staff-to-children ratio described in paragraph (A) of this subsection.

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(C) There must be at least one person present where care is provided who has a current certificate in infant and child CPR and a current American Red Cross First Aid card or an equivalent.

(g) An enhanced rate will become effective not later than the second month following the month in which the Department receives verification that the provider has met the requirements of subsection (b) or (f) of this section.

(h) The Certified Center Rate applies to child care provided in a center that is certified by the Office of Child Care.

(3) The following provisions apply to child care payments:

(a) Providers not eligible for the enhanced or licensed rate will be paid at an hourly rate for children in care less than 158 hours per month subject to the maximum full-time monthly rate.

(b) Providers eligible for the enhanced or licensed rate will be paid at an hourly rate for children in care less than 136 hours a month, unless the provider customarily bills all families at a part-time monthly rate subject to the maximum full-time monthly rate and is designated as the primary provider for the case.

(c) At their request, providers eligible for the enhanced or licensed rate may be paid at the part-time monthly rate if they provide 63 or more hours of care in the month, customarily bill all families at a part-time monthly rate, and are designated as the primary provider for the case.

(d) Unless required by the circumstances of the client or child, the Department will not pay for care at a part-time monthly or a monthly rate to more than one provider for the same child for the same month.

(e) The Department will pay at the hourly rate for less than 63 hours of care in the month subject to the maximum full-time monthly rate.

(f) The Department will pay for up to five days each month the child is absent if:

(A) The child was scheduled to be in care and the provider bills for the amount of time the child was scheduled to be in care; and

(B) It is the provider's policy to bill all families for absent days.

(g) The Department will not pay for more than five consecutive days of scheduled care for which the child is absent.

(h) Child care providers are eligible to receive an incentive payment upon achieving and maintaining a three star or higher rating with the Quality Rating Improvement System (QRIS) subject to all of the following provisions.

(A) The incentive payment is in addition to the Department maximum rate.

(B) A provider may receive an incentive payment for any ERDC child that the Department paid the provider for full-time care (136 hours or more).

(C) Providers who are contracted for child care services through the ERDC program are not eligible to receive incentive payments.

(D) Eligibility for the incentive payment is effective the month after the QRIS rating has been achieved.

(E) The incentive payment amount is based on the provider's star QRIS rating as follows: [Table not included. See ED. NOTE.]

(4) The following are the child care rates based on the type of provider, the location of the provider (shown by zip code), the age of the child, and the type of billing used (hourly or monthly):

(a) [Table not included. See ED. NOTE.]

(b) [Table not included. See ED. NOTE.]

(c) [Table not included. See ED. NOTE.]

(5) Except to the extent provided otherwise in section (12), (13), or (14) of this rule or for children in contracted child care (see OAR 461-135-0405 and 461-135-0407), this section establishes the ERDC eligibility standard and the client's copayment (copay).

(a) At initial certification, the ERDC eligibility standard is met for a need group (see OAR 461-110-0630) of eight or less if monthly countable income (see OAR 461-001-0000) for the need group is less than 185 percent of the federal poverty level (FPL), as described in OAR 461-155-0180. The eligibility standard for a need group of eight applies to any need group larger than eight.

(b) During the certification period (see OAR 461-001-0000) and at recertification the ERDC eligibility standard is met for a need group of eight or less if monthly countable income for the need group during the 12 month period is less than 250 percent FPL or 85 percent state median income (SMI), whichever is higher, as described in OAR 461-155-0180. The eligibility standard for a need group of eight applies to any need group larger than eight.

(c) The minimum monthly ERDC copay is \$25.

(d) The filing group may not exceed the resource limit in OAR 461-160-0015.

(e) For a filing group (see OAR 461-110-0310) whose countable income is at or below 50 percent of the 2007 FPL, the copay is \$25 or 1.5 percent of the filing group's monthly countable income, whichever is greater.

(f) For a filing group whose countable income is over 50 percent of the 2007 FPL, the copay amount is determined with the following percentage of monthly income:

(A) Divide the filing group's countable income by the 2007 FPL, drop all digits beyond two decimal points, subtract 0.5, and multiply this difference by 0.12.

(B) Add .015 to the amount in paragraph (A) of this subsection. This sum is the percentage of monthly income used to determine the copay amount. Multiply this sum by the filing group's countable income and round to the nearest whole dollar.

(g) The 2007 federal poverty level used to determine copay amounts under subsections (d) and (e) of this section is set at the following amounts: [Table not included. See ED. NOTE.]

(6) Subject to the provisions in section (9) of this rule, the monthly limit for each child's child care payments is the lesser of the amount charged by the provider or providers and the following amounts:

(a) The monthly rate provided in section (4) of this rule.

(b) The product of the hours of care, limited by section (8) of this rule, multiplied by the hourly rate provided in section (4) of this rule.

(7) The limit in any month for child care payments on behalf of a child whose caretaker is away from the child's home for more than 30 days because the caretaker is a member of a reserve or National Guard unit that is called up for active duty is the lesser of the following:

(a) The amount billed by the provider or providers.

(b) The monthly rate established in this rule for 215 hours of care.

(8) The number of payable billed hours of care for a child is limited as follows:

(a) In the ERDC and TANF programs, the total payable hours of care in a month may not exceed the amounts in paragraphs (A) or (B) of this subsection:

(A) 125 percent of the number of child care hours authorized:

(i) Under OAR 461-160-0040(2) and (5); or

(ii) To participate in activities included in a case plan (see OAR 461-001-0025) including, for clients in the JOBS Plus program, the time the client searches for unsubsidized employment and for which the employer pays the client.

(B) The monthly rate established in section (4) of this rule multiplied by a factor of not more than 1.5, determined by dividing the number of hours billed by 215, when the client meets the criteria for extra hours under section (10) of this rule.

(b) In the ERDC program, for a client who earns less than the Oregon minimum wage, the total may not exceed 125 percent of the anticipated earnings divided by the state minimum wage not to exceed 172 hours (which is full time).

(c) In the TANF program, for a client who earns less than the Oregon minimum wage or is self-employed, the total may not exceed 125 percent of the anticipated earnings divided by the state minimum wage not to exceed 172 hours (which is full time). The limitation of this subsection is waived for the first three months of the client's employment.

(d) In the ERDC program, employed caretakers eligible under OAR 461-135-0400 may have education hours added to the authorized work hours. Education hours may not exceed authorized work hours and combined hours may not exceed 215 hours per month. Education hours are hours required to participate in coursework that leads to a certificate, degree, or job-related knowledge or skills attainment at an institution of higher education approved to receive federal financial aid.

(9) The limit in any month for child care payments on behalf of a child whose caretaker has special circumstances, defined in section (10) of this rule, is the lesser of one of the following:

(a) The amount billed by the provider or providers; or

(b) The monthly rate established in section (4) of this rule multiplied by a factor, of not more than 1.5, determined by dividing the number of hours billed by 215.

(10) The limit allowed by section (9) of this rule is authorized once the Department has determined the client has special circumstances. For the purposes of this section, a client has special circumstances when it is necessary for the client to obtain child care in excess of 215 hours in a month to perform the requirements of his or her employment or training required to keep current employment, not including self-employment. This is limited to the following situations:

(a) The commute time to and from work exceeds two hours per day.

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(b) The caretaker works an overnight shift and care is necessary for both work hours and sleep hours.

(c) The caretaker works a split shift and it is not feasible to care for the child between shifts.

(d) The caretaker consistently works more than 40 hours per week.

(11) The payment available for care of a child who meets the special needs criteria described in subsection (e) of section (1) of this rule is increased in accordance with OAR 461-155-0151 if the requirements of both of the following subsections are met:

(a) The child requires significantly more direct supervision by the child care provider than normal for a child of the same age.

(b) The child is enrolled in a local school district Early Intervention or Early Childhood Special Education program or school-age Special Education Program. The enrollment required by this subsection is waived if determined inappropriate by a physician, nurse practitioner, licensed or certified psychologist, clinical social worker, or school district official.

(12) Effective May 1, 2012:

(a) The minimum monthly ERDC copay is \$27.

(b) Except as stated in subsection (a) of this section, the Department adds 10 percent to the monthly client copay amount set under section (5) of this rule by multiplying the copay amount by 1.1 and rounding down to the nearest whole dollar.

(13) Effective April 1, 2016, the ERDC copay is \$27 for no more than three months after closure of Pre-TANF, SFPSS, or TANF benefits when:

(a) The closure is because an individual in the need group had earned income that led to the TANF closure;

(b) An ERDC date of request (see OAR 461-115-0030) is established within 90 days of closure; and

(c) The individual is eligible for ERDC.

(14) The ERDC copay will be reduced starting the month after the ERDC case has been electronically connected to a Department approved child care provider with a Quality Rating and Improvement System (QRIS) star rating of 3, 4, or 5. The copay will be reduced by the following amounts:

(a) A copay set at \$27 is waived, unless the copay is \$27 under section (13) of this rule in which case the copay is not waived under this section.

(b) Copay amounts of \$28 to \$200 are reduced by \$20.

(c) Copay amounts of \$201 or more are reduced by 10 percent rounding to the nearest dollar.

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

Stat. Auth.: ORS 329A.500, 409.050, 411.060, 411.070, 412.006, 412.049

Stats. Implemented: ORS 329A.500, 409.010, 409.050, 409.610, 411.060, 411.070, 411.122, 411.141, 412.006, 412.049, 412.124, 418.485

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 19-1991(Temp), f. & cert. ef. 10-1-91; AFS 4-1992, f. 2-28-92, cert. ef. 3-1-92; AFS 14-1992, f. & cert. ef. 6-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 10-1993, f. & cert. ef. 6-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 9-1994, f. 4-29-94, cert. ef. 5-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 23-1995, f. 4-20-95, cert. ef. 10-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 14-1999, f. & cert. ef. 11-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 4-2000(Temp), f. 2-29-00, cert. ef. 3-1-00 thru 8-25-00; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; AFS 23-2002(Temp), f. 12-31-02, cert. ef. 1-1-03 thru 6-30-03; SSP 2-2003(Temp), f. & cert. ef. 2-7-03 thru 6-30-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 24-2003(Temp), f. & cert. ef. 10-1-03 thru 12-31-03; SSP 35-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 35-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 7-2006(Temp), f. 3-31-06, cert. ef. 4-1-06 thru 9-28-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 4-2009(Temp), f. 3-11-09, cert. ef. 4-1-09 thru 9-28-09; SSP 27-2009, f. & cert. ef. 9-29-09; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 17-2011, f. & cert. ef. 7-1-11; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12; SSP 13-2012(Temp), f. & cert. ef. 4-10-12 thru 10-7-10; SSP 30-2012, f. 9-28-12, cert. ef. 10-1-12; SSP 39-2012(Temp), f. 12-28-12, cert. ef. 1-1-13 thru 6-30-13; SSP 13-2013, f. & cert. ef. 7-1-13; SSP 31-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 35-2013, f. & cert. ef. 11-1-13 thru 3-30-14; SSP 8-2014, f. & cert. ef. 3-31-14; SSP 14-2015(Temp), f. & cert. ef. 3-23-15 thru 9-18-15; SSP 17-2015, f. & cert. ef. 6-30-15; SSP 23-2015, f. 9-28-15, cert. ef. 10-1-15; SSP 33-2015(Temp), f. 12-18-15, cert. ef. 1-1-16 thru 6-28-16; SSP 7-2016(Temp), f. 2-17-16, cert. ef. 3-1-16 thru 6-28-16; SSP 15-2016, f. & cert. ef. 4-1-16; SSP 23-2016, f. 6-28-16, cert. ef. 7-1-16; SSP 30-2016, f. & cert. ef. 9-1-16; SSP 45-2016, f. 12-20-16, cert. ef. 1-1-17

461-165-0010

Legal Status of Benefit Payments

(1) Under Oregon law, cash benefits are not subject to assignment, transfer, garnishment, levy, or execution, as long as they can be identified as program payments and are separate from other money in the client's possession.

(2) A cash payment, once issued to or on behalf of the client, becomes vested in the client.

(3) Except for electronic benefit transfer (EBT), the Department considers a benefit issued if the check has been handed to the client in the branch office, or mailed to the client. The Department considers a benefit issued, and received by the client, when a direct check deposit is made to the client's bank account.

(4) For EBT, the Department considers benefits issued and received when an EBT card and personal identification number (PIN) have been issued in person to the client, or the EBT card and PIN have been received by the client in the mail during conversion, and the benefits have been deposited to the client's EBT account.

(5) SNAP program benefits issued by EBT remain available for client access for 12 calendar months from the date of issuance. The EBT system expunges unused benefits after 12 calendar months.

(6) Benefits, once issued, are unrestricted and do not require accountability for individual expenditures or amounts, unless limited elsewhere in rule.

(7) In the TA-DVS program, a payment issued on behalf of a client as a vendor or dual payee payment or directly to the client becomes vested in the client when issued. The Department considers the benefit to be issued if the Department has mailed the payment to the vendor or has hand delivered or mailed a dual payee check to the client. Benefits in the TA-DVS program are restricted to uses outlined in OAR 461-135-1230.

(8) In the REF program:

(a) Cash benefits are provided to help meet the basic needs of low-income refugees and may not be used in any electronic benefit transfer transaction (see section (10) of this rule) in:

(A) Any liquor store (see section (10) of this rule);

(B) Any casino, gambling casino, or gaming establishment (see section (10) of this rule);

(C) Any retail establishment which provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment; or

(D) Any marijuana dispensary.

(b) The Department will take steps to ensure clients have adequate access to their cash benefits.

(9) In the SFPSS and TANF programs:

(a) Cash benefits are provided to help meet the basic needs of low-income families with dependent children (see OAR 461-001-0000) and may not be used in any electronic benefit transfer transaction in:

(A) Any liquor store;

(B) Any casino, gambling casino, or gaming establishment;

(C) Any retail establishment which provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment; or

(D) Any marijuana dispensary.

(b) The Department will take steps to ensure clients have adequate access to their cash benefits.

(10) For purposes of sections (8) and (9) of this rule:

(a) "Liquor store" means any retail establishment which sells exclusively or primarily intoxicating liquor. Such term does not include a grocery store which sells both intoxicating liquor and groceries including staple foods (as defined in section 3(r) of the Food and Nutrition Act of 2008 (7 U.S.C. 2012(r))). The term "liquor" includes alcoholic beverages broadly, including beer and wine.

(b) "Casino, gambling casino, or gaming establishment" means an establishment with a primary purpose of accommodating the wagering of money, and does not include:

(A) A grocery store which sells groceries including such staple foods and which also offers, or is located within the same building or complex as, casino, gambling, or gaming activities; or

(B) Any other establishment that offers casino, gambling, or gaming activities incidental to the principal purpose of the business.

(c) "Electronic benefit transfer transaction" means the use of a credit or debit card service, automated teller machine, point-of-sale terminal, or access to an online system for the withdrawal of funds or the processing of a payment for merchandise or a service.

(A) "Electronic benefit transfer transaction" includes transactions in Oregon, outside Oregon, and on tribal lands.

(B) "Electronic benefit transfer transaction" includes using or accessing cash benefits in a private bank account.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.816, 412.006, 412.014, 412.049

Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.117, 411.816, 411.837, 412.006, 412.014, 412.049, 412.151

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 11-1991, f. 4-30-91, cert. ef. 5-1-91; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; SSP 13-2009, f.

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& cert. ef. 7-1-09; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 5-2013, f. & cert. ef. 2-6-13; SSP 19-2015, f. & cert. ef. 7-1-15; SSP 23-2016, f. 6-28-16, cert. ef. 7-1-16; SSP 45-2016, f. 12-20-16, cert. ef. 1-1-17

461-165-0180

Eligibility of Child Care Providers

(1) The Department must approve a child care provider to receive payment for child care if information available to the Department provides no basis for denying eligibility unless the Department determines, following a final fitness determination (see OAR 125-007-0260 and 407-007-0320) or Child Protective Service (CPS) records checks, that the provider or other subject individual (see OAR 125-007-0210 and 407-007-0210(8)(a)(J)) is not eligible for payment.

(2) Ineligibility for payment may result from any of the following:

(A) A finding of “denied”.

(A) A provider may be “denied” under OAR 461-165-0410 and 461-165-0420. If, after conducting a weighing test as described in OAR 407-007-0300, the Department finds substantial risk to the health or safety of a child (see OAR 461-001-0000) in the care of the provider, the provider must be “denied” and is ineligible for payment.

(B) A provider who has been “denied” has the right to a hearing under OAR 407-007-0335.

(b) A finding of “failed”.

(A) A provider may be “failed” if the Department determines, based on a specific eligibility requirement and evidence, that a provider does not meet an eligibility requirement of this rule not covered in paragraph (c)(A) of this section.

(B) While the provider is in “failed” status:

(i) The Department does not pay any other child care provider for child care at the “failed” provider’s site.

(ii) The Department does not pay a child care provider at another site if the “failed” provider is involved in the child care operation unless the Department determines that the reasons the provider is in “failed” status are not relevant to the new site.

(C) A provider with a status of “failed” may reapply at any time by providing the required documents and information to the Department for review.

(c) A finding of “suspended”.

(A) A provider may be “suspended” if the Department determines and provides notice that the provider does not meet an eligibility requirement in the following subsections and paragraphs of section (7) of this rule: (d), (e), (h), (i), (j), (k), (L), (o)(H), (o)(I), (o)(L), or (t) or in section (10) of this rule. A provider who has been “suspended” may challenge this status by requesting a contested case hearing subject to the requirements and limitations of OAR 461-025.

(B) While the provider is in “suspended” status:

(i) The provider is ineligible for payment for at least six months.

(ii) The Department does not pay any other child care provider for child care at the “suspended” provider’s site.

(iii) The Department does not pay a child care provider at another site if the “suspended” provider is involved in the child care operation unless the Department determines that the reasons the provider is in “suspended” status are not relevant to the new site.

(C) A provider with a status of “suspended” may be eligible for payments after the six month ineligibility period ends when the provider has been approved following reapplication, including providing the required documents and information to the Department for review.

(d) The Department has referred an overpayment against the provider for collection and the claim is unsatisfied.

(3) The provider must submit a completed Child Care Provider Listing Form (DHS 7494) to the Department within 30 calendar days from the date the Department issues the listing form to the client. The provider and each individual identified under section (4) of this rule must complete and sign the authorization for a records check through the Criminal History (CH) record system maintained by the Oregon State Police (OSP), Federal Bureau of Investigation (FBI), and the Child Protective Service (CPS) record system maintained by the Department and, if necessary, an authorization to release information and fingerprint cards. The provider, each individual described in section (4) of this rule, and each subject individual described in OAR 125-007-0210 and 407-007-0210(8)(a)(J) must fully disclose all requested information as part of the records check.

(4) This rule also establishes additional requirements for the following individuals:

(a) The site director of an exempt child care facility and each employee of the facility who may have unsupervised access to a child in care.

(b) The child care provider and each individual the provider uses to supervise a child in his or her absence.

(c) In the case of a provider who provides care for a child in the provider’s home:

(A) Each individual 16 years of age or older who lives in the provider’s home; and

(B) Each individual who visits the home of the provider during the hours care is provided and may have unsupervised access to a child in care.

(5) To receive payment or authorization for payment, the provider must comply with at least one of the following subsections:

(a) If the provider is not legally exempt (see section (11) of this rule):

(A) Be currently certified or registered with the Office of Child Care (OCC) of the Oregon Department of Education (ODE) under OAR 414-205-0000 to 414-205-0170, 414-300-0000 to 414-300-0440, or 414-350-0000 to 414-350-0250 and be in compliance with the applicable rules;

(B) Complete the Department’s background check process;

(C) Complete the Department’s listing process; and

(D) Be approved by the Department.

(b) If the provider is legally exempt and a legally exempt relative (see section (11) of this rule):

(A) Complete the Department’s background check process;

(B) Complete the Department’s listing process; and

(C) Be approved by the Department.

(c) If the provider is legally exempt and not a legally exempt relative for all children in care:

(A) Meet all OCC Regulated Subsidy Provider requirements under OAR 414-180-0005 through 414-180-0100;

(B) Submit to and pass a site visit at the location where care will be provided;

(C) Complete the Department’s background check process;

(D) Complete the Department’s listing process; and

(E) Be approved by the Department.

(6) Each individual described in section (4) of this rule must:

(a) Allow the Department to conduct a national criminal history records check through the Oregon State Police and the Federal Bureau of Investigation as specified in OAR 407-007-0250.

(b) Provide, in a manner specified by the Department, information required to conduct CH, FBI, OSP, and CPS records checks and determine whether the provider meets health and safety requirements.

(c) Have a history of behavior that indicates no substantial risk to the health or safety of a child in the care of the provider.

(7) Each provider must:

(a) Obtain written approval from their certifier or certifier’s supervisor if the provider is also certified as a foster parent.

(b) Be 18 years of age or older and in such physical and mental health as will not affect adversely the ability to meet the needs of safety, health, and well-being of a child in care.

(c) Not be in the same filing group (see OAR 461-110-0310 and 461-110-0350) as the child cared for; the parent (see OAR 461-001-0000) of a child in the filing group; or a sibling living in the home of a child in the filing group.

(d) Allow the Department to inspect the site of care while child care is provided.

(e) Keep daily attendance records showing the arrival and departure times for each child in care and billing records for each child receiving child care benefits from the Department. These written records must be retained for a minimum of 12 months and provided to the Department upon request.

(f) Be the individual or facility listed as providing the child care. The provider may only use someone else to supervise a child on a temporary basis if the person was included on the most current listing form and the provider notifies the Department’s Direct Pay Unit.

(g) Not bill a Department client for an amount collected by the Department to recover an overpayment or an amount paid by the Department to a creditor of the provider because of a lien, garnishment, or other legal process.

(h) Report to the Department’s Direct Pay Unit within five days of occurrence:

(A) Any arrest or conviction of any subject individual or individual described in section (4) of this rule.

(B) Any involvement of any subject individual or individual described in section (4) of this rule with CPS or any other agencies providing child or adult protective services.

(C) Any change to the provider’s name or address including any location where care is provided.

ADMINISTRATIVE RULES

(D) The addition of any subject individual or individual described in section (4) of this rule.

(E) Any reason the provider no longer meets the requirements under this rule.

(i) Report suspected child abuse of any child in his or her care to CPS or a law enforcement agency.

(j) Supervise each child in care at all times.

(k) Prevent any individual who behaves in a manner that may harm children from having access to a child in the care of the provider. This includes anyone under the influence (see section (11) of this rule).

(L) Allow the custodial parent of a child in his or her care to have immediate access to the child at all times.

(m) Inform a parent of the need to obtain immunizations for a child and have a completed, up-to-date Oregon shot record called the "Certification of Immunization Status" (CIS) form on file for each child in care.

(n) Take reasonable steps to protect a child in his or her care from the spread of infectious diseases.

(o) Ensure that the home or facility where care is provided meets all of the following standards:

(A) Each floor level used by a child has two usable exits to the outdoors (a sliding door or window that can be used to evacuate a child is considered a usable exit). If a second floor is used for child care, the provider must have a written plan for evacuating occupants in the event of an emergency.

(B) The home or facility has safe drinking water.

(C) The home or facility has a working smoke detector on each floor level and in any area where a child naps.

(D) Each fireplace, space heater, electrical outlet, wood stove, stairway, pool, pond, and any other hazard has a barrier to protect a child. Any gate or barrier may not pose a risk or hazard to any child in care.

(E) Any firearm, ammunition, and other items that may be dangerous to children, including but not limited to alcohol, inhalants, tobacco and e-cigarette products, matches and lighters, any legally prescribed or over-the-counter medicine, cleaning supplies, paint, plastic bags, and poisonous and toxic materials are kept in a secure place out of a child's reach.

(F) The building, grounds, any toy, equipment, and furniture are maintained in a clean, sanitary, and hazard free condition.

(G) The home or facility has a telephone in operating condition.

(H) No one may smoke or carry any lighted smoking instrument, including e-cigarettes or vaporizers, in the home or facility or within ten feet of any entrance, exit, window that opens, or any ventilation intake that serves an enclosed area, during child care operational hours or anytime child care children are present. No one may use smokeless tobacco in the home or facility during child care operational hours or anytime child care children are present. No one may smoke or carry any lighted smoking instrument, including e-cigarettes and vaporizers, or use smokeless tobacco in motor vehicles while child care children are passengers.

(I) No one may consume alcohol or use controlled substances (except legally prescribed and over-the-counter medications) or marijuana (including medical marijuana) on the premises (see section (11) of this rule) during child care operational hours or anytime child care children are present. No one under the influence of alcohol, controlled substances (except legally prescribed and over-the-counter medications) or marijuana (including medical marijuana) may be on the premises during child care operational hours or anytime child care children are present. No one may consume alcohol or use controlled substances (except legally prescribed and over-the-counter medications) or marijuana (including medical marijuana) in motor vehicles while child care children are passengers.

(J) Is not a half-way house, hotel, motel, shelter, or other temporary housing such as a tent, trailer, or motor home. The restriction in this paragraph does not apply to licensed (registered or certified) care approved in a hotel, motel, or shelter.

(K) Is not a structure:

(i) Designed to be transportable; and

(ii) Not attached to the ground, another structure, or to any utilities system on the same premises.

(L) Controlled substances (except legally prescribed and over-the-counter medications), marijuana (including medical marijuana, marijuana edibles, and other products containing marijuana), marijuana plants, derivatives, and associated paraphernalia may not be on the premises during child care operational hours or anytime child care children are present.

(p) Complete and submit a new listing form every two years, or sooner at the request of the Department, so that the Department may review the provider's eligibility.

(q) Provide evidence of compliance with the Department's administrative rules, upon request of Department staff.

(r) Comply with state and federal laws related to child safety systems and seat belts in vehicles, bicycle safety, and crib standards under 16 CFR 1219 and 1220.

(s) Place infants to sleep on their backs.

(t) Not hold a medical marijuana card; or distribute, grow, or use marijuana (including medical marijuana) or any controlled substance (except lawfully prescribed and over-the-counter medications).

(u) Develop and communicate expulsion and suspension policies to parents and caretakers.

(8) Legally exempt providers must complete the "Introduction to Child Care Health and Safety" two-hour, web-based training as provided in the following subsections:

(a) Legally exempt providers with a list date prior to November 1, 2016, must complete the "Introduction to Child Care Health and Safety" training by June 30, 2017.

(b) Legally exempt providers with a list date of November 1, 2016 or later must complete the "Introduction to Child Care Health and Safety" prior to Department approval.

(9) Legally exempt providers must complete an orientation provided by the Department or a Child Care Resource and Referral agency within 90 days of being approved by the Department if he or she:

(a) Receives funds from the Department; and

(b) Begins providing child care services after June 30, 2010, or resumes providing child care services, after a break of more than one year that began after June 30, 2010.

(10) Child care providers and any individual supervising, transporting, preparing meals, or otherwise working in the proximity of child care children and those completing daily attendance and billing records shall not be under the influence.

(11) For purposes of these rules:

(a) "Premises" means the home or facility structure and grounds, including indoors and outdoors and space not directly used for child care.

(b) "Under the influence" means observed abnormal behavior or impairments in mental or physical performance leading a reasonable person to believe the individual has used alcohol, any controlled substances (including lawfully prescribed and over-the-counter medications), marijuana (including medical marijuana), or inhalants that impairs their performance of essential job function or creates a direct threat to child care children or others. Examples of abnormal behaviors include, but are not limited to hallucinations, paranoia, or violent outbursts. Examples of impairments in physical or mental performance include, but are not limited to slurred speech as well as difficulty walking or performing job activities.

(c) "Legally exempt" means the child care provider is exempt from licensing with the OCC because the provider is not subject to the licensing requirements under OAR 414-205-0000 to 414-205-0170, OAR 414-350-000 to 414-350-0405, and OAR 414-300-0000 to 414-300-0415.

(d) "Legally exempt relative" means a legally exempt provider who is a relative to all children in care including a great-grandparent, grandparent, aunt, uncle, or sibling not living in the home of any child in care.

(12) Legally exempt providers that are not a legally exempt relative to all children in care must meet all of the requirements in this section before approval by the Department, unless otherwise noted:

(a) Have an up-to-date, in-person infant and child CPR and first aid certification or have a currently valid waiver of this requirement from the Child Care Resource and Referral program.

(b) Complete the Recognizing and Reporting Child Abuse and Neglect (RRCAN) web-based training.

(c) Complete six hours of ongoing education in each two-year listing period as provided in this subsection. All trainings must be accepted by the Oregon Center for Career Development (OCCD) and be part of the OCCD's 10 Core Knowledge Categories recognized by Oregon Registry Online to count toward the six hours.

(A) Two of the six hours must fall under the "Human Growth and Development" category; and

(B) Two of the six hours must cover "Understanding & Guiding Behavior".

(13) Child care centers or programs that are legally exempt from certification or registration with the OCC, are located in a commercial or institutional facility, and receive payment from the Department on behalf of a family receiving a child care subsidy, may not exceed the following staff to children in care ratios:

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(a) Six weeks through 23 months of age, the minimum number of staff to children is one to four. The maximum number of children in a group is eight.

(b) 24 months through 35 months of age, the minimum number of staff to children is one to five. The maximum number of children in a group is 10.

(c) 36 months of age to attending kindergarten, minimum number of staff to children is one to 10. The maximum number of children in a group is 20.

(d) Attending kindergarten and older, the minimum number of staff to children is one to 15. The maximum number of children in a group is 30.

(e) In a mixed-age group of children, the number of staff and group size shall be determined by the age of the youngest child in the group.

Stat. Auth.: ORS 181.537, 329A.500, 409.050, 411.060, 411.070

Stats. Implemented: ORS 181.537, 329A.340, 329A.500, 409.010, 409.050, 409.610, 411.060, 411.070, 411.122

Hist.: AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 17-1994(Temp), f. & cert. ef. 8-15-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 2-1997, f. 2-27-97, cert. ef. 3-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 12-1997, f. & cert. ef. 8-25-97; AFS 14-1999, f. & cert. ef. 11-1-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 13-2004, f. 4-29-04, cert. ef. 5-1-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 6-2005(Temp), f. & cert. ef. 4-25-05 thru 9-30-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 5-2009, f. & cert. ef. 4-1-09; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 25-2012, f. 6-29-12, cert. ef. 7-1-12; SSP 30-2012, f. 9-28-12, cert. ef. 10-1-12; SSP 8-2013, f. & cert. ef. 3-1-13; SSP 5-2014(Temp), f. 2-4-14, cert. ef. 3-1-14 thru 8-28-14; SSP 10-2014(Temp), f. & cert. ef. 4-1-14 thru 8-28-14; SSP 15-2014, f. & cert. ef. 7-1-14; SSP 21-2014(Temp), f. & cert. ef. 8-13-14 thru 2-9-15; SSP 6-2015, f. 1-30-15, cert. ef. 2-1-15; SSP 17-2015, f. & cert. ef. 6-30-15; SSP 3-2016(Temp), f. & cert. ef. 1-20-16 thru 7-17-16; SSP 12-2016(Temp), f. & cert. ef. 3-14-16 thru 7-17-16; SSP 22-2016(Temp), f. & cert. ef. 5-23-16 thru 11-18-16; SSP 27-2016(Temp), f. 6-30-16, cert. ef. 7-1-16 thru 11-18-16; SSP 23-2016, f. 6-28-16, cert. ef. 7-1-16; SSP 29-2016, f. & cert. ef. 8-1-16; SSP 37-2016(Temp), f. 9-30-16, cert. ef. 10-1-16 thru 3-29-17; SSP 41-2016(Temp), f. & cert. ef. 11-1-16 thru 4-29-17; SSP 40-2016, f. & cert. ef. 11-1-16; SSP 45-2016, f. 12-20-16, cert. ef. 1-1-17

461-190-0360

Special Payments; SNAP Employment and Training Programs

In the SNAP program:

(1) The Department may authorize special payments to clients participating in one of the three SNAP Employment and Training programs described in OAR 461-001-0020 for transportation and other costs identified in the client's case plan (see OAR 461-001-0020) subject to the provisions of this rule.

(a) Costs must be directly related to an approved component in the case plan and be reasonable and necessary.

(b) The Department must consider lower cost alternatives.

(c) The Department may deny, reduce, or close special payments when costs exceed the local district's budget for employment and training.

(d) Special payments are not intended to replace other funding available in the community. The Department or the Employment and Training contractor and the client must seek resources reasonably available to the client in order to comply with the requirements in the case plan.

(e) When this rule authorizes a special payment for transportation, and public transportation is available, the Department may issue bus passes or tickets to the client sufficient to enable the client to participate in the program activities identified in the case plan.

(2) In the 50 percent (50/50) reimbursement program:

(a) Funds may be used to pay for tuition and mandatory school fees charged to the general public. Funds may not be used to pay for state or local education entitlements.

(b) Special payments for job retention (see OAR 461-001-0020) is only available if the individual was participating in a component other than job retention prior to securing employment.

(3) In the OFSET program, the Department may authorize payment of not more than \$80 over an eight week participation period for transportation and other costs identified in the client's case plan. If necessary, the case plan is adjusted to ensure that OFSET program participation requirements may be fulfilled at no cost to the client.

(4) In one of the time limit counties (see OAR 461-135-0520), the Department may authorize payment of not more than \$100 a month to reimburse an ABAWD for transportation and other costs identified in the client's case plan. If necessary, the case plan is adjusted to ensure the ABAWD work requirements may be fulfilled at no cost to the client.

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.121, 411.816, 411.825, 411.837

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 18-1998, f. & cert. ef. 10-2-98; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 24-2003(Temp), f. & cert. ef. 10-1-03 thru 12-31-03; SSP 33-2003, f. 12-31-03, cert. ef.

1-4-04; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 9-2009(Temp), f. & cert. ef. 5-1-09 thru 10-28-09; SSP 28-2009, f. & cert. ef. 10-1-09; SSP 31-2015(Temp), f. & cert. ef. 11-30-15 thru 5-27-16; SSP 15-2016, f. & cert. ef. 4-1-16; SSP 35-2016, f. 9-30-16, cert. ef. 10-1-16; SSP 45-2016, f. 12-20-16, cert. ef. 1-1-17

461-190-0500

Workfare; SNAP

(1) Workfare is a voluntary employment program to meet the work requirements in OAR 461-135-0520 for ABAWD (see OAR 461-135-0520) clients who reside in one of the time limit counties (see OAR 461-135-0520).

(2) For each individual that the Department determines has a potential for locating unsubsidized employment, Workfare begins with 30 days of intensive job search or job search training. If the Department determines this labor market test is inappropriate, Workfare begins with a job site placement.

(3) After the first 30 days, individuals who are not participating in an activity listed in OAR 461-135-0520(3)(d) may continue in a Workfare job site placement.

(4) Individuals in a Workfare job site placement must complete an average of five hours per week (at least 20 hours per month). The individual must meet the monthly requirements in order to comply with the requirements of the Workfare program, unless they have good cause under OAR 461-130-0327.

(5) Individuals in a Workfare job site placement must provide proof from the employer of Workfare hours worked each month.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.116, 411.816

Stats. Implemented: ORS 409.050, 411.060, 411.070, 411.116, 411.816

Hist.: SSP 6-2016(Temp), f. & cert. ef. 2-5-16 thru 8-2-16; SSP 15-2016, f. & cert. ef. 4-1-16; SSP 35-2016, f. 9-30-16, cert. ef. 10-1-16; SSP 45-2016, f. 12-20-16, cert. ef. 1-1-17

461-195-0501

Definitions and Categories of Overpayments

This rule applies to benefits and services delivered under chapters 410, 411, and 461 of the Oregon Administrative Rules.

(1) "Overpayment" means:

(a) A benefit or service received by or on behalf of a client, or a payment made by the Department on behalf of a client, that exceeds the amount for which the client is eligible.

(b) A payment made by the Department and designated for a specific purpose which is spent by a person on an expense not approved by the Department.

(A) In the REF program, there is a rebuttable presumption that the full amount of cash benefits was improperly spent in violation of OAR 461-165-0010(8)(a) when cash benefits are used or accessed in Oregon, outside of Oregon, or on tribal lands at:

(i) Any liquor store (see OAR 461-165-0010);

(ii) Any casino, gambling casino, or gaming establishment (see OAR 461-165-0010);

(iii) Any retail establishment that provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment; or

(iv) Any marijuana dispensary.

(B) In the SFPSS and TANF programs, there is a rebuttable presumption that the full amount of cash benefits was improperly spent in violation of OAR 461-165-0010(9)(a) when cash benefits are used or accessed in Oregon, outside of Oregon, or on tribal lands at:

(i) Any liquor store;

(ii) Any casino, gambling casino, or gaming establishment;

(iii) Any retail establishment that provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment; or

(iv) Any marijuana dispensary.

(C) The rebuttable presumptions in paragraphs (A) and (B) of this section also apply when an individual in a location covered in paragraphs (A) or (B) uses or accesses cash benefits from a private bank account.

(c) A payment for child care made by the Department to, or on behalf of, a client that:

(A) Is paid to an ineligible provider;

(B) Exceeds the amount for which a provider is eligible;

(C) Is paid when the client was not engaged in an activity that made the client eligible for child care, such as an activity of the JOBS program (see OAR 461-001-0025 and 461-190-0151 to 461-190-0401);

(D) Is paid when the client was not eligible for child care benefits; or

(E) Has given an electronic benefit transfer (EBT) card, card number, or personal identification number (PIN) to a provider for the purpose of

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checking a child (see OAR 461-001-0000) in or out from the provider's child care.

(d) A misappropriated payment when a person cashes and retains the proceeds of a check from the Department on which that person is not the payee and the check has not been lawfully endorsed or assigned to the person.

(e) A benefit or service provided for a need when that person is compensated by another source for the same need and the person fails to reimburse the Department when required to do so by law.

(f) A cash benefit received by an individual in the GA or SFPSS programs for each month for which the client receives a retroactive SSI lump sum payment.

(g) In the TA-DVS program, a payment made by the Department to an individual or on behalf of an individual when the individual intentionally and without intimidation or coercion by an abuser:

(A) Makes a false or misleading statement or misrepresents, conceals, or withholds information for the purpose of establishing eligibility (see OAR 461-001-0000) for or receiving a benefit from the TA-DVS program; or

(B) Commits any act intended to mislead or misrepresent, conceal, or withhold information for the purpose of establishing eligibility for or receiving a benefit from the TA-DVS program.

(2) The Department may establish an overpayment for the initial month (see OAR 461-001-0000) of eligibility under circumstances including, but not limited to:

(a) The filing group (see OAR 461-110-0310), ineligible student, or authorized representative (see OAR 461-115-0090) withheld information;

(b) The filing group, ineligible student, or authorized representative provided inaccurate information;

(c) The Department failed to use income reported as received or anticipated in determining the benefits of the filing group; or

(d) The error was due to an error in computation or processing by the Department.

(3) In the OCCS Medical programs, the Department may establish an overpayment for the budget month (see OAR 410-200-0015) when the OCCS medical program household group (see OAR 410-200-0015) or authorized representative (see OAR 410-200-0015) withheld or provided inaccurate information.

(4) Overpayments are categorized as follows:

(a) An administrative error overpayment is an overpayment caused by any of the following circumstances:

(A) The Department fails to reduce, suspend, or end benefits after timely reporting by the filing group, OCCS medical program household group, ineligible student, or authorized representative (see OAR 461-115-0090 and 410-200-0015) of a change covered under OAR 461-170-0011 or 410-200-0235 and that reported change requires the Department to reduce, suspend, or end benefits;

(B) The Department fails to use the correct benefit standard;

(C) The Department fails to compute or process a payment correctly based on accurate information timely provided by the filing group, OCCS medical program household group, ineligible student, or authorized representative;

(D) In the GA and SFPSS programs, the Department fails to require a client to complete an interim assistance agreement; or

(E) The Department commits a procedural error that was no fault of the filing group, OCCS medical program household group, ineligible student, or authorized representative.

(b) A client error overpayment is any of the following:

(A) An overpayment caused by the failure of a filing group, OCCS medical program household group, ineligible student, or authorized representative to declare or report information or a change in circumstances as required under OAR 461-170-0011 or 410-200-0235, including information available to the Department, that affects the client's eligibility to receive benefits or the amount of benefits.

(B) A client's unreduced liability or receipt of unreduced benefits pending a contested case hearing decision or other final order favorable to the Department.

(C) A client's failure to return a benefit known by the client to exceed the correct amount.

(D) A client's use of a JOBS or SFPSS program support payment (see OAR 461-190-0211) for other than the intended purpose.

(E) A payment for child care when the client was not engaged in an activity that made the client eligible for child care, such as an activity of the JOBS program (see OAR 461-001-0025 and OAR 461-190-0151 to OAR 461-190-0401).

(F) A payment for child care when the client was not eligible for child care benefits.

(G) The failure of a client to pay his or her entire share of the cost of services or the participant fee (see OAR 461-160-0610 and 461-160-0800) in the month in which it is due.

(H) An overpayment caused by a client giving an electronic benefit transfer (EBT) card, card number, or personal identification number (PIN) to a provider for the purpose of checking a child in or out from the provider's child care.

(I) In the REF, SFPSS, and TANF programs, an overpayment caused by the client using or accessing cash benefits in any electronic benefit transaction in any liquor store; casino, gambling, or gaming establishment; retail establishment that provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment; or marijuana dispensary (see OAR 461-165-0010).

(c) A fraud overpayment is an overpayment determined to be an intentional program violation (see OAR 461-195-0601 and 461-195-0611) or substantiated through a criminal prosecution.

(d) In the SNAP program, a provider error overpayment is an overpayment made to a drug or alcohol treatment center or residential care facility that acted as a client's authorized representative.

(e) In the child care program, a provider error overpayment is a payment made by the Department on behalf of a client to a child care provider when:

(A) Paid to an ineligible provider; or

(B) The payment exceeds the amount for which a provider is eligible.

(5) When an overpayment is caused by both an administrative and client error in the same month, the Department determines the primary cause of the overpayment and assigns as either an administrative or client error overpayment.

(6) In the TANF and TA-DVS programs, when an overpayment puts the client at greater risk of domestic violence (see OAR 461-001-0000), the overpayment is waived (see OAR 461-135-1200).

(7) Except as provided in section (8) of this rule, the Department establishes an overpayment when the following thresholds are exceeded:

(a) Administrative error overpayments concerning:

(A) Cash and child care programs, when the amount is greater than \$200;

(B) SNAP open case, when the amount is greater than \$100; and

(C) SNAP closed case, when the amount is greater than \$200.

(b) Client error overpayments in:

(A) Cash and child care programs, when the amount is greater than \$200;

(B) SNAP open case, when the amount is greater than \$100;

(C) SNAP closed case, when the amount is greater than \$200;

(D) Medical programs, when the amount is greater than \$750.

(c) Provider error overpayments in:

(A) Cash and child care programs, when the amount is greater than \$200;

(B) SNAP open case, when the amount is greater than \$100;

(C) SNAP closed case, when the amount is greater than \$200.

(8) There are no overpayment thresholds in all of the following situations:

(a) In SNAP program, if the overpayment was identified in a quality control review.

(b) In all programs, if the overpayment was caused by a client's receipt of continuing benefits in a contested case.

(c) In all programs, if the overpayment was caused by possible fraud by a client or provider.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.081, 411.404, 411.816, 412.001, 412.014, 412.049, HB 2089 (2013), Section 10)

Stats. Implemented: ORS 409.010, 411.060, 411.070, 411.081, 411.117, 411.404, 411.620, 411.640, 411.690, 411.816, 411.892, 412.001, 412.014, 412.049, 414.025, 416.350

Hist.: AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 7-2001(Temp), f. & cert. ef. 4-4-01 thru 6-30-01; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 15-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 25-2011, f. 9-30-11, cert. ef. 10-1-11; SSP 7-2013(Temp), f. & cert. ef. 3-25-13 thru 9-21-13; SSP 23-2013, f. & cert. ef. 9-20-13; SSP 36-2013(Temp), f. & cert. ef. 11-1-13 thru 4-30-14; SSP 9-2014, f. & cert. ef. 4-1-14; SSP 19-2015, f. & cert. ef. 7-1-15; SSP 23-2016, f. 6-28-16, cert. ef. 7-1-16; SSP 45-2016, f. 12-20-16, cert. ef. 1-1-17

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Department of Public Safety Standards and Training Chapter 259

Rule Caption: Updates DPSST fire certification training requirements for NFPA Standard 1002 and NFPA Standard 1003 certifications.

Adm. Order No.: DPSST 18-2016

Filed with Sec. of State: 12-22-2016

Certified to be Effective: 12-22-16

Notice Publication Date: 12-1-2016

Rules Amended: 259-009-0062

Subject: This permanent rule filing combines two proposed rule changes.

First, this rule change adopts the 2014 Edition of the NFPA 1002 Fire Apparatus Driver/Operator standard for DPSST certification requirements.

All of the technical requirements referenced by the 2014 Edition of the NFPA 1002 Fire Apparatus Driver/Operator standard remain the same and there are no changes to the task books or the application for certification other than updates that reflect the recommended adoption of the 2014 Edition of the of the NFPA 1002 Fire Apparatus Driver/Operator standard.

Second, this rule change adopts the 2015 Edition for NFPA 1003 Airport Fire Fighter standard for DPSST certification requirements.

While the technical requirements for obtaining the NFPA 1003 Airport Fire Fighter certification remain the same, the NFPA altered the numbering system used within the standard from the previous year. This will not cause an impact for those in process of completing course work or applying for certification. The application for certification and the task book have been updated to reflect the recommended adoption of the NFPA 1003 Airport Fire Fighter standard.

Rules Coordinator: Jennifer Howald—(503) 378-2432

259-009-0062

Fire Service Professional Certification

(1) A fire service professional affiliated with an Oregon fire service agency may be certified by:

(a) Satisfactorily completing the requirements specified in section (2) of this rule;

(b) Through participation in a fire service agency training program accredited by the Department;

(c) Through a course certified by the Department; or

(d) By evaluation of experience as specified in OAR 259-009-0063.

(e) The Department may certify a fire service professional who has satisfactorily completed the requirements for certification as prescribed in section (2) of this rule, including the Task Performance Evaluations (TPE) if applicable.

(2) The following standards for fire service professionals are adopted by reference:

(a) The provisions of the NFPA Standard 1001, 2013 Edition, entitled “Fire Fighter Professional Qualifications”;

(A) Delete section 1.3.1.

NOTE: This references NFPA 1500.

(B) Delete section 2.2.

NOTE: This references NFPA 1500 and 1582.

(C) For certification as Fire Fighter II, the applicant must be certified at NFPA 1001 Fire Fighter I as defined by the Department and meet the job performance requirements defined in Sections 6.1 through 6.5.5 of this Standard.

(D) All applicants for certification must complete a task performance evaluation or a Department-approved task book for NFPA Fire Fighter I and NFPA Fire Fighter II. The evaluation or task book must be approved by the Agency Head or Training Officer before an applicant can qualify for certification.

(b) The provisions of the NFPA Standard 1002, 2014 Edition, entitled “Standard for Fire Apparatus Driver/Operator Professional Qualifications,” are adopted subject to the following definitions and modifications:

(A) 4.1 General. The requirements and job performance requirements defined in Sections 4.2 and 4.3 must be met prior to certification as a Fire Service Agency Driver Operator.

(B) 5.1 General. The job performance requirements defined in Sections 5.1 and 5.2 must be met prior to certification as a Fire Service Agency Driver/Operator-Pumper.

(C) 6.1 General. The requirements of NFPA 1001 Fire Fighter I and NFPA 1002 Fire Apparatus Driver/Operator, as specified by the Department and the job performance requirements defined in Sections 6.1 and 6.2, must be met prior to certification as a Fire Service Agency Driver/Operator-Aerial.

(D) 7.1 General. The requirements of NFPA 1001 Fire Fighter I and NFPA 1002 Fire Apparatus Driver/Operator, as specified by the Department and the job performance requirements defined in Sections 7.1 and 7.2 must be met prior to certification as a Fire Service Agency Driver/Operator-Tiller.

(E) 8.1 General. The requirements of NFPA 1002 Fire Apparatus Driver/Operator, as specified by the Department and the job performance requirements defined in Sections 8.1 and 8.2, must be met prior to certification as a Fire Service Agency Driver/Operator-Wildland Fire Apparatus.

(F) 9.1 General. The requirements of NFPA 1001 Fire Fighter II, NFPA 1003 Airport Fire Fighter and NFPA 1002 Fire Apparatus Driver/Operator, as specified by the Department and the job performance requirements defined in Sections 9.1 and 9.2, must be met prior to certification as a Fire Service Agency Driver/Operator-Aircraft Rescue and Fire Fighting Apparatus (ARFF).

(G) 10.1 General. The requirements of NFPA 1002 Fire Apparatus Driver/Operator, as specified by the Department and the job performance requirements defined in Sections 10.1 and 10.2, must be met prior to certification as a Fire Service Agency Driver/Operator-Mobile Water Supply Apparatus.

(H) Delete “the requirements of NFPA 1500, Standard on Fire Department Occupational Safety and Health Program”.

(I) All applicants for certification must complete a task performance evaluation or a Department-approved task book for: NFPA Fire Apparatus Driver/Operator, NFPA Apparatus Equipped with Fire Pump, NFPA Apparatus Equipped with an Aerial Device, NFPA Apparatus Equipped with a Tiller, NFPA Wildland Fire Apparatus, NFPA Aircraft Rescue and Firefighting Apparatus or NFPA Mobile Water Supply Apparatus. The task books must be approved by the Agency Head or Training Officer before an applicant can qualify for certification.

(c) The provisions of the NFPA Standards 1003, 2015 Edition, entitled “Standard for Airport Fire Fighter Professional Qualifications”.

(A) 4.1 General. Prior to certification as a Fire Service Agency NFPA 1003 Airport Fire Fighter, the requirements of NFPA 1001 Fire Fighter II, as specified by the Department, and the job performance requirements defined in sections 4.1 through 4.4, must be met.

(B) All applicants for certification must complete a Department-approved task book for Airport Fire Fighter. The task book must be approved by the Agency Head or Training Officer before an applicant can qualify for certification.

(d) The provisions of NFPA Standard 1005, 2007 Edition, entitled “Marine Fire Fighting for Land Based Fire Fighters Professional Qualifications,” are adopted subject to the following definitions and modifications:

(A) Delete section 2.2.

NOTE: This references NFPA 1500.

(B) Delete sections of 2.4.

NOTE: This references NFPA 1000, NFPA 1081, NFPA 1405, NFPA 1670 and NFPA 1710.

(C) 5.1 General. Prior to certification as a Fire Service Agency NFPA 1005 Marine Land-Based Fire Fighter, the requirements of NFPA 1001 Fire Fighter II, as specified by the Department.

(D) All applicants for certification must complete a Department approved task book for Marine Fire Fighting for Land Based Fire Fighters. The task book must be approved by the Agency Head or Training Officer before an applicant can qualify for certification.

(E) Transition Phase:

(i) An application for certification in Marine Fire Fighting for Land Based Fire Fighters must be submitted to the Department no later than June 30, 2009 to receive consideration for certification without having to complete a task book.

(ii) All applications received on or after July 1, 2009 will need to show completion of the approved task book.

(e) The provisions of the NFPA Standard No. 1031, Edition of (2009), entitled “Professional Qualifications for Fire Inspector and Plan Examiner” are adopted.

(A) All applicants for certification as an NFPA Fire Inspector I must:

(i) Successfully complete a Department-approved task book; and

(ii) Furnish proof that they have passed an exam demonstrating proficiency in the model fire code adopted by the State of Oregon or an equivalent.

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(B) All applicants for certification as an NFPA Fire Inspector II must:

- (i) Hold a certification as a NFPA Fire Inspector I; and
- (ii) Successfully complete a Department-approved task book.

(C) All applicants for certification as an NFPA Fire Inspector III must:

- (i) Hold a certification as a NFPA Fire Inspector II; and
- (ii) Successfully complete a Department-approved task book.

(D) Task books must be monitored by a Field Training Officer approved by the Department. The Field Training Officer must be certified at or above the level being monitored and have at least five years inspection experience. The Department may approve other Field Training Officers with equivalent training, education and experience as determined by designated Department staff.

(f) The provisions of the NFPA Standard No. 1033, Edition of (2009), entitled "Professional Qualifications for Fire Investigator" are adopted subject to the following definitions and requirements:

(A) An individual must successfully complete a Department-approved task book before the Department will administer a written examination for the Fire Investigator certification level. Exception: Anyone holding a valid IAAI Fire Investigator Certification, National Association of Fire Investigators (NAFI) certification, or Certified Fire Explosion Investigators (CFEI) certification is exempt from taking the Department's Fire Investigator written exam.

(B) A Department approved Field Training Officer must monitor the completion of a task book. The Field Training Officer must be certified at or above the level being monitored and have at least five (5) years fire investigation experience. Exception: The Department may approve Field Training Officers with equivalent training, education and experience.

(g) The provisions of the NFPA Standard No. 1035, Edition of 2010, entitled "Professional Qualifications for Public Fire and Life Safety Educator" are adopted subject to the following definitions and modifications:

(A) A task book will be completed prior to certification as a NFPA Public Fire and Life Safety Educator I, II or III. The Task Book must be approved by the Agency Head or Training Officer before an applicant can qualify for certification.

(B) A task book will be completed prior to certification as a NFPA Public Information Officer. The task book must be approved by the Agency Head or Training Officer before an applicant can qualify for certification.

(C) A task book will be completed prior to certification as a NFPA Juvenile Firesetter Intervention Specialist I and II. The task book must be approved by the Agency Head or Training Officer before an applicant can qualify for certification.

(h) The provisions of the NFPA Standard No. 1041, Edition of 2012, entitled "Standard for Fire Service Instructor Professional Qualifications," are adopted subject to the successful completion of an approved task book for NFPA Fire Instructor I, II and III.

(i) The provisions of the NFPA Standard 1021, 2014 Edition, entitled "Standards for Fire Officer Professional Qualifications," are adopted subject to the following definitions and modifications:

(A) 4.1 General. For certification as NFPA Fire Officer I, the candidate must be certified at NFPA 1001 Fire Fighter II, and NFPA 1041 Fire Instructor I, as defined by the Department, and meet the job performance requirements defined in Sections 4.1 through 4.7 of the Standard.

(i) All applicants for certification must complete a task performance evaluation or a Department-approved task book for NFPA Fire Officer I.

(ii) The evaluation or task book must be approved by the Agency Head or Training Officer before an applicant can qualify for certification.

(B) 5.1 General. For certification as NFPA Fire Officer II, the candidate must be certified as NFPA Fire Officer I, as defined by the Department, and meet the job performance requirements defined in Section 5.1 through 5.7 of the Standard.

(i) All applicants for certification must complete a task performance evaluation or a Department-approved task book for NFPA Fire Officer II.

(ii) The evaluation or task book must be approved off by the Agency Head or Training Officer, before an applicant can qualify for certification.

(C) 6.1 General. For certification as NFPA Fire Officer III, the candidate must be certified as a NFPA Fire Officer II and meet the job performance requirements defined in Sections 6.1 through 6.8 of the Standard.

(i) All applicants for certification must complete a task performance evaluation or a Department-approved task book for NFPA Fire Officer III.

(ii) The evaluation or task book must be approved by the Agency Head or Training Officer before an applicant can qualify for certification.

(D) 7.1 General. For certification as NFPA Fire Officer IV the candidate must be certified as NFPA Fire Officer III, as defined by the

Department, and meet the job performance requirements in Sections 7.1 through 7.7 of the Standard.

(i) All applicants for certification must complete a task performance evaluation or a Department-approved task book for NFPA Fire Officer IV.

(ii) The evaluation or task book must be approved by the Agency Head or Training Officer, before an applicant can qualify for certification.

(j) Hazardous Materials Responder (DPSST-P-12 1/96).

(k) Fire Ground Leader.

(A) This is a standard that is Oregon-specific.

(B) An applicant applying for Fire Ground Leader must first be certified as an NFPA Fire Fighter II.

(C) An applicant applying for Fire Ground Leader must document training in all of the following areas:

(i) Building Construction: Non-Combustible and Combustible;

(ii) Emergency Service Delivery;

(iii) Fire Behavior;

(iv) Fire Ground Safety; and

(v) Water Supply Operations.

(D) All applicants for certification must complete a task performance evaluation or a Department-approved task book for Fire Ground Leader. The evaluation or task book must be approved by the Agency Head or Training Officer before an applicant can qualify for certification.

(1) NWCG Firefighter Type 2 (FFT2).

(A) This is a NWCG standard.

(B) An individual applying for NWCG Firefighter (FFT2) must document training in all of the following areas at the time of application:

(i) S-130 Firefighter Training;

(ii) S-190 Wildland Fire Behavior;

(iii) L-180 Human Factors on the Fireline;

(iv) I-100 Introduction to ICS.

(v) NIMS, Introduction IS700; and

(vi) I-100 Introduction to ICS or IS100.

(m) NWCG Firefighter Type 1 (FFT1).

(A) This is a NWCG standard.

(B) An individual applying for NWCG Firefighter Type 1 (FFT1) must be certified as a NWCG Firefighter Type 2 (FFT2) prior to applying for NWCG Firefighter Type 1 (FFT1) and must document training in all of the following areas at the time of application:

(i) S-131 Firefighter Type I;

(ii) S-133 Look Up, Look Down, Look Around;

(iii) Annual Fireline Safety Refresher (RT-130); and

(iv) Completion of the NWCG Firefighter Type 1 (FFT1)/Incident Commander Type 5 (ICT5) Task Book.

(n) NWCG Single Resource, Engine Boss (ENGB).

(A) This is an NWCG standard.

(B) An individual applying for NWCG Single Resource, Engine Boss must be certified as a NWCG Firefighter Type 1 (FFT1) prior to applying for NWCG Single Resource, Engine Boss and must document training in all of the following areas at the time of application:

(i) I-200 Basic Incident Command;

(ii) S-230 or Crew Boss (Single Resource);

(iii) S-290 Intermediate Wildland Fire Behavior;

(iv) NIMS I-200 or IS200;

(v) Annual Fireline Safety Refresher (RT-130); and

(vi) Completion of the task book for NWCG Single Resource Engine Boss

(o) NWCG Single Resource, Crew Boss (CRWB).

(A) This is a NWCG standard.

(B) An individual applying for NWCG Single Resource Crew Boss must be certified as a NWCG Firefighter Type 1 (FFT1) prior to applying for NWCG Single Resource Crew Boss and must document training in all of the following areas at the time of application:

(i) S-230 Crew Boss (Single Resource);

(ii) S-290 Intermediate Wildland Fire Behavior;

(iii) NIMS I-200 or IS200;

(iv) Annual Fireline Safety Refresher (RT-130); and

(v) Completion of the task book for NWCG Single Resource Crew Boss.

(p) NWCG Single Resource, Heavy Equipment Boss (HEQB).

(A) This is a NWCG standard.

(B) An individual applying for NWCG Single Resource, Heavy Equipment Boss must be certified as a NWCG Firefighter Type 1 (FFT1) prior to applying for NWCG Single Resource, Heavy Equipment Boss and must document training in all of the following areas at the time of application:

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- (i) I -200 Basic Incident Command or IS200;
 - (ii) S-230 Crew Boss (Single Resource);
 - (iii) S-290 Intermediate Wildland Fire Behavior;
 - (iv) Annual Fireline Safety Refresher (RT-130); and
 - (v) Completion of the task book for NWCG Single Resource, Heavy Equipment Boss.
- (q) NWCG Single Resource, Felling Boss (FELB).
- (A) This is a NWCG standard.
- (B) An individual applying for NWCG Single Resource, Felling Boss must be certified as a NWCG Firefighter Type 1 (FFT1) prior to applying for NWCG Single Resource, Felling Boss and must document training in all of the following areas at the time of application:
- (i) I -200 Basic Incident Command or IS200;
 - (ii) S-230 Crew Boss (Single Resource);
 - (iii) S-290 Intermediate Wildland Fire Behavior;
 - (iv) Annual Fireline Safety Refresher (RT-130); and
 - (v) Completion of the task book for NWCG Single Resource, Felling Boss.
- (r) NWCG Single Resource, Firing Boss (FIRB)
- (A) This is a NWCG standard.
- (B) An individual applying for NWCG Single Resource, Firing Boss must be certified as NWCG Firefighter Type 1 (FFT1) prior to applying for NWCG Single Resource, Firing Boss and must document training in all of the following areas at the time of application:
- (i) I -200 Basic Incident Command or IS200;
 - (ii) S-230 Crew Boss (Single Resource);
 - (iii) S-290 Intermediate Wildland Fire Behavior;
 - (iv) Annual Fireline Safety Refresher (RT-130); and
 - (v) Completion of the task book for NWCG Single Resource, Firing Boss
- (s) NWCG Strike Team Leader Engine (STEN.)
- (A) This is a NWCG standard.
- (B) An individual applying for NWCG Strike Team Leader Engine (STEN) must be certified as NWCG Single Resource, Engine Boss prior to applying for NWCG Strike Team Leader Engine and must document training in all of the following areas at the time of application:
- (i) S-215 Fire Operations in the Wildland Urban Interface WUI;
 - (ii) S-330 Task Force Strike Team Leader;
 - (iii) I-300 Incident Command Systems for Expanding Incidents;
 - (iv) NRF: Introduction IS800B;
 - (v) Annual Fireline Safety Refresher (RT-130); and
 - (vi) Completion of the task book for NWCG Strike Team Leader Engine.
- (t) NWCG Task Force Leader (TFLD).
- (A) This is a NWCG standard.
- (B) An individual applying for NWCG Task Force Leader (TFLD) must complete "Required Experience" as defined in PMS 310-1 and must document training in all of the following areas at the time of application:
- (i) S-215 Fire Operation in the Wildland Urban Interface (WUI);
 - (ii) S-330 Task Force/Strike Team Leader;
 - (iii) I-300 Incident Command Systems for Expanding Incidents;
 - (iv) NRF: Introduction IS800B;
 - (v) Annual Fireline Safety Refresher (RT-130); and
 - (vi) Completion of the task book for NWCG Task Force Leader.
- (u) NWCG Division/Group Supervisor (DIVS).
- (A) This is a NWCG standard.
- (B) An individual applying for NWCG Division/Group Supervisor must complete "Required Experience" as defined in PMS 310-1 and must document training in all of the following areas at the time of application:
- (i) S-390 Introduction to Wildland Fire Behavior Calculations;
 - (ii) S-339 Division/Group Supervisor;
 - (iii) Annual Fireline Safety Refresher (RT-130); and
 - (iv) Completion of the task book for NWCG Division/Group Supervisor.
- (v) Maritime Fire Service Operator Standards Professional Qualifications (October, 1999) and completion of an approved task book. Historical Recognition:
- (A) The application must be submitted with the fire chief or designee's signature attesting to the skill level and training of the applicant.
- (B) The application must be submitted to the Department no later than October 1, 2004, to receive certification for Maritime Fire Service Operator without having to complete the task book.
- (C) All applications received after October 1, 2004, will need to show completion of the approved task book.
- (w) Certification guide for Wildland Fire Investigator (August, 2005).
- (x) The provisions of the 2013 Edition of NFPA 1006 entitled, "Standards for Technical Rescuer Professional Qualifications" are adopted subject to the following modifications:
- (A) Historical Recognition:
- (i) Applicants who currently hold active Department NFPA Rope Rescue I and II certifications will be recognized as a NFPA Rope Rescue Technician.
- (ii) An individual who holds an active NFPA Rope Rescue I certification and has been working toward an NFPA Rope Rescue II certification may complete certification based on NFPA 1006 until January 1, 2016. No new NFPA Rope Rescue II certifications will be issued after January 1, 2016.
- (iii) Applicants who currently hold active Department NFPA Surface Water I and II certifications will be recognized as a NFPA Surface Water Rescue Technician.
- (iv) An individual who holds an active NFPA Surface Water I certification and has been working toward an NFPA Surface Water II certification may complete certification based on NFPA 1006 until January 1, 2016. No new NFPA Surface Water II certifications will be issued after January 1, 2016.
- (v) Applicants who currently hold an active Department NFPA Vehicle and Machinery Rescue certification will be recognized as NFPA Vehicle Rescue and NFPA Machinery Rescue.
- (vi) An individual who has fulfilled training competencies in NFPA Vehicle and Machinery Rescue may complete certification based on NFPA 1006 until January 1, 2016. No new NFPA Vehicle and Machinery Rescue certifications will be issued after January 1, 2016.
- (B) Instructors:
- (i) Curriculum must be certified by the Department to meet NFPA 1006 standards.
- (ii) An instructor delivering training under a fire service agency's accreditation agreement must be a certified technician in that specialty rescue area.
- (C) Task Books:
- (i) A task book must be completed for each of the eleven specialty rescue areas applied for.
- (ii) Only a certified technician in that specialty rescue area can approve the task book.
- (iii) The requirements in Chapters 4 and 5 only need to be met once for all eleven specialty rescue areas.
- (y) Urban Search and Rescue.
- (A) This is a standard that is Oregon-specific.
- (B) The following eleven (11) specialty Urban Search and Rescue (USAR) certifications are adopted:
- (i) Task Force Leader;
 - (ii) Safety Officer;
 - (iii) Logistics Manager;
 - (iv) Rescue Team Manager;
 - (v) Rescue Squad Officer;
 - (vi) Rescue Technician;
 - (vii) Medical Technician;
 - (viii) Rigging Technician;
 - (ix) Search Team Manager;
 - (x) Search Squad Officer; and
 - (xi) Search Technician.
- (C) An applicant applying for any USAR certification(s) must complete the appropriate application attesting to completion of the required training.
- (z) The provisions of the NFPA Standard 472, 2008 Edition, entitled "Standard for Hazardous Materials and Weapons of Mass Destruction" are adopted subject to the following definitions and modifications:
- (A) NFPA Hazardous Materials Technician: All applicants for certification must first certify as an NFPA Operations Level Responder and complete a Department-approved task book. The task book must be approved by the Agency Head or Training Officer before an applicant can qualify for certification.
- (B) NFPA Hazardous Materials Safety Officer: All applicants for certification must first certify as a NFPA Hazardous Materials Technician and complete a Department-approved task book. The task book must be approved by the Agency Head or Training Officer before an applicant can qualify for certification. This certification level includes, but is not limited to, the following course work:
- (i) Analyzing the Incident;
 - (ii) Planning the Response;
 - (iii) Implementing the Planned Response;
 - (iv) Evaluating the Progress.

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(C) Incident Commander: The level of certification formerly known as “On-Scene Incident Commander” is now known as “NFPA Hazardous Materials Incident Commander.” The Incident Commander correlates directly with NFPA 472. All applicants for certification must first certify as an NFPA Operations Level Responder.

(D) Operations Level Responder: The level of certification formerly known as “First Responder” is now known as “NFPA Operations Level Responder.” The NFPA Operations Level Responder correlates directly with NFPA 472. Successful completion of skills sheets or task performance evaluations (TPE) must be met prior to certification as an NFPA Operations Level Responder.

(aa) Specialty Levels of Certification. All applicants for specialty levels of certification must first certify as a NFPA Hazardous Materials Technician.

(A) The following four (4) specialty certifications are adopted:

- (i) NFPA Cargo Tank Specialty;
- (ii) NFPA Intermodal Tank Specialty;
- (iii) NFPA Marine Tank Vessel Specialty;
- (iv) NFPA Tank Car Specialty;

(B) Successful completion of task performance evaluations (TPE) must be met prior to obtaining a specialty level of certification.

(3) Task performance evaluations, where prescribed, will be required prior to certification. Such examinations will be conducted in the following manner:

(a) Task performance competency will be evaluated by three people nominated by the employing fire service agency’s Chief Officer for approval by the Department or its designated representative.

(b) The employing fire service agency’s equipment and operational procedures must be used in accomplishing the task performance to be tested.

(c) Specific minimum testing procedures, as provided by the Department, will be used for administration of the evaluation.

(d) The training officer for an accredited fire service agency training program must notify the Department or its designated representative prior to performing a task performance evaluation.

(e) At the request of the fire chief, a representative of the Department will be designated to monitor the task performance evaluation for fire service professionals from a fire service agency whose training program is not accredited.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 181A.410

Stats. Implemented: ORS 181A.410

Hist.: BPSST 22-2002, f. & cert. ef. 11-18-02; DPSST 11-2003, f. & cert. ef. 7-24-03; DPSST 13-2003(Temp), f. & cert. ef. 10-27-03 thru 3-31-04; DPSST 3-2004(Temp), f. & cert. ef. 4-9-04 thru 10-1-04; DPSST 8-2004, f. & cert. ef. 4-23-04; DPSST 2-2006, f. & cert. ef. 1-24-06; DPSST 9-2006, f. & cert. ef. 7-7-06; DPSST 14-2006, f. & cert. ef. 10-13-06; DPSST 16-2006, f. & cert. ef. 11-20-06; DPSST 2-2007, f. & cert. ef. 1-12-07; DPSST 10-2008, f. & cert. ef. 7-15-08; DPSST 7-2009, f. & cert. ef. 7-13-09; DPSST 12-2009, f. & cert. ef. 10-15-09; DPSST 16-2009(Temp), f. & cert. ef. 12-15-09 thru 6-11-10; DPSST 5-2010, f. & cert. ef. 6-11-10; DPSST 11-2010, f. & cert. ef. 11-12-10; DPSST 11-2010, f. & cert. ef. 11-12-10; DPSST 3-2011, f. & cert. ef. 5-1-11; DPSST 7-2012, f. & cert. ef. 3-28-12; DPSST 21-2012, f. & cert. ef. 10-1-12; DPSST 8-2013, f. & cert. ef. 3-26-13; DPSST 16-2013, f. & cert. ef. 6-25-13; DPSST 22-2013, f. & cert. ef. 10-3-13; DPSST 6-2014, f. & cert. ef. 2-6-14; DPSST 9-2014, f. & cert. ef. 4-3-14; DPSST 36-2014, f. & cert. ef. 12-31-14; DPSST 17-2015, f. & cert. ef. 10-22-15; DPSST 22-2015, f. & cert. ef. 12-22-15; DPSST 15-2016, f. & cert. ef. 9-22-16; DPSST 18-2016, f. & cert. ef. 12-22-16

Rule Caption: Amends language regarding the request to challenge the basic telecommunications course.

Adm. Order No.: DPSST 19-2016

Filed with Sec. of State: 12-22-2016

Certified to be Effective: 12-22-16

Notice Publication Date: 12-1-2016

Rules Amended: 259-008-0025

Subject: The rule changes to 259-008-0025 (Minimum Standards for Training) clarify DPSST’s ability to continue the past application of the rule and approve requests to challenge the basic telecommunications course when the telecommunicator has been employed by a public or private safety agency and has previously completed a basic training course deemed by DPSST to meet or exceed Oregon’s minimum training standards.

This rule change also adds the requirement that a request to challenge the basic telecommunications course must be submitted in writing and adds documentation of the telecommunicator’s employment history to the required documentation submitted to support an

agency’s written request to challenge the basic telecommunications course.

Rules Coordinator: Jennifer Howald—(503) 378-2432

259-008-0025

Minimum Standards for Training

(1) Basic Training.

(a) The prescribed basic training course and field training manual must be completed by all corrections officers no later than 12 months from the date of employment in a certifiable position.

(b) The prescribed basic training course and field training manual must be completed by all police officers, parole and probation officers, telecommunicators, emergency medical dispatchers and regulatory specialists no later than 18 months from the date of employment in a certifiable position.

(c) Corrections and police officers who have not completed the prescribed basic course must begin training within 90 days of their initial date of employment as a law enforcement officer.

(d) All prescribed field training will be conducted under the supervision of the employing agency. The employing agency must provide proof of completion prior to the award of basic certification.

(e) Regulatory specialists employed by OLCC prior to July 1, 2015 who have previously completed OLCC basic training may be exempted from completion of the basic regulatory specialist course.

(f) Law enforcement officers employed in a limited duration, administrative position, as described in OAR 259-008-0078, are exempted from these minimum training requirements.

(2) Additional Training Requirements.

(a) Law enforcement officers who have previously completed the prescribed basic course but have not been employed full-time as a law enforcement officer within the past five years will be required to satisfactorily complete the prescribed basic course and field training manual in its entirety prior to reactivation of certification.

(b) Law enforcement officers who have previously completed the prescribed basic course but have not been employed full-time as a law enforcement officer for over two and one-half years but less than five years must complete the prescribed career officer development course and field training manual prior to reactivation of certification.

(c) Telecommunicators and emergency medical dispatchers (EMD) who have previously completed the prescribed basic course but have not been employed as a telecommunicator or EMD within the past two and one-half years will be required to satisfactorily complete the prescribed basic course and field training manual in its entirety prior to reactivation of certification.

(d) Training timelines for career officer development courses will be established by the Department.

(3) Waivers of the Minimum Training Standards for Law Enforcement Officers.

(a) The Department may waive any portion of the minimum training standards upon finding that a law enforcement officer has the current knowledge, skills and abilities to perform as a law enforcement officer in Oregon. For the purposes of this standard, demonstration of current knowledge, skills and abilities as an Oregon law enforcement officer must include full-time employment within the past five years which demonstrates the individual has maintained a level of knowledge, skills and abilities comparable to those of an active law enforcement officer in Oregon, including the authorization to provide law enforcement services or the responsibility of enforcing criminal law.

(b) Reciprocity. Law enforcement officers who have been employed by a public or private safety agency in another state and have previously completed a basic training course deemed by the Department to meet or exceed Oregon’s minimum training standards may be granted a waiver of the basic training course. These officers will be required to complete the prescribed career officer development course and field training manual.

(c) Waiver requests must be made in writing by the employing agency and must include any supporting documentation, to include a written request for a waiver from the officer’s employing agency, a copy of any previously completed course including documentation of course content with hour and subject breakdown of the training, and the officer’s employment history.

(d) The Department may request additional information. Any expenses associated with providing waiver documentation will be the responsibility of the requesting agency.

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(e) Notwithstanding section (4), waivers are not available for the basic telecommunications course or basic emergency medical dispatcher course.

(4) Challenge of the Minimum Training Standards for Telecommunicators. Telecommunicators who have been employed by a public or private safety agency and have previously completed a basic training course deemed by the Department to meet or exceed Oregon's minimum training standards may challenge the basic telecommunications course.

(a) Challenge requests must be made in writing by the department head of the telecommunicator's employing agency. Requests must include proof of successful completion of prior equivalent training including documentation of the course content with hour and subject breakdown of the training and the telecommunicator's employment history.

(b) The telecommunicator must obtain a minimum passing score on all written examinations for the basic course and demonstrate an acceptable performance level.

(c) Telecommunicators who fail the written examination or fail to demonstrate an acceptable performance level will be required to complete the basic telecommunications course and field training manual in its entirety.

(d) Telecommunicators will be given one opportunity to challenge the basic telecommunications course.

(5) Supervision Course. Public safety officers who are promoted, appointed or transferred to a first-level supervisory position must satisfactorily complete the Supervision course or equivalent training that complies with the requirements outlined in the DPSST Form F-21.

(a) The required training must be completed no later than 12 months after the promotion, appointment or transfer.

(b) Applicable training that occurred within five years prior to the promotion, appointment or transfer may be accepted by the Department as satisfying the Supervision training requirement.

(6) Middle Management Course. Public safety officers who are promoted, appointed or transferred to a middle management position must satisfactorily complete the Middle Management course or equivalent training that complies with the requirements outlined in the DPSST Form F-22.

(a) The required training must be completed no later than 12 months after the promotion, appointment or transfer.

(b) Applicable training that occurred within five years prior to the promotion, appointment or transfer may be accepted by the Department as satisfying the Middle Management training requirement.

(7) Time Extensions. The Department may grant a time extension upon presentation of evidence by a public or private safety agency that a public safety officer is unable to meet the timelines prescribed in sections (1), (5) and (6) due to an authorized leave of absence or any other reasonable cause as determined by the Department.

(a) Time extensions of the requirements found in sections (1)(a), (1)(b), (5) and (6) will not exceed one year.

(b) Time extensions of the requirements found in subsection (1)(c) will not exceed 30 days.

(c) Any delays caused by the inability of the Department to provide basic training for any reason will not be counted towards the time requirements found in subsections (1)(a), (b) or (c).

(8) Notwithstanding this rule, the Department may prescribe additional training for Basic certification, up to and including completion of the full Basic course, in situations in which previous periods of employment have been limited.

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

Stat. Auth.: ORS 181A.410

Stats. Implemented: 181A.410

Hist.: PS 12, f. & ef. 12-19-77; PS 1-1979, f. 10-1-79, ef. 10-3-79; PS 1-1982, f. & ef. 7-2-82; PS 1-1983, f. & ef. 12-15-83; PS 1-1985, f. & ef. 4-24-85; Renumbered from 259-010-0030, PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 5-1997, f. & cert. ef. 3-20-97, cert. ef. 3-25-97; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 11-2000, f. 11-13-00, cert. ef. 11-15-00; BPSST 13-2001(Temp), f. & cert. ef. 10-26-01 thru 4-10-02; BPSST 2-2002, f. & cert. ef. 2-6-02; BPSST 8-2002, f. & cert. ef. 4-3-02; BPSST 15-2002, f. & cert. ef. 7-5-02; DPSST 14-2003, f. & cert. ef. 12-22-03; DPSST 5-2004, f. & cert. ef. 4-23-04; DPSST 3-2007, f. & cert. ef. 1-12-06; DPSST 3-2007, f. & cert. ef. 1-12-07; DPSST 9-2008, f. & cert. ef. 7-15-08; DPSST 14-2008, f. & cert. ef. 10-15-08; DPSST 3-2009, f. 11-13-00, cert. ef. 4-8-09; DPSST 8-2009(Temp), f. & cert. ef. 9-15-09 thru 3-1-10; DPSST 15-2009, f. & cert. ef. 12-15-09; DPSST 3-2010, f. 4-12-10, cert. ef. 5-1-10; DPSST 2-2011, f. 3-23-11, cert. ef. 5-1-11; DPSST 13-2012(Temp), f. & cert. ef. 5-8-12 thru 10-1-12; DPSST 17-2012, f. & cert. ef. 8-24-12; DPSST 6-2013, f. & cert. ef. 3-8-13; DPSST 15-2013, f. & cert. ef. 6-25-13; DPSST 1-2014, f. & cert. ef. 1-2-14; DPSST 2-2014, f. & cert. ef. 1-2-14; DPSST 10-2014, f. & cert. ef. 4-10-14; DPSST 7-2015, f. & cert. ef. 3-24-15; DPSST 11-2015, f. 6-23-15, cert. ef. 7-1-15; DPSST 18-2015, f. 12-22-15, cert. ef. 1-1-16; DPSST 5-2016, f. & cert. ef. 3-22-16; DPSST 19-2016, f. & cert. ef. 12-22-16

Rule Caption: Adds military education/training transcripts as recognized education credits, makes uniform references to "education credits".

Adm. Order No.: DPSST 20-2016

Filed with Sec. of State: 12-27-2016

Certified to be Effective: 1-1-17

Notice Publication Date: 12-1-2016

Rules Amended: 259-008-0045, 259-008-0060

Subject: The rule change to OAR 259-008-0045 (College Education Credits) adds the American Council on Education's Joint Services Transcript (JST) as a recognized source for the addition of education credits to a public safety officer's DPSST record.

Additional changes to OARs 259-008-0045 (College Education Credits) and 259-008-0060 (Public Safety Officer Certification) make uniform references to education credits and make clarifying changes to both rules regarding the interpretation and application of education credits for training records and certification requirements.

Rules Coordinator: Jennifer Howald—(503) 378-2432

259-008-0045

Education Credits

(1) Credit for preservice or in-service college education will not be accepted in lieu of the Basic Course described in OAR 259-008-0025.

(2) Education credits or college degrees submitted to the Department for inclusion on a public safety professional's official record must have been earned from one of the following recognized sources:

(a) A degree-granting community college, college or university accredited by a recognized national or regional accrediting body;

(b) A community college, college or university whose coursework or degree has been accepted for credit by a degree granting community college, college or university accredited by a recognized national or regional accrediting body;

(c) A degree-granting college or university recognized by the Oregon Office of Degree Authorization under the provisions of ORS 348.604; or

(d) The American Council on Education's credit recommendation on the Joint Services Transcript (JST) used by the Army, Marine Corps, Navy, and Coast Guard.

(e) For purposes of this rule, a recognized national or regional accrediting body is one recognized by the U.S. Department of Education, or the Council on Higher Education Accreditation (CHEA), or its predecessor.

(3) Any education credits obtained in a foreign country, which are claimed to be comparable to credits or a college degree granted by a licensing body in the United States or US Territories must be evaluated by a credentialing agency that is a member of the National Association of Credential Evaluation Services (NACES). The credentialing agency must send an evaluation to the Department for approval, at the applicant's expense, before any educational credit is accepted as equivalent.

(4) Documentation of Education Credits. The Department must receive official transcripts from a recognized source as defined in section (2) of this rule prior to entering education credits on a public safety professional's official record.

(a) Each quarter credit unit granted by a recognized source operating on a quarterly schedule will equal one education credit.

(b) Each semester credit unit granted by a recognized source operating on a semester schedule will equal 1-1/2 education credits.

Stat. Auth.: ORS 181A.410

Stats. Implemented: ORS 181A.410

Hist.: PS 12, f. & ef. 12-19-77; Renumbered from 259-010-0025, PS 1-1983, f. & ef. 12-15-83; Renumbered from 259-010-0051, PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 5-1999, f. & cert. ef. 7-29-99; BPSST 4-2001, f. & cert. ef. 8-22-01; DPSST 4-2006, f. & cert. ef. 2-28-06; DPSST 9-2008, f. & cert. ef. 7-15-08; DPSST 20-2016, f. 12-27-16, cert. ef. 1-1-17

259-008-0060

Public Safety Officer Certification

(1) Basic, Intermediate, and Advanced Certificates are awarded by the Department to law enforcement officers and telecommunicators meeting prescribed standards of training, education, and experience. Emergency medical dispatchers may be awarded basic certification only.

(2) Supervisory, Management, and Executive Certificates are awarded to law enforcement officers and telecommunicators meeting the prescribed standards in section (1) of this rule and the ranks established by the employing law enforcement units, or public or private safety agencies.

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(3) Basic certification is mandatory and must be acquired by all police officers, parole and probation officers, telecommunicators, emergency medical dispatchers, and regulatory specialists within 18 months of employment, and by all corrections officers within 12 months of employment, unless an extension is granted by the Department.

(4) To be eligible for the award of a certificate, law enforcement officers must:

(a) Be full-time employees as defined in OAR 259-008-0005 or part-time parole and probation officers, as defined in OAR 259-008-0066.

(b) Meet the prescribed minimum employment standards in OAR 259-008-0010;

(c) Law enforcement officers must subscribe to and swear or affirm to abide by the Criminal Justice Code of Ethics (Form F-11); and

(d) Have valid first aid and cardiopulmonary resuscitation (CPR) certification.

(5) To be eligible for the award of a certificate, telecommunicators and emergency medical dispatchers must:

(a) Meet the prescribed minimum employment standards as established by OAR 259-008-0011;

(b) Subscribe to and swear or affirm to abide by the Telecommunicator Code of Ethics (Form F-11T); and

(c) Have valid first aid and cardiopulmonary resuscitation (CPR) certification.

(6) Applications for certification must:

(a) Be submitted on Form F-7 (Application for Certification), with all applicable sections completed and signed by the applicant.

(b) Be signed by the employing agency's department head or authorized representative recommending that requested certification be issued. The department head's signature affirms that the applicant meets the minimum standards for employment, training, education, and experience and is competent to hold the level of certification being applied for.

(7) When a department head is the applicant, the above recommendation must be made by the department head's appointing authority, such as the city manager or mayor, or in the case of a specialized agency, the applicant's superior. Elected department heads are authorized to sign as both applicant and department head.

(8) In addition to the requirements in sections (1) through (7) of this rule, each applicant must have completed the designated education and training, combined with the prescribed corrections, parole and probation, police, regulatory specialist or telecommunications experience for the award of an Intermediate, Advanced, Supervisory, Management, or Executive Certificate.

(9) Training and Education:

(a) Basic courses certified by the Department will be approved by the Board.

(b) The Department may record training hours for departmental or other in-service training which is recorded and documented in the personnel files of the trainee's department. These records must include the subject, instructor, classroom hours, date, sponsor, and location.

(c) Training completed in other states, military training, and other specialized training, if properly documented, may be accepted, subject to staff evaluation and approval. These records must include the subject, date, and classroom hours, and must be certified true copies of the original.

(d) The Department must receive official transcripts, as prescribed in OAR 259-008-0045 (Education Credits), prior to entering education credits on an individual's official record.

(e) Education credits awarded based on training completed must be documented on an official transcript from a recognized source, as defined in OAR 259-008-0045, and may be applied toward an application for certification as either training hours or education credits, whichever is to the advantage of the applicant. These credits cannot be applied towards certification as both education credits and training hours.

(A) Prior to applying an applicant's education credits toward any level of certification, the Department must receive documentation of the number of education credits awarded based on training completed.

(B) The training hours identified under section (9) (e) (A) and submitted as education credit toward a certification will not be included in any calculation of whether the applicant has earned sufficient training hours to qualify for the requested certification level.

(10) Experience/Employment:

(a) Experience gained as a corrections officer, parole and probation officer, police officer, or regulatory specialist employed full time with municipal, county, state, or federal agencies, may be accepted if the experience is in the discipline the certification is requested and is approved by the Department.

(b) Experience acquired as a telecommunicator or emergency medical dispatcher employed with a public or private safety agency may be accepted if the experience is in the discipline the certification is requested and is approved by the Department.

(c) Experience acquired as a certified part-time telecommunicator or emergency medical dispatcher as defined in OAR 259-008-0005, or part-time parole and probation officer as defined under 259-008-0005 and 259-008-0066, will count on a pro-rated basis.

(d) Partial credit may be given to law enforcement experience that is not in the discipline the certification is requested, when supported by job descriptions or other documentary evidence. In all cases, experience claimed is subject to evaluation and approval by the Department.

(e) For the purpose of this rule, creditable service time for experience will not accrue under the following circumstances:

(A) When an individual is employed in a casual, seasonal, or temporary capacity;

(B) When an individual is on leave, other than full-time military leave;

(C) From the date a public safety officer's certification is suspended until it is reinstated by the Department;

(D) When a public safety officer fails to obtain Basic certification within a mandated timeframe and is prohibited from being employed as a public safety officer; or

(E) When a public safety officer is employed in a limited duration, administrative position, as described in OAR 259-008-0078.

(11) The Basic Certificate. In addition to the requirements in sections (1) through (7) of this rule, the following are required for the award of the Basic Certificate:

(a) Applicants must have completed a period of service in a certifiable position of not less than nine months with one or more law enforcement units or public or private safety agencies in the discipline the certification is requested;

(b) Applicants must have satisfactorily completed the required Basic Course as prescribed in OAR 259-008-0025, in the discipline the certification is requested or have completed equivalent training, as determined by the Department.

(12) The Intermediate Certificate. In addition to the requirements in sections (1) through (7) of this rule, the following are required for the award of the Intermediate Certificate:

(a) Applicants must possess a Basic Certificate in the discipline the certification is requested; and

(b) Applicants must have acquired a combination of work experience in the discipline the certification is requested, along with training hours and education credits or college degree, as identified in the Intermediate/Advanced Certification Charts. [Table not included. See ED. NOTE.]

(A) Applicants may determine eligibility for intermediate certification by referencing either:

(i) The "All Disciplines" chart (referred to as the old chart). This is the original certification chart and may be referenced by all police, corrections, parole and probation, regulatory specialist and telecommunicator applicants until October 31, 2015; or

(ii) The "Police/Corrections/Parole & Probation/Regulatory Specialist" chart. This certification chart became effective November 1, 2012, and may be referenced by police, corrections, regulatory specialists and parole and probation applicants; or

(iii) The "Telecommunicators" chart. This certification chart became effective November 1, 2012, and may be referenced by telecommunicator applicants.

(B) Applicants may apply for certification using the chart that best fits their experience, education and training.

(C) If applying using either the "Police/Corrections/Parole & Probation/Regulatory Specialist" chart or the "Telecommunicators" chart in section (12)(b)(A)(ii) and (iii) of this rule, training hours originating from a single training event used to meet the training hour requirement for intermediate certification cannot be applied towards future levels of certification.

(c) The required years of experience are for the purpose of developing and demonstrating competency at the intermediate level. The signature of the department head or authorized representative on an F-7 at the intermediate level represents the agency's attestation that the applicant is performing competently at the intermediate level.

(13) The Advanced Certificate. In addition to the requirements in sections (1) through (7) of this rule, the following are required for the award of the Advanced Certificate:

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(a) Applicants must possess or be eligible to possess the Intermediate Certificate in the discipline the certification is requested; and

(b) Applicants must have acquired a combination of work experience in the discipline the certification is requested, along with training hours and education credits or college degree, as identified in the Intermediate/Advanced Certification Charts. [Table not included. See ED. NOTE.]

(A) Applicants may determine eligibility for advanced certification by referencing either:

(i) The "All Disciplines" chart (referred to as the old chart). This is the original certification chart and may be referenced by all police, corrections, parole and probation, regulatory specialist and telecommunicator applicants until October 31, 2015; or

(ii) The "Police/Corrections/Parole & Probation/Regulatory Specialist" chart. This certification chart became effective November 1, 2012, and may be referenced by police, corrections, regulatory specialist and parole and probation applicants; or

(iii) The "Telecommunicators" chart. This certification chart became effective November 1, 2012, and may be referenced by Telecommunicator applicants.

(B) Applicants may apply for certification using the chart that best fits their experience, education and training.

(C) If applying using either the "Police/Corrections/Parole & Probation/Regulatory Specialist" chart or the "Telecommunicators" chart in section (13) (b) (A) (ii) and (iii) of this rule, training hours originating from a single training event used to meet the training hour requirement for advanced certification cannot be applied towards future levels of certification.

(c) The required years of experience are for the purpose of developing and demonstrating competency at the advanced level. The signature of the department head or authorized representative on an F-7 at the advanced level represents the agency's attestation that the applicant is performing competently at the advanced level.

(14) The Supervisory Certificate. In addition to requirements in sections (1) through (7) of this rule, the following are required for the award of the Supervisory Certificate:

(a) Applicants must possess or be eligible to possess the Advanced Certificate in the discipline the certification is requested;

(b) Applicants must have satisfactorily completed no less than 45 education credits as defined in OAR 259-008-0045 and in accordance with section (9) of this rule;

(c) Applicants must have satisfactorily completed the prescribed supervision training within five years of the application for the Supervisory Certificate; and

(d) Applicants must be presently employed in and have satisfactorily performed the duties of a first-level supervisor as defined in OAR 259-008-0005.

(A) The applicant's department head must attest that the first-level supervisor duties were performed for a period of one year.

(B) The required experience must have been acquired within five years of the date of the application.

(e) Upon request of the employing agency, the Department may waive the requirements of section (14) (c) or (d), provided the employing agency demonstrates that the applicant performs supervisory duties on a regular basis.

(15) The Management Certificate. In addition to requirements in sections (1) through (7) of this rule, the following are required for the award of the Management Certificate:

(a) Applicants must possess or be eligible to possess the Supervisory Certificate in the discipline the certification is requested;

(b) Applicants must have satisfactorily completed no less than 90 education credits as defined in OAR 259-008-0045 and in accordance with section (9) of this rule;

(c) Applicants must have satisfactorily completed the prescribed middle management training within five years of the application for the Management Certificate; and

(d) Applicants must be presently employed in and must have satisfactorily served in a middle management position as a department head or assistant department head as defined in OAR 259-008-0005 for a period of two years. The required experience must have been acquired within five years of the date of the application.

(e) Upon request of the employing agency, the Department may waive the requirements of section (15)(c) or (d), provided the employing agency demonstrates that the applicant performs management duties on a regular basis.

(16) The Executive Certificate. In addition to requirements in section (1) through (7) of this rule, the following are required for the award of the Executive Certificate:

(a) Applicants must possess or be eligible to possess the Management Certificate in the discipline the certification is requested;

(b) Applicants must have satisfactorily completed no less than 90 education credits as defined in OAR 259-008-0045 and in accordance with section (9) of this rule;

(c) Applicants must have satisfactorily completed 100 hours of Department-approved executive level training within five years of the application for the Executive Certificate; and

(d) Applicants must be presently employed in and must have satisfactorily served in a middle management position as department head or assistant department head, as defined in OAR 259-008-0005 for a period of two years. The required experience must have been acquired within five years of the date of the application.

(e) Upon request of the employing agency, the Department may waive the requirements of section (16) (c) or (d), provided the employing agency demonstrates that the applicant performs the duties of a department head or assistant department head on a regular basis.

(17) Multi-discipline Certification. Upon receiving written request from the department head stating a justified and demonstrated need exists for the efficient operation of the employing agency, the Department may approve multi-discipline certification for law enforcement officers who meet all minimum employment, training and education standards established in OAR 259-008-0010, 259-008-0011, 259-008-0025, and this rule, in the disciplines which they are requesting certification. The officer must meet the following requirements for the award of multi-discipline certification:

(a) Basic certification. A law enforcement officer who is certified in one discipline may apply for multi-discipline certification if employed in or transferred to another discipline within the same law enforcement unit. The applicant must demonstrate completion of all training requirements in the discipline in which certification is being requested.

(b) Higher levels of certification. Law enforcement officers who possess higher levels of certification in one discipline may, upon employment in or transfer to another discipline within the same law enforcement unit, apply for the same level of certification after completion of nine months experience in the discipline in which they are requesting certification and meeting the requirements for those higher levels of certification as outlined in this rule. This section does not apply to the emergency medical dispatcher discipline since it only exists at the basic certification level.

(c) Retention of multi-discipline certification. In order to maintain multi-discipline certification, each discipline in which certification is held requires successful completion and documentation of training hours by the holders of the certificates every 12 months. The training must be reported to the Department, as follows:

(A) For a law enforcement officer who also holds emergency medical dispatcher certification, a minimum of four hours of training specific to the emergency medical dispatcher discipline must be reported annually as required under OAR 259-008-0064.

(B) For a law enforcement officer who also holds telecommunicator certification, a minimum of 12 hours of training specific to the telecommunicator discipline must be reported annually as required under OAR 259-008-0064.

(C) A minimum of 20 hours of training specific to each law enforcement discipline in which certification is held must be reported annually as required under subsections (h) through (l) of this section.

(d) The same training may be used for more than one discipline if the content is specific to each discipline. It is the responsibility of the department head to determine if the training is appropriate for more than one discipline.

(e) The maintenance training cycle for law enforcement officers who are certified in more than one discipline begins on July 1st of each year and ends on June 30th the following year.

(f) The employing agency must maintain documentation of all required maintenance training completed.

(g) If reported on a Form F-6 (Course Attendance Roster), required maintenance training must be submitted to the Department by June 30th of each year. Training reported on a Form F-6 will result in credit for training hours. No training hours will be added to a law enforcement officer's record, unless accompanied by a Form F-6 Course Attendance Roster.

(h) On or after July 1st of each year, the Department will identify all law enforcement officers who are deficient in maintenance training according to Department records. A Contested Case Notice of Intent to Suspend

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will be prepared and served on the law enforcement officer pursuant to ORS 181A.640(c) and these rules. A copy of the Notice will be sent to the officer's employing agency.

(A) All Contested Case Notices will be prepared in accordance with the applicable provisions of the Attorney General's Model Rules of Procedure adopted under OAR 259-005-0015.

(B) A law enforcement officer who has been served with a Contested Case Notice of Intent to Suspend has 30 days from the date of mailing or personal service of the notice to notify the Department of the training status identified as deficient by submitting a Form F-16 (Maintenance Training Log) to the Department identifying the maintenance training completed during the previous one year reporting period or to file a written request for hearing with the Department.

(C) Maintenance training hours reported to the Department on a Form F-16 will be used solely to verify completion of maintenance training requirements and will not be added to an officer's training record.

(i) Default Order: If the required training is not reported to the Department or a request for a hearing received within 30 days from the date of the mailing or personal service of the notice, the Contested Case Notice will become a final order suspending certification pursuant to OAR 137-003-0672.

(j) A law enforcement officer with a suspended certification is prohibited from being employed in any position for which the certification has been suspended.

(k) Recertification following a suspension may be obtained, subject to Department approval, by submitting the following:

(A) A written request from the department head requesting recertification, along with a justification of why the maintenance training was not completed; and

(B) Verification that the missing training was completed.

(l) Failure to complete the required maintenance training may not result in a suspension of certification if the law enforcement officer is on leave from a public or private safety agency.

(23) Certificates and awards are the property of the Department. The Department has the power to revoke or suspend any certificate or award as provided in the Act.

[ED. NOTE: Forms & Tables referenced are available from the agency.]

Stat. Auth.: ORS 181A.410

Stats. Implemented: ORS 181A.410, 181A.490, 181A.520, 181A.530, 181A.560 & 181A.570

Hist.: PS 12, f. & ef. 12-19-77; PS 1-1979, f. 10-1-79, ef. 10-3-79; PS 1-1980(Temp), f. & ef. 6-26-80; PS 2-1980, f. & ef. 12-8-80; PS 1-1981, f. 9-26-81, ef. 11-2-81; PS 1-1983, f. & ef. 12-15-83; PS 1-1985, f. & ef. 4-24-85; Renumbered from 259-010-0055, PS 1-1990, f. & cert. ef. 2-7-90; PS 1-1995, f. & cert. ef. 3-30-95, PS 2-1995, f. & cert. ef. 9-27-95; PS 7-1997, f. 3-20-97, cert. ef. 3-25-97; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 1-1999, f. & cert. ef. 3-9-99; BPSST 6-1999, f. & cert. ef. 7-29-99; BPSST 11-2000, f. 11-13-00, cert. ef. 11-15-00; BPSST 13-2001(Temp), f. & cert. ef. 10-26-01 thru 4-10-02; BPSST 8-2002, f. & cert. ef. 4-3-02; BPSST 21-2002, f. & cert. ef. 11-21-02; DPSST 1-2004, f. 1-16-04, cert. ef. 1-20-04; DPSST 5-2004, f. & cert. ef. 4-23-04; DPSST 2-2008, f. & cert. ef. 1-15-08; DPSST 9-2008, f. & cert. ef. 7-15-08; DPSST 22-2008, f. & cert. ef. 12-29-08; DPSST 4-2009, f. & cert. ef. 4-8-09; DPSST 1-2010, f. & cert. ef. 1-11-10; DPSST 2-2010, f. & cert. ef. 3-15-10; DPSST 4-2010, f. & cert. ef. 6-2-10; DPSST 7-2010, f. 7-15-10, cert. ef. 8-1-10; DPSST 8-2010, f. & cert. ef. 8-13-10; DPSST 8-2011, f. & cert. ef. 6-24-11; DPSST 17-2011, f. & cert. ef. 12-23-11; DPSST 23-2012, f. 10-25-12, cert. ef. 11-1-12; DPSST 31-2012, f. & cert. ef. 12-27-12; DPSST 15-2013, f. & cert. ef. 6-25-13; DPSST 1-2014, f. & cert. ef. 1-2-14; DPSST 12-2014, f. & cert. ef. 6-24-14; DPSST 28-2014(Temp), f. & cert. ef. 10-8-14 thru 4-6-15; DPSST 1-2015, f. & cert. ef. 1-5-15; DPSST 7-2015, f. & cert. ef. 3-24-15; DPSST 11-2015, f. 6-23-15, cert. ef. 7-1-15; DPSST 18-2015, f. 12-22-15, cert. ef. 1-1-16; DPSST 11-2016, f. 7-25-16, cert. ef. 7-29-16; DPSST 20-2016, f. 12-27-16, cert. ef. 1-1-17

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Department of Revenue Chapter 150

Rule Caption: Marijuana Tax: Rules application to local marijuana tax administration

Adm. Order No.: REV 76-2016(Temp)

Filed with Sec. of State: 12-20-2016

Certified to be Effective: 12-21-16 thru 6-18-17

Notice Publication Date:

Rules Amended: 150-305-0360

Subject: Amends rule clarifying that ORS 305.620 provisions apply to both transit and local marijuana taxes.

Rules Coordinator: Lois Williams—(503) 945-8029

150-305-0360

Rules Application

(1) "Local marijuana tax" means a tax or fee authorized under ORS 475B.345 on the sale of marijuana items that are sold within an area sub-

ject to a city's jurisdiction or an unincorporated area subject to a county's jurisdiction by a person that holds a license under ORS 475B.110.

(2) Unless the context requires otherwise, the department will apply the same rules to administer transit district payroll tax programs as are used in the administration of the withholding tax program. See rules adopted under ORS 316.162 to 316.212. In addition, the provisions of rules adopted pursuant to ORS Chapters 305 and 314 as to the audit and examination of reports and returns, determination of deficiencies, assessments, claims for refund, conferences, appeals, and the procedures relating thereto, shall apply to the determination of taxes, penalty, and interest imposed under transit district payroll tax programs.

(3) Unless the context requires otherwise, the department will apply the same rules to administer local marijuana taxes as are used in the administration of the marijuana tax program. See rules adopted under ORS 475B.705 to 475B.760. In addition, the provisions of rules adopted pursuant to ORS Chapter 475B as to the audit and examination of reports and returns, determination of deficiencies, assessments, claims for refund, conferences, appeals, and the procedures relating thereto, shall apply to the determination of taxes, penalty, and interest imposed under local marijuana taxes.

Stat. Auth.: ORS 305.100, ORS 475B.750

Stats. Implemented: ORS 305.620

Hist.: RD 10-1983, f. 12-20-83, cert. ef. 12-31-83; RD 1-1997(Temp), f. 6-13-97, cert. ef. 7-4-97 thru 12-31-97; RD 5-1997, f. 12-12-97, cert. ef. 12-31-97; Renumbered from 150-305.620(1)-(A), REV 49-2016, f. 8-13-16, cert. ef. 9-1-16; REV 76-2016(Temp), f. 12-20-16, cert. ef. 12-21-16 thru 6-18-17

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Rule Caption: Amusement device tax: Repeals rule defining devices subject to tax.

Adm. Order No.: REV 77-2016

Filed with Sec. of State: 12-28-2016

Certified to be Effective: 1-1-17

Notice Publication Date: 11-1-2016

Rules Repealed: 150-320-0010

Subject: 150-320-0010 — Repeal of the rule removes inconsistencies with Amusement Device Tax statutes regarding the types of devices that are subject to the tax.

Rules Coordinator: Lois Williams—(503) 945-8029

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Rule Caption: State Lodging Tax: Fees subject to the tax and registration of providers.

Adm. Order No.: REV 78-2016

Filed with Sec. of State: 12-28-2016

Certified to be Effective: 1-1-17

Notice Publication Date: 11-1-2016

Rules Amended: 150-320-0040

Subject: 150-320-0040:

- Removes reference to "allocations made for local lodging taxes" and clarifies that exemptions are limited to those listed in the state lodging tax statutes and rules, regardless of the local lodging tax exemptions available in any particular city or county.

- Provides guidance as to what fees are subject to the state lodging tax.

- Removes the requirement for transient lodging providers to register with the department.

Rules Coordinator: Lois Williams—(503) 945-8029

150-320-0040

State Lodging Tax

(1) Definitions. For purposes of ORS 320.305 and 320.308 and the rules thereunder:

(a) "Nonprofit facility" means a lodging facility that is owned by an IRC 501(c) exempt organization or an organization described in ORS 65.001(31) and that is not operated for profit.

(b) "Transient lodging provider" includes a person who operates a facility, whether in the capacity of owner, managing agent, lessee, sub-lessee, mortgagee in possession, licensee, concessionaire, or any other capacity.

(2) Public and Private Providers Must Collect the Tax. The state lodging tax applies to rents charged for dwelling units, recreational vehicle spaces, and tent spaces provided by public and private persons. It applies to dwelling units and recreational vehicle and tent spaces offered to the general public by state and local parks departments. It also applies to dwelling

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units and spaces offered for rent to the general public on federal lands operated by a concessionaire on a contract basis with a federal agency, such as the U.S. Forest Service, Bureau of Land Management, and the National Parks Service.

(3) **Services Included in the Fee for Lodging.** If a separate fee is charged for a service and the service is optional, that fee is not subject to the state lodging tax. Examples of optional services include, but are not limited to: pay-per-view movies, room service, use of an honor bar or restaurant meals charged to the room. If a separate fee is charged for a service and the service is not optional, or if the value of a service is included in the standard lodging rate, the amount allocated to the service is subject to the state lodging tax. Examples of fees for non-optional services include, but are not limited to: cleaning service fees, pet charges, fee for providing an extra bed, service fees and processing fees. Examples of services that are included in the standard lodging rate include, but are not limited to: free breakfast and free transportation to the airport. If the provider offers a lodging package that includes something that is not associated with the actual lodging or is provided by a third party, only the regular lodging rate that would have been charged absent the package item is subject to the state lodging tax. Examples of lodging packages include, but are not limited to: a package consisting of a night of lodging and a round of golf for two, or a romance package that includes a night of lodging, a bottle of wine and dinner at a local restaurant.

Example 1: The ABC Bed and Breakfast charges \$100 per night for a room. Guests are provided a breakfast that is included in the per-night fee. Guests may also have lunch or dinner at ABC and may charge the cost of these meals to their room. ABC will collect tax on \$100 per night because the breakfast is included in the room fee. The tax does not apply to any charges for optional meals purchased by ABC's guests.

Example 2: The High Mountain Resort offers winter lodging packages for customers. Customers can purchase a weekend package that includes two nights lodging and two ski lift tickets for a nearby ski resort for \$250. Their regular charge for weekend lodging during the winter for a two night stay is \$200. The state lodging tax will be collected on \$200 because that represents the charge for providing lodging.

Example 3: The Highlife Hotel charges a standard room rate based on single occupancy. The Young family has two children and a dog. They rent a room for one night. The basic room rate is \$80 per night. There is a \$10 charge for a second adult. There is no charge for the children. The Youngs request a crib that costs an additional \$10. There is also a \$10 charge for the family dog. The state lodging tax applies to all of the additional fees as well as the standard room rate. The total amount subject to tax is \$110.

Example 4: The Hedgehog Inn works with INEZ.com, a transient lodging intermediary. The Stubblefield family used INEZ.com to book a room at the Hedgehog Inn for their annual family reunion. The standard room rate is \$100. Additionally, INEZ.com charges a 5 percent processing fee. The state lodging tax applies to the 5 percent processing fee as well as the standard room rate. The total amount subject to the tax is \$105 (\$100 room rate plus 5 percent processing fee).

(4) **Use of a Managing Agent.** If a transient lodging provider uses a managing agent that is not an employee, the managing agent is considered the provider for the purposes of the tax and has the same duties and liabilities as the operator. Compliance with the provisions of the state lodging tax by either the lodging provider or the managing agent is considered compliance by both.

(5) **Penalty Imposed.** The person submitting the return required by ORS 320.315 must sign the return and is subject to the penalty for false swearing under ORS 162.075, which is a Class A misdemeanor.

Stat. Auth.: ORS 305.100 & 320.315

Stats. Implemented: ORS 320.305

Hist.: REV 3-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04; REV 3-2004, f. & cert. ef. 6-25-04; REV 3-2005, f. 12-30-05, cert. ef. 1-1-06; REV 11-2008, f. & cert. ef. 9-23-08; Renumbered from 150-320.305, REV 36-2016, f. 8-12-16, cert. ef. 9-1-16; REV 78-2016, f. 12-28-16, cert. ef. 1-1-17

Rule Caption: Cigarette Tax: Amends rules related to the purchase of cigarette tax stamps.

Adm. Order No.: REV 79-2016

Filed with Sec. of State: 12-28-2016

Certified to be Effective: 1-1-17

Notice Publication Date: 11-1-2016

Rules Amended: 150-323-0130, 150-323-0150

Subject: 150-323-0130: Allows cigarette distributors to purchase cigarette tax stamps using electronic type payments.

150-323-0150: Requires cigarette distributors to electronically authorize individuals to order cigarette tax stamps on the distributors' behalf and removes requirement for the department to maintain signature cards for authorized purchasers.

Rules Coordinator: Lois Williams—(503) 945-8029

150-323-0130

Payment Type for Cigarette Stamps

Every licensed distributor purchasing tax stamps from the department must pay for the stamps with cash, cashier's check, money order, or an electronic form of payment such as credit card, debit card, or electronic funds transfer (ACH Debit).

Stat. Auth.: ORS 305.100 & 323.440

Stats. Implemented: ORS 323.170

Hist.: REV 6-2004, f. 7-30-04, cert. ef. 7-31-04; Renumbered from 150-323.170, REV 72-2016, f. 8-15-16, cert. ef. 9-1-16; REV 79-2016, f. 12-28-16, cert. ef. 1-1-17

150-323-0150

Written Authorization for Cigarette Stamp Purchases

A distributor shall authorize those persons who may order stamps for the distributor's account. Authorization must be submitted electronically, through the distributor's online taxpayer account. The distributor's authorization to the named persons shall continue in effect until notice of revocation of the authority is received by the department. Revocation of authority to purchase stamps must also be submitted electronically, through the distributor's online taxpayer account.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 323.180

Hist.: 6-66; 9-71; RD 8-1984, f. 12-5-84, cert. ef. 12-31-84; REV 6-1999, f. 12-1-99, cert. ef. 12-31-99; Renumbered from 150-323.180, REV 72-2016, f. 8-15-16, cert. ef. 9-1-16; REV 79-2016, f. 12-28-16, cert. ef. 1-1-17

Rule Caption: Property Tax: Manufactured Property Rehabilitation, local budget, tax refunds, agricultural housing, timber tax, exemptions.

Adm. Order No.: REV 80-2016

Filed with Sec. of State: 12-28-2016

Certified to be Effective: 1-1-17

Notice Publication Date: 11-1-2016

Rules Adopted: 150-090-0020

Rules Amended: 150-294-0430, 150-294-0840, 150-307-0510, 150-311-0760, 150-321-0340, 150-321-0810

Rules Repealed: 150-307-0470, 150-311-0120, 150-311-0130, 150-311-0510

Subject: 150-090-0020 [Adopt]: To describe the process for obtaining cancelation of taxes on abandoned homes that manufactured dwelling park or marina owners acquire, rehabilitate, and sell in the park or marina. This is an option for landlords created under 2015 Oregon Laws c. 217 (HB 3016).

150-294-0430 [Amend]: ORS 294.388 states that budgets may include amounts for general operating contingencies. We have interpreted that to mean that a contingency may only be budgeted in an "operating fund," without defining "operating fund." In the current rule, Example 2 says that a reserve fund is not an operating fund, which is inconsistent with our training regarding reserve funds.

150-294-0840 [Amend]: To correct grammatical error in the rule title by adding the word "of" and adding a space between the words "as" and "approved" in line 4.

150-307-0470 [Repeal]: The 2009 amendment to ORS 307.397 to exempt such hoop houses or similar buildings, structures or improvements. The statute now provides exemption for such structures if they are primarily used to grow plants for agricultural or horticultural production, that are covered with translucent or transparent material, and that have no permanent heat source (other than the sun). This rule is more restrictive than the statute and prohibits exemption for hoop houses with permanent climate control systems, even though the 2009 statute amendments only prevent exemption where a permanent heat source is present.

150-307-0510 [Amend]: ORS 307.480 amended in the 2015 session to allow a property tax exemption for community based agricultural workforce housing. The existing rule only addresses the requirements for farm labor camps. One of the new statutory requirements is that agricultural workforce housing be owned and operated as a nonprofit "facility" and the rule will define that term in the context of this exemption. The term "facility" is also used as the basis

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for determining which income and expenses must be used to calculate the payment in lieu of taxes required by ORS 307.490.

150-311-0120 [Repeal]: This rule is obsolete as it relates to ORS 308.020, which applied to large value appeals from tax years prior to 1997-1998. There are no longer accounts being collected from appeals under ORS 308.020.

150-311-0130 [Repeal]: This rule is obsolete as it relates to ORS 308.020, which applied to large value appeals from tax years prior to 1997-1998. There are no longer accounts being collected from appeals under ORS 308.020.

150-311-0510 [Repeal]: This rule is obsolete as it relates to ORS 308.020, which applied to large value appeals from tax years prior to 1997-1998. There are no longer accounts being collected from appeals under ORS 308.020.

150-311-0760 [Amend]: ORS 311.806 was amended by HB 2485 and SB 161 in the 2015 session. The bills added provisions that specified refunds paid because of a request for proration of taxes under ORS 308.425 are to be paid to the applicant for the refund, and that in some circumstances allows refunds to purchasers of personal property who have paid delinquent taxes on the property. Those provisions are not addressed in our current rule describing where refunds are to be paid.

150-321-0340 [Amend]: To replace the word “one” with “common” as it is used in the definition of “common ownership” in ORS 321.354(6)(b). To provide a definition for “contiguous acres” as it applies to meet minimum acreage requirements.

150-321-0810 [Amend]: To replace the word “one” with “common” as it is used in the definition of “common ownership” in ORS 321.354(6)(b). To provide a definition for “contiguous acres” as it applies to meet minimum acreage requirements.

Rules Coordinator: Lois Williams—(503) 945-8029

150-090-0020

Abandoned Personal Property Homes; Landlord’s Acquisition, Rehabilitation, and Sale to New Tenant with Tax Cancellation

(1) “Manufactured dwelling or floating home” has the same meaning as the term “personal property” as that term is defined in ORS 90.675(1)(e).

(2) ORS 90.675 requires three declarations or affidavits to be filed before the county tax collector and the Department of Revenue may cancel unpaid property taxes as provided in ORS 90.675(15). For purposes of this rule the declarations and affidavits required in the statute will be referred to as follows:

(a) The declaration or affidavit required by ORS 90.675(15)(a)(A) shall be referred to as a “Declaration or Affidavit of Intent.”

(b) The declaration or affidavit required by ORS 90.675(15)(a)(B) shall be referred to as a “Declaration or Affidavit of Compliance.”

(c) The declaration or affidavit required by ORS 90.675(15)(c)(C) shall be referred to as a “Declaration or Affidavit of the Buyer.”

(3) In addition to the information required under ORS 90.675(15), the Declaration or Affidavit of Intent and the Declaration or Affidavit of Compliance must contain the following additional information:

(a) Information identifying the manufactured dwelling or floating home. For manufactured dwellings, this is the “Home ID” in the Department of Consumer and Business Services ownership records, and, if known, the DMV X-plate number and Serial Number. For floating homes, identification would be the floating home plate number or other specific identifying information.

(b) The physical location of the manufactured dwelling in the manufactured dwelling park or the floating home in the marina (address/space number).

(c) The manufactured dwelling park or marina information, which includes:

- (A) Name of the manufactured dwelling park or marina;
- (B) Mailing address of the manufactured dwelling park or marina;
- (C) The name, address and phone number of the owner of the manufactured dwelling park or marina; and
- (D) The county in which the manufactured dwelling or floating home is located.

(4) To comply with ORS 90.675(15), the owner of the manufactured dwelling park or marina must file a Declaration or Affidavit of Intent with the county tax collector or Department of Revenue, as appropriate, prior to

selling the abandoned manufactured dwelling or floating home to a subsequent tenant.

(5) Upon receiving the Declaration or Affidavit of Intent and the filing by the owner of the manufactured dwelling park or marina of relevant ownership or title documents and any associated fees, the county tax collector shall provide to the owner of the manufactured dwelling park or marina an ownership document or title to the manufactured dwelling or floating home under ORS 90.675(15)(b). Manufactured dwelling ownership transfers are processed under ORS chapter 446. Floating home title transfers are processed under ORS chapter 830.

(6) After the manufactured dwelling or floating home has been sold by the owner of the manufactured dwelling park or marina, the owner of the manufactured dwelling park or marina may file a Declaration or Affidavit of Compliance as required under ORS 90.675(15)(a)(B) and (c).

(7) In addition to documentation filed under sections (4) and (6) of this rule, the following items must be filed or paid in order to have unpaid taxes or tax liens cancelled in accordance with ORS 90.675(15)(d):

(a) Filing of the Declaration or Affidavit of the Buyer with the county tax collector;

(b) Payments of taxes and warrant fees to the Department of Revenue or county tax collector as required under ORS 90.675(15); and

(c) Filing of ownership or title transfer documents to transfer ownership to the purchaser that made the Declaration or Affidavit of the Buyer.

(8) Warrant fees paid to the county as required in ORS 90.675(15)(c)(B) must be paid in full. There is no authority to cancel these fees.

(9) If the county tax collector or Department of Revenue receives and accepts all documents and payments required to be filed with them as described above and in ORS 90.675(15), the county tax collector or Department of Revenue must cancel the taxes or tax liens on the manufactured structure or floating home.

(10) For purposes of ORS 90.675(15)(a)(B)(iii) and the Declaration or Affidavit of Compliance, the period of time reasonably necessary to complete the improvements and the sale must be within six months from the date the manufactured dwelling or floating home was presumed to be abandoned unless reasonable explanation is provided to and found to be sufficient to justify the time period by the county tax collector or Department of Revenue, as appropriate.

(a) The county tax collector or Department of Revenue, as appropriate, may allow a reasonable period of time that is longer than six months to complete the improvements and the sale if the period of time was due to factors that may include, but are not limited to:

- (A) Condition of the home;
- (B) Extent of improvement work to be completed;
- (C) Time of year;
- (D) Weather conditions;
- (E) Permitting, inspections, or other government requirements;
- (F) Arrangements for marketing and sale; or
- (F) Any other pertinent information related to the improvement time-frame.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 90.675

Hist.: REV 80-2016, f. 12-28-16, cert. ef. 1-1-17

150-294-0430

General Operating Contingencies

(1) An estimate for general operating contingency may be included in any operating fund. The general operating contingency is not a fund, but an appropriation within a fund. This type of appropriation is allowed on the assumption that in the operation of any municipal corporation certain expenditures will become necessary in the fiscal year of the budget which cannot be foreseen and planned in the budget.

(a) An operating fund is one which contains estimates for personnel services, materials and services, or capital outlay.

(b) The estimate for a general operating contingency, like other budget estimates, must be a good faith estimate. The estimate must be reasonable and based on past experience, comparable information, or through the use of risk analysis.

(c) The estimate for general operating contingencies may not be used to compensate for improper estimating practices in the preparation of the budget.

(2) A fund that finances an activity, the cost of which can be accurately estimated, may not include an appropriation for a general operating contingency.

Example 1: A debt service fund for general obligation bonds may not include a general operating contingency. The requirements for a debt service fund are known at the time the budget is prepared. Therefore, there is no unknown or unascertainable aspect to the expenditures from the fund.

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(3) A non-operating fund may not have an estimate for general operating contingencies.

Example 2: A reserve fund is used to save money for future expenditure. If a reserve fund does not include estimates for personnel services, materials and services, or capital outlay, it is a nonoperating fund and may not have an estimate for a general operating contingency.

(4) An expenditure may not be made directly from the general operating contingency appropriation. The amount must be transferred from the general operating contingency appropriation to another existing appropriation. The general operating contingency is then reduced, and the appropriation in question is increased correspondingly.

(a) The amount, in aggregate, that may be transferred by resolution of the governing body during any fiscal year or budget period is limited to 15 percent of the original total appropriations made in the fund, per ORS 294.463(2).

(b) Total transfers may exceed 15 percent of the total appropriation budgeted in a fund following the adoption of a supplemental budget prepared for that purpose. See ORS 294.471 and ORS 294.473 for the supplemental budget process.

Example 3: The General Fund has total appropriations in the amount of \$100,000, including a \$20,000 appropriation for the general operating contingency. Only \$15,000 of the general operating contingency may be transferred (by one or more transfers) by a resolution of the governing body. Any portion of the remaining \$5,000 can be transferred only through a supplemental budget.

Stat. Auth.: ORS 305.100 & 294.495

Stats. Implemented: ORS 294.388

Hist.: 2-66; 12-67; RD 11-1984, f. 12-5-84, cert. ef. 12-31-84; REV 4-2004, f. 7-30-04 cert. ef. 7-31-04; Renumbered from 150-294.352(8), REV 7-2012, f. 7-26-12, cert. ef. 8-1-12; Renumbered from 150-294.388(7), REV 42-2016, f. 8-12-16, cert. ef. 9-1-16; REV 80-2016, f. 12-28-16, cert. ef. 1-1-17

150-294-0840

Duties the Governing Body of a Council of Government

The council of governments notifies the public of the time and place of a public hearing on a budget document as approved by the budget committee. The council of governments must pass a resolution adopting a budget document as approved by the budget committee or as modified by the council of governments.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 294.920

Hist.: RD 5-1989, f. 12-18-89, cert. ef. 12-31-89; Renumbered from 150-294.388, REV 42-2016, f. 8-12-16, cert. ef. 9-1-16; REV 80-2016, f. 12-28-16, cert. ef. 1-1-17

150-307-0510

Agricultural Workforce Housing and Farm Labor Camp Assessment

(1) Only the portion of the farm labor camp property actually occupied, or held for occupation, by persons primarily employed for agricultural or horticultural purposes would qualify. Land and improvements which are not an integral part of the farm labor camp shall not qualify for the exemption. Examples of areas which may qualify for exemption are:

(a) Cooking and eating areas.

(b) Parking areas.

(c) Buffer areas, when reasonably necessary to protect the labor camp or to protect surrounding area from noise or other nuisance factors.

(d) Recreation areas.

(2) The term "facility" as used in ORS 307.480(2) means housing, and associated common areas reasonably necessary for the provision of housing, that is established for occupancy by agricultural workers, retired or disabled agricultural workers, and the immediate family members of agricultural workers. Such housing may be composed of:

(a) Specifically dedicated or designated units within a housing development; or

(b) A defined number of housing units of specified sizes, where vacancies may be filled from the available housing inventory in the development on a first-available basis, but may only be filled with a similar sized unit.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 307.480

Hist.: RD 9-1989, f. 12-18-89, cert. ef. 12-31-89; Renumbered from 150-307.480, REV 54-2016, f. 8-13-16, cert. ef. 9-1-16; REV 80-2016, f. 12-28-16, cert. ef. 1-1-17

150-311-0760

Process for Determining Recipient of Property Tax Refund

(1) Definitions: For the purpose of this rule:

(a) "Owner of record on the tax roll" means the owner or an owner of the property or each person in whose name the property is assessed on the last certified tax roll.

(b) "At the time of the refund" means the time at which the tax collector calculates the refund and any applicable interest.

(2) The tax collector must determine the recipients of a refund as follows:

(a) Whenever a refund is the result of an appeal, the refund for each year included in the petition must be made payable to, and be mailed or delivered to, the petitioner as shown on the petition.

(b) If an appeal results in a lowering of value under ORS 309.115 for a subsequent year that was not included in the petition and a refund results, the refund for each subsequent year must be made payable to, and be mailed or delivered to, the petitioner for each year in which that person was the owner, an owner, or the person in whose name the property was assessed; and to the current owner of record on the tax roll at the time of the refund for each year thereafter.

(c) Whenever taxes are collected against property not within the jurisdiction of the levying body, the refund must be made payable to, and be mailed or delivered to the owner of record on the tax roll at the time of the refund.

(d) Whenever taxes are paid on property in excess of the amount actually due the refund must be made payable to, and be mailed or delivered to, the owner of record on the tax roll at the time of the refund.

(e) Whenever taxes are paid on the property of another by mistake of any kind:

(A) The refund must be made payable to, and be mailed or delivered to, the payer of the tax.

(B) If the Department of Revenue pays the taxes on a deferral account under ORS 311.676, and the owner, or another party acting on behalf of the owner, also pays the tax for the same property, the department will determine the refund recipient for the overpayment based on information it deems appropriate. The department may contact the deferral applicant and the "other party" to make the determination.

(f) Pursuant to OAR 150-309-0180, a refund resulting from a petition to a Board of Property Tax Appeals, the Department of Revenue, or the tax court by one or more owners of property assessed as an undivided interest must be apportioned to all of the owners of the property according to the percentage of interest owned.

(g) When a refund is paid as a result of an application for proration of taxes under ORS 308.425, the refund must be paid to the applicant.

(h) If a purchaser of business personal property pays a refundable compromise payment, and the total outstanding tax amount is subsequently paid as provided in ORS 311.642(4), upon notice to the county governing body, the refund of the compromise payment shall be paid to the purchaser who made the compromise payment.

(3) Notwithstanding section (2) of this rule, the refund will not be mailed or delivered to the petitioner, owner of record on the tax roll, or payer of the tax if:

(a) The refund is the result of an appeal as described in section (2)(a) or (2)(b) of this rule and the petitioner is represented by an attorney. The refund to which the petitioner is entitled must be made payable to the petitioner, or to someone else if so directed by the petitioner in writing, but must be mailed or delivered to the representing attorney.

(b) The refund is the result of an appeal as described in section (2)(f) of this rule and the petitioner who filed the appeal is represented by an attorney. The refund apportioned to the petitioner must be made payable to the petitioner, or to someone else if so directed by the petitioner in writing, but must be mailed or delivered to the representing attorney. The refund or refunds due to the other owners who did not file petitions must be made payable to, and be mailed or delivered to those individual owners.

(c) The petitioner, owner of record, or payer of the tax named in section (2) of this rule is not represented by an attorney and instructs the tax collector, in writing, to make the refund payable to or to mail or deliver it to someone else. The tax collector must follow such instructions.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 311.806

Hist.: 10-5-84, 12-31-84, Renumbered from 150-311.806 to 150-311.806(A); 12-31-87; 12-31-92; REV 6-2001, f. & cert. ef. 12-31-01; REV 6-2003, f. & cert. ef. 12-31-03; REV 6-2003, f. & cert. ef. 12-31-03; REV 12-2004, f. 12-29-04, cert. ef. 12-31-04; REV 12-2007, f. 12-28-07, cert. ef. 1-1-08; REV 8-2012, f. 12-18-12, cert. ef. 1-1-13; REV 1-2013, f. & cert. ef. 3-28-13; Renumbered from 150-311.806(A), REV 27-2016, f. 8-12-16, cert. ef. 9-1-16; REV 80-2016, f. 12-28-16, cert. ef. 1-1-17

150-321-0340

Minimum Stocking and Acreage Requirements for Designation as Forestland in Western Oregon

(1) "Contiguous acres" means acres touching along a boundary or at a point.

(a) Includes acres separated by a public or county road, state highway or any stream other than a large stream as identified by the state forester using the water classification system in OAR 629-635-0200.

(b) Does not include acres separated by an interstate highway or large stream.

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(2) To qualify, the land must have growing upon it at least the number of established trees per acre set by the state forester in OAR 629-610-0020. The established trees must be of a marketable species acceptable to the state forester as described or set forth in OAR 629-610-0050.

(3) If the land does not meet the minimum requirements of section (1) of this rule, the owner must give the assessor a written management plan for establishing trees to meet the minimum stocking requirements. The plan must contain and meet the following requirements:

(a) A description of the area that states the location, number of acres, ground cover, present stocking, steepness of slope, and aspect (the direction the slope faces).

(b) A list of needed site preparation requirements prior to planting. Examples include brush or grass removal, rodent eradication, disease and insect problem resolution, slash disposal, protection from grazing or browsing animals, and tillage of soil.

(c) Planting information that lists the species to be planted, time of year that planting will take place, number of trees per acre to be planted, and method of planting.

(d) At least 20 percent, but not less than two acres, of the area in the plan must be planted by December 31 of the first assessment year that the land is designated as forestland. Each additional year thereafter, a minimum of 20 percent of the area must be planted. At the end of the fifth year after the assessor approves the designation, 100 percent of the area in the plan must be planted. The assessor may grant extensions to fulfilling planting requirements if a loss of planted stock occurs due to conditions beyond the control of the landowner.

(4) To qualify, the area to be designated must be at least two contiguous acres in common ownership. All other property located within the same county that is owned by the same common owner of at least two contiguous acres may also qualify for forestland designation if it meets the stocking requirements.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 321.358
Hist.: 12-6-82, 12-31-82; RD 3-1996, f. 12-23-96, cert. ef. 12-31-96; REV 11-2000, f. 12-29-00, cert. ef. 12-31-00; Renumbered from 150-321.358(2), REV 12-2004, f. 12-29-04, cert. ef. 12-31-04; Renumbered from 150-321.358(4), REV 70-2016, f. 8-15-16, cert. ef. 9-1-16; REV 80-2016, f. 12-28-16, cert. ef. 1-1-17

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

(1) "Contiguous acres" means acres touching along a boundary or at a point.

(a) Includes acres separated by a public or county road, state highway or any stream other than a large stream as identified by the state forester using the water classification system in OAR 629-635-0200.

(b) Does not include acres separated by an interstate highway or large stream.

(2) To qualify, the land must have growing upon it at least the number of established trees per acre set by the state forester in OAR 629-610-0020. The established trees must be of a marketable species acceptable to the state forester as described or set forth in OAR 629-610-0050.

(3) If the land does not meet the minimum requirements of section (1) of this rule, the owner must give the assessor a written management plan for establishing trees to meet the minimum stocking requirements. The plan must contain and meet the following requirements:

(a) A description of the area that states the location, number of acres, ground cover, present stocking, steepness of slope, and aspect (the direction the slope faces).

(b) A list of needed site preparation requirements prior to planting. Examples include brush or grass removal, rodent eradication, disease and insect problem resolution, slash disposal, protection from grazing or browsing animals, and tillage of soil.

(c) Planting information that lists the species to be planted, time of year that planting will take place, number of trees per acre to be planted, and method of planting.

(d) At least 20 percent, but not less than two acres, of the area in the plan must be planted by December 31 of the first assessment year that the land is designated as forestland. Each additional year thereafter, a minimum of 20 percent of the area must be planted. At the end of the fifth year after the assessor approves the designation, 100 percent of the area in the plan must be planted. The assessor may grant extensions to planting requirements if a loss of planted stock occurs due to conditions beyond the control of the landowner.

(4) Certain lands do not support sufficient stocking requirements; however, when the use of these lands supports sound management practices

and the harvest of forest crops on surrounding lands, these lands may be designated as forestland. Examples of such lands include:

(a) Roads, landings, and rock pits used for forest roads that are necessary for forest management and the harvest of forest crops.

(b) Land that is subject to power transmission and distribution easements or gas line easements that are not centrally assessed under ORS 308.505-308.665 or 308.805-308.820 if the lands would otherwise qualify for designation as forestland if, but for the easement, sufficient stocking of trees would be permitted.

(5) To qualify for designation, the land must meet the minimum stocking requirements of sections (1) or (2) of this rule. However, when the circumstances listed in section (3) of this rule are present, and at least 80 percent of the total area applied for meets the minimum stocking requirements, the total area of the application will be assessed as designated forestland.

(6) To qualify, the area to be designated must be at least two contiguous acres in common ownership. All other property located within the same county that is owned by the same common owner of at least two contiguous acres may also qualify for forestland designation if it meets the stocking requirements.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 321.805
Hist.: 11-71; TC 10-1978, f. 12-5-78, cert. ef. 12-31-78; RD 15-1982, f. 12-6-82, cert. ef. 12-31-82; RD 9-1989, f. 12-18-89, cert. ef. 12-31-89; RD 3-1996, f. 12-23-96, cert. ef. 12-31-96; REV 11-2000, f. 12-29-00, cert. ef. 12-31-00; Renumbered from 150-321.805, REV 12-2004, f. 12-29-04, cert. ef. 12-31-04; Renumbered from 150-321.839(4), REV 71-2016, f. 8-15-16, cert. ef. 9-1-16; REV 80-2016, f. 12-28-16, cert. ef. 1-1-17

Rule Caption: Interest rates, interest start dates, definition of interest period.

Adm. Order No.: REV 81-2016

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Rules Amended: 150-305-0140, 150-305-0142

Subject: 150-305-0140 - Amend to update annual interest rate charged on deficiencies and delinquencies from 4% to 5% based on increase of IRS' 2016 third quarter interest rate, per ORS 305.220; clarify the definition of 'interest period'.

150-305-0142 - Amend to update annual interest rate paid on refunds from 4% to 5% based on increase of IRS' 2016 third quarter interest rate, per ORS 305.220; clarify the definition of 'interest period'; define the refund interest start dates for personal income taxes, corporation taxes (excise and income) and other tax programs.

Rules Coordinator: Lois Williams—(503) 945-8029

150-305-0140 Interest on Deficiencies and Delinquencies

(1) Adjustment to statutory rate. For interest periods beginning on or after January 1, 2017, unless otherwise provided by law, every deficiency and delinquency arising under any law administered by the Department of Revenue will bear interest at the rate of 0.4167 percent per month (5 percent annually). For a fraction of a month, interest will be computed at 0.0137 percent per day. For historic interest rates, see section (4) of this rule.

(2) Interest start date. The interest start date for deficiencies and delinquencies will be one day after the due date of the return, excluding extensions.

(3) Interest periods. An interest period is one full calendar day beginning with the interest start date. Interest will be computed on a daily basis for a fraction of a month. The daily rate is based on a 365-day year.

(4) Interest rates. The following table shows interest rates and interest periods used by the Oregon Department of Revenue to compute interest due from taxpayers on deficiencies and delinquencies.

Percentage Rates	Effective date	Annual rate	Monthly rate	Daily rate
Prior to January 1, 1969	—	6	0.5	—
January 1, 1969	—	8	0.6667	—
September 13, 1975	—	12	1.0	—
June 1, 1982	—	18	1.5	0.0493
August 1, 1986	—	17	1.4167	0.0466
January 1, 1987	—	16	1.3333	0.0438
January 1, 1988	—	11	0.9167	0.0301
January 1, 1993	—	8	0.6667	0.0219
January 1, 1995	—	10	0.8333	0.0274
January 1, 1999	—	9	0.75	0.0247
January 1, 2001	—	10	0.8333	0.0274
February 1, 2002	—	8	0.6667	0.0219
February 1, 2003	—	7	0.5833	0.0192

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January 1, 2004 — 6 — 0.5 — 0.0164
January 1, 2005 — 5 — 0.4167 — 0.0137
January 1, 2006 — 7 — 0.5833 — 0.0192
January 1, 2007 — 9 — 0.75 — 0.0247
January 1, 2009 — 6 — 0.5 — 0.0164
January 1, 2010 — 5 — 0.4167 — 0.0137
January 1, 2013 — 4 — 0.3333 — 0.0110
January 1, 2017 — 5 — 0.4167 — 0.0137

(5) Decimal places used in computations. In all computations, the interest rate will consist of six decimal places.

4/16/2014–1/15/2015 9 mos. @ .3333% = \$ 15.00
1/16/2015–1/15/2016 12 mos. @ .3333% = 20.00
1/16/2016–12/15/2016 11 mos. @ .3333% = 18.33
12/16/2016–12/31/2016 16 days @ .0110 = .88
1/1/2017–1/31/2017 1 month @ .4167% = 2.08
2/1/2017–2/25/2017 25 days @ .0137% = 1.71
Total interest \$ 58.00

Prior to January 1, 2017, the new interest rate, even though effective on the first day of a month, does not apply until the first day of the first interest period that begins after the effective date. In this example, the first interest period begins on the 16th of the month. As of January 1, 2017, each day is its own interest period and the new rate applies on January 1st.

(6) This rule is effective January 1, 2017 and applies to deficiencies or delinquencies owed on or after January 1, 2017.

Stat. Auth.: ORS 305.100 & 305.220

Stats. Implemented: ORS 305.220

Hist.: RD 2-1986, f. 7-2-86, cert. ef. 8-1-86; RD 8-1986, f. & cert. ef. 12-31-86; RD 14-1987, f. 12-18-87, cert. ef. 1-16-88; RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; RD 7-1992, f. & cert. ef. 12-29-92; RD 5-1993, f. 12-30-93, cert. ef. 12-31-93; RD 7-1994, f. 12-15-94, cert. ef. 12-30-94; REV 7-1998, f. 11-13-98, cert. ef. 12-31-98; REV 12-2000, f. & cert. ef. 12-29-00, cert. ef. 12-31-00; REV 9-2001, f. 12-31-01, cert. ef. 2-1-02; REV 9-2002, f. 12-31-02, cert. ef. 1-31-03; REV 4-2003, f. & cert. ef. 12-31-03; REV 10-2004, f. 12-29-04, cert. ef. 12-31-04; REV 5-2005, f. 12-30-05, cert. ef. 1-1-06; REV 11-2006, f. 12-27-06, cert. ef. 1-1-07; REV 16-2008, f. 12-26-08, cert. ef. 1-1-09; REV 9-2009, f. 12-21-09, cert. ef. 1-1-10; REV 10-2012, f. 12-18-12, cert. ef. 1-1-13; REV 3-2013, f. & cert. ef. 3-28-13; Renumbered from 150-305.220(1), REV 47-2016, f. 8-13-16, cert. ef. 9-1-16; REV 81-2016, f. 12-28-16, cert. ef. 1-1-17

150-305-0142

Interest on Refunds

(1) Adjustment to statutory rate. For interest periods beginning on or after January 1, 2017, unless specifically provided by statute or by rule, every refund arising under any law administered by the Department of Revenue will bear interest at the rate of 0.4167 percent per month (5 percent annually). For a fraction of a month, interest will be computed at .0137 percent per day. For historic rates, see section (6) of this rule.

(2) Interest start date.

(a) As provided in OAR 150-314-0240, when a refund of individual income tax is attributable to tax withheld by an employer, or when a refund of individual income tax, corporate excise tax, or corporate income tax is attributable to estimated taxes, the interest starting date is 45 days after the return was due or 45 days after the return was filed, whichever is later.

(b) The interest start date for a refund of estate tax is 45 days after the return was due, 45 days after the original return was filed, or 45 days after the tax was paid, whichever is later.

(c) The interest start date for refunds not described in (2)(a) or (2)(b) is 45 days after the return was due or 45 days after the date the tax was paid, whichever is later.

(3) Interest periods. An interest period is one full calendar day beginning with the interest start date. Interest will be computed on a daily basis for a fraction of a month. The daily rate is based on a 365-day year.

(4) Interest rates. For interest periods beginning on or after June 1, 1983, the interest rate paid on refunds will be the same as the interest rate charged on deficiencies and delinquencies.

(5) Decimal places used in computations. In all computations, the interest rate will consist of six decimal places.

(6) The following table shows interest rates used by the Oregon Department of Revenue to compute interest due to taxpayers on refunds.

Percentage Rates.

Effective date	Annual rate	Monthly rate	Daily rate
January 1, 1969	8	0.6667	—
September 13, 1975	6	0.5	—
June 1, 1982	12	1.0	0.0329
June 1, 1983	18	1.5	0.0493
August 1, 1986	17	1.4167	0.0466
January 1, 1987	16	1.3333	0.0438
January 1, 1988	11	0.9167	0.0301
January 1, 1993	8	0.6667	0.0219
January 1, 1995	10	0.8333	0.0274
January 1, 1999	9	0.75	0.0247
January 1, 2001	10	0.8333	0.0274
February 1, 2002	8	0.6667	0.0219
February 1, 2003	7	0.5833	0.0192
January 1, 2004	6	0.5	0.0164
January 1, 2005	5	0.4167	0.0137
January 1, 2006	7	0.5833	0.0192
January 1, 2007	9	0.75	0.0247

January 1, 2009 — 6 — 0.5 — 0.0164
January 1, 2010 — 5 — 0.4167 — 0.0137
January 1, 2013 — 4 — 0.3333 — 0.0110
January 1, 2017 — 5 — 0.4167 — 0.0137

Example 1: Debby files her 2013 return on April 15, 2014. Debby later files a 2013 amended return on April 10, 2017, asking for a refund of \$500. The refund is paid on December 22, 2017. The interest is computed as follows:

5/30/2014–12/29/2016 31 mos. @ .3333% = \$51.66
12/30/2016–12/31/2016 2 days @ .0110% = 0.11
1/1/2017–11/30/2017 11 mos. @ .4167% = 22.92
12/1/2017–12/22/2017 22 days @ .0137% = 1.51
Total interest \$76.20

Prior to 2017, the new interest rate, even though effective on the first day of a month, does not apply until the first day of the first interest period that begins after the effective date. In this example, the first interest period begins on the 30th of the month. As of January 1, 2017 and thereafter, each day is an interest period and the new rate applies when it is first effective, in this case on January 1, 2017.

Example 2: Tom filed his 2015 return and paid the tax due on April 6, 2016. On November 1, 2016, Tom filed a 2015 amended return to claim a refund of \$1,000. The refund was paid on December 11, 2017. The interest start date is May 30, 2016, the 45th day after the return was due. The interest is computed as follows:

5/30/2016–12/29/2016 7 mos. @ .3333% = \$ 23.33
12/30/2016–12/31/2016 2 days @ .0110% = 2.2
1/1/2017–11/30/2017 11 mos. @ .4167% = 45.84
12/1/2017–12/11/2017 11 days @ .0137% = 1.51
Total interest \$ 70.90

Stat. Auth.: ORS 305.100 & 305.220

Stats. Implemented: ORS 305.220

Hist.: 5-5-82, 6-15-82; 12-31-82, Renumbered from Ch. 16. Or Laws 1982 (2nd SS) to 150-314.415(1)(a); 12-31-85; 12-31-86; Renumbered from 150-314.415(1)(a); RD 15-1987, f. 12-10-87, cert. ef. 12-31-87, Renumbered from 305.220; RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; RD 7-1992, f. & cert. ef. 12-29-92; RD 7-1993, f. 12-30-93, cert. ef. 12-31-93; RD 7-1994, f. 12-15-94, cert. ef. 12-30-94; REV 7-1998, f. 11-13-98, cert. ef. 12-31-98; REV 12-2000, f. & cert. ef. 12-29-00, cert. ef. 12-31-00; REV 9-2001, f. 12-31-01, cert. ef. 2-1-02; REV 9-2002, f. 12-31-02, cert. ef. 1-31-03; REV 4-2003, f. & cert. ef. 12-31-03; REV 10-2004, f. 12-29-04, cert. ef. 12-31-04; REV 5-2005, f. 12-30-05, cert. ef. 1-1-06; REV 11-2006, f. 12-27-06, cert. ef. 1-1-07; REV 11-2007, f. 12-28-07, cert. ef. 1-1-08; REV 16-2008, f. 12-26-08, cert. ef. 1-1-09; REV 9-2009, f. 12-21-09, cert. ef. 1-1-10; REV 10-2012, f. 12-18-12, cert. ef. 1-1-13; REV 3-2013, f. & cert. ef. 3-28-13; Renumbered from 150-305.220(2), REV 47-2016, f. 8-13-16, cert. ef. 9-1-16; REV 81-2016, f. 12-28-16, cert. ef. 1-1-17

Rule Caption: Extension of time to pay estate tax; enforcement of corporate e-file mandate.

Adm. Order No.: REV 82-2016

Filed with Sec. of State: 12-28-2016

Certified to be Effective: 1-1-17

Notice Publication Date: 11-1-2016

Rules Amended: 150-118-0150, 150-314-0150

Subject: 150-118-0150 - Amend to clearly identify when a request for an extension to pay the estate tax must be received; specify that fluctuations in the market value of property will not generally grant reasonable cause for an extension of time to pay the estate tax.

150-314-0150 - Amend to provide that the Department of Revenue may reject non-electronically filed corporate tax returns that are required to be filed electronically by the taxpayer.

Rules Coordinator: Lois Williams—(503) 945-8029

150-118-0150

Extension of Time to Pay Tax

(1) An executor may request an extension of time to pay the estate tax. The extension request must be in writing and submitted to the department by the date the estate return is due, or 30 days from the date shown on a notice of deficiency. Collateral determined acceptable by the department must be secured for payment of the estate tax. An extension to pay tax does not eliminate penalties for late filing of a return, and interest continues to accrue on unpaid tax at the rate provided in OAR 150-305-0140. See OAR 150-118-0170.

(a) If a federal extension of time to pay has been obtained and acceptable collateral is secured for payment of the Oregon estate tax, the department will grant an extension to pay the Oregon estate tax for the same period of time as an approved federal extension. The executor must submit the Oregon extension request in writing and the estate must secure acceptable collateral for payment of the Oregon estate tax. A copy of the accepted federal extension must be submitted with the Oregon return.

(b) If reasonable cause exists and acceptable collateral is provided to the department, the department may grant an extension of time for payment of estate tax for up to 14 years, or, in the case of an estate tax deficiency, for a period of up to four years. If a federal extension of time to pay federal estate tax has been granted, the department may extend additional time for the payment of Oregon estate tax for up to 14 years if reasonable cause exists and collateral acceptable to the department is provided.

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Renumbered from 150-118.225, REV 9-2016, f. 8-10-16, cert. ef. 9-1-16; REV 82-2016, f. 12-28-16, cert. ef. 1-1-17

(2) In general, reasonable cause exists if:

(a) The estate can pay the tax only by disposing of property for less than market value or by borrowing money at a rate in excess of the mortgage money market (on terms that would inflict loss on the estate), or

(b) The gross taxable estate includes a beneficial interest in one or more closely held businesses whose value exceeds either 35 percent of the gross taxable estate or 50 percent of the net taxable estate. For purposes of this rule:

(A) "Interest in a closely held business" means, as determined immediately before the decedent's death, an interest that was:

(i) An interest as a proprietor in a trade or business carried on as a proprietorship;

(ii) An interest as a partner in a partnership carrying on a trade or business, if the gross taxable estate includes 20 percent or more of the total capital interest in that partnership, or the partnership had 15 or fewer partners;

(iii) Stock in a corporation carrying on a trade or business, if 20 percent or more of the voting stock of such corporation is included in the gross taxable estate, or such corporation had 15 or fewer shareholders. Stock, or a partnership interest, that is held by spouses in a marriage as community property or as joint tenants, tenants by the entirety, or tenants in common, is treated as owned by one shareholder or one partner, whichever is applicable.

(B) "Trade or business" does not include an investment or holding company;

(C) An extension only applies to the portion of tax attributable to the closely held business. To determine the portion of tax attributable to the closely held business, divide the value of the interest in the closely held business by the taxable estate amount, and multiply that ratio by the computed net tax.

Example 1: A's estate assets included a retail store valued at \$900,000 that had been operated by the decedent. Listed securities, cash, a family residence and miscellaneous personal effects made up the balance. The taxable estate was \$1,300,000. The department may grant an extension for the payment of tax on the portion attributable to the value of the store; i.e. \$900,000 divided by \$1,300,000 multiplied by tax owed.

Example 2: B's taxable estate of \$1,400,000 included \$950,000 of stock in a closely held corporation. The balance of the property was listed securities and personal effects. The corporation was a holding company with the majority of corporate assets invested in real estate. The estate could not show that money could only be borrowed on terms that would inflict loss upon the estate. The department will not grant an extension of time to pay the tax.

Example 3: C's taxable estate of \$2,100,000 included farm land valued at \$1,050,000. The balance of the estate was real property, listed securities, cash and personal effects. The estate leased the farm land for cash rent, which is considered an investment in real property and not a trade or business; the department will not grant an extension for payment of tax.

Example 4: D's taxable estate of \$1,200,000 included a tree farm valued at \$800,000. The farm consisted of all pre-merchantable timber. The estate demonstrated that the farm could only be sold at a sacrifice price in a depressed market and that money could only be borrowed on terms that would inflict loss upon the estate. The department may grant an extension for payment of the tax that is attributable to the tree farm's value of \$800,000.

(3) For purposes of subsection (2)(a) of this rule, if a liquid market exists for property, then fluctuations in the market value of the property will not create reasonable cause for an extension of time to pay the estate tax. However, if no liquid market exists for the property and the lack of a liquid market would require the estate to sell the property for less than its market value, the department may determine that there is reasonable cause for an extension.

(4) The department generally will accept the following as collateral for purposes of extending the date for payment of tax:

(a) A first mortgage or trust deed on real property with a value at least double the amount of the tax paid on extension;

(b) A surety bond executed by a corporation licensed to do business in the State of Oregon. The bond must be at least double the amount of the tax paid on extension and must be renewed every five years.

(5) Collateral must be received within 60 days from the date the estate return is due, or within 60 days from the date the estate return is filed, whichever is earlier.

(6) The executor must make payments in at least equal annual installments for the tax paid on extension, plus accrued interest. The department may cancel an extension of time to pay and collect the tax plus interest if any installment is not paid on or before its due date.

(7) The department may cancel an extension of time to pay and collect the tax plus interest if the value of the interest in a closely held business is reduced by one-third or more through sale, exchange or other disposition, or through aggregate withdrawals of money or other property.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 118.225

Hist.: 12-31-77; TC 9-1978, f. 12-5-78, cert. ef. 12-31-78; TC 19-1979, f. 12-20-79, cert. ef. 12-31-79; RD 4-1997, f. 9-12-97, cert. ef. 12-31-97; REV 10-2009, f. 12-21-09, cert. ef. 1-1-10; REV 6-2012, f. 7-20-12, cert. ef. 8-1-12; REV 8-2013, f. & cert. ef. 12-26-13;

150-314-0150

Requirement to File Returns Electronically (Corporation E-file Mandate)

(1) All corporations required to electronically file their federal corporation tax return are required to electronically file their Oregon corporation tax return. A paper tax return filed by a corporation required to electronically file its Oregon corporation tax return may be rejected, unless a waiver request has been approved by the department prior to the filing of the paper return.

(2) Waivers.

(a) A waiver of the electronic filing requirement granted by the Internal Revenue Service (IRS) will be accepted by the department as a waiver to the mandate under section (1). The corporation must notify the department in writing when such a waiver is granted in accordance with the department's instructions.

(b) In addition to a waiver allowed under subsection (a), the department may grant a waiver of the mandate in section (1) if the following conditions are met:

(A) The corporation requests a waiver in accordance with the department's instructions; and

(B) The corporation's facts and circumstances are such that complying with the mandate would cause the corporation an undue financial hardship. The corporation's refusal to purchase or use the requisite software or computer equipment does not, in and of itself, satisfy the conditions for a waiver under this subsection.

(c) When circumstances warrant, the department may issue an administrative waiver of the mandate in section (1) when the department determines it is necessary to promote the effective and efficient administration of the tax system.

(3) If an electronic tax return cannot be accepted for processing electronically, the corporation must contact the department for assistance in correcting the rejected return errors. If the rejected return errors cannot be corrected, the corporation must receive authorization from the department prior to filing a paper return.

(4) This rule is applicable to corporation tax returns filed for tax years beginning on or after January 1, 2011.

Stat. Auth.: ORS 305.100 & 314.364

Stats. Implemented: 314.364

Hist.: REV 4-2011, f. 12-30-11, cert. ef. 1-1-12; Renumbered from 150-314.HB2071(A) by REV 6-2012, f. 7-20-12, cert. ef. 8-1-12; Renumbered from 150-314.364(A), REV 32-2016, f. 8-12-16, cert. ef. 9-1-16; REV 82-2016, f. 12-28-16, cert. ef. 1-1-17

Rule Caption: Information returns and W-2 penalties, information return filing requirements, tax compliance certificates.

Adm. Order No.: REV 83-2016

Filed with Sec. of State: 12-28-2016

Certified to be Effective: 1-1-17

Notice Publication Date: 11-1-2016

Rules Adopted: 150-418-0010

Rules Amended: 150-314-0140, 150-316-0359

Subject: 150-314-0140 - Amend definition of what constitutes "knowingly" for assessing the enhanced penalty of \$250 per information return to include the requirement of an employer being assessed the lower penalty before being eligible for the enhanced penalty. Amend the rule to require all 1099s to be filed electronically with the department and remove the exception for issuers of under 10 forms 1099.

150-316-0359 - Amend definition of what constitutes "knowingly" for assessing the enhanced penalty of \$250 per W-2 to include the requirement of an employer being assessed the lower penalty before being eligible for the enhanced penalty. Mandate electronic filing of the form WR starting in 2018. Remove March 31 due date for W-2s.

150-418-0010 - Establish administrative rule for child-caring agencies with the following criteria that defines "tax compliance" for personal income, withholding, transit, corporation excise, and corporation income tax programs administered by DOR:

- All required returns or reports have been filed, whether timely or not, or, in the absence of a return or report, final assessments of tax have been issued by the department for the preceding three tax years and any tax period subsequent to the application date;

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- Tax is paid in full for PIT, withholding, transit, corporation excise, and corporation income tax programs; or
- The child-caring agency is in compliance with a department-approved payment plan for personal income, withholding, transit, corporation excise, and corporation income tax programs.

Rules Coordinator: Lois Williams—(503) 945-8029

150-314-0140

Information Returns

- (1) Definition. As used in this rule:
 - (a) “Information return,” as used in ORS 314.360(4) and sections (7) and (8) of this rule, means a federal form W-2 or 1099.
 - (b) “Payer” means any person required to issue a 1099-MISC, 1099-G, 1099-R, or a W-2G.
- (2) In general, taxpayers are required to file information returns as described in ORS 314.360 except as provided in this rule.
- (3) Any person that issues one or more information returns, where the recipient, winner, or the payer has an Oregon address, is required to file the information returns electronically with the department by the federal due dates. For purposes of this rule, information returns required to be filed electronically include:
 - (a) 1099-MISC Miscellaneous Income;
 - (b) 1099-G Certain Government Payments;
 - (c) 1099-R Distributions from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, etc.
 - (d) W-2G Certain Gambling Winnings.
- (4) For information regarding the reporting requirements of salaries and wages, see ORS 316.202 and related rules.
- (5) The department may grant an exception to this filing requirement in section (3) upon a showing of undue hardship. Undue hardship is based on the facts and circumstances specific to each payer and determined on a case-by-case basis.
- (6) For persons issuing fewer than 11 information returns:
 - (a) The requirement to file electronically begins with tax year 2017 forms due in 2018; and
 - (b) For information returns due before January 1, 2018, the department may require the filing of the return(s) as it deems necessary. If requested under this section, an information return that is due before January 1, 2018 must be provided within 30 days of the date of the department’s written request to be considered timely under ORS 305.217.
- (7) Penalties. The department will assess penalties, as described in ORS 314.360(4), if a payer fails to file an information return with the department by the due date as required under section (3) of this rule or files an incorrect or incomplete information return.
 - (a) An information return is incorrect or incomplete if one or more of the following circumstances exist:
 - (A) Identifying employee information is missing from the information return, such as first or last name or social security number.
 - (B) The information return contains an incorrect statement of state income tax withheld, federal income, or state income amounts. Obvious math or clerical errors are not considered an incorrect statement for this purpose.
 - (C) Other information is incorrect or missing on the information return.
 - (b) A payer knowingly fails to file an information return by the due date if:
 - (A) The information return was not received by the department on or before the due date of the corresponding federal return for the tax year under consideration;
 - (B) The payer has been assessed the penalty under ORS 314.360(4)(a) for one or more filing periods preceding the period at issue; and
 - (C) The payer fails to file the information return upon written request to file the information return by the department; or
 - (D) The department determines that the facts and circumstances in the particular case warrant penalty assessment.
 - (c) A payer knowingly files an incomplete, false or misleading information return if one or more of the following occur:
 - (A) A pattern of conduct exists by the payer of repeatedly filing incorrect information returns;
 - (B) The payer failed to correct the information return upon discovering incorrect information;
 - (C) The payer corrected the information return only upon written request to correct the information return by the department;

(D) The amount of the potential information return penalty is less than the cost of complying with the requirement to include correct information on the information return;

(E) The department determines that the facts and circumstances in the particular case warrant penalty assessment.

(d) A penalty may be assessed under ORS 314.360(4)(b) even though a prior penalty assessed under ORS 314.360(4)(a) was waived under OAR 150-305-0062.

(e) Payers issuing fewer than 11 information returns will not be assessed penalties imposed by this section for failing to file information returns due before January 1, 2018.

(8) If the payer fails to produce documentation to support the information return, as requested by the department, the department will use the best information available to determine the appropriate penalty assessment amount.

Stat. Auth.: ORS 305.100 & 314.360
Stats. Implemented: ORS 314.360

Hist.: 1958-59; 12-70; 12-19-75; RD 10-1986, f. & cert. ef. 12-31-86; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; RD 11-1988, f. 12-19-88, cert. ef. 12-31-88, Renumbered to 150-314.360?; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; RD 7-1993, f. 12-30-93, cert. ef. 12-31-93; RD 5-1994, f. 12-15-94, cert. ef. 12-31-94; REV 8-2010, f. 7-23-10, cert. ef. 7-31-10; REV 4-2011, f. 12-30-11, cert. ef. 1-1-12; REV 2-2014, f. & cert. ef. 7-31-14; Renumbered from 150-314.360, REV 32-2016, f. 8-12-16, cert. ef. 9-1-16; REV 83-2016, f. 12-28-16, cert. ef. 1-1-17

150-316-0359

Withholding: Annual Report by Employer

- (1) Definitions. As used in this rule:
 - (a) “Employer” has the meaning given that term in ORS 316.162 and also includes lenders, sureties and other persons subject to withholding and reporting requirements under ORS 316.169.
 - (b) “Payer” has the meaning given that term in ORS 316.189(1)(g).
 - (c) “Payroll service provider” is any person that prepares payroll tax returns on behalf of another person for remuneration.
 - (d) “W-2” means the federal form W-2 required to be filed under 26 USC § 6051.
- (2) Withholding Statements.
 - (a) Every employer or other payer must complete an individual withholding statement for each employee. The Oregon withholding statement must contain the same information as is required to be reported on a federal withholding statement including:
 - (A) Total state and local wages;
 - (B) State and local tax withheld during the calendar year; and
 - (C) The Oregon business identification number of the employer.
 - (b) The employer must use a federal withholding statement (W-2) for purposes of section (2) of this rule. If the employer or other payer is withholding from certain periodic payments as described in ORS 316.189, the employer or payer must use federal Form 1099-R for purposes of section (2) of this rule.
 - (c) The employer must provide a copy of the withholding statement to the employee within 31 days of the close of the calendar year. If an employee is terminated and requests a copy of the withholding statement, the employer must provide the form to the employee within 30 days of either the request or the final wage payment, whichever is later.
 - (d) The information in the withholding statement (W-2) must be filed electronically with the department.
 - (e) Under ORS 314.385, the due date for electronic filing of W-2s for Oregon purposes is the same as the federal due date for electronically filed W-2s.
- (3) Reconciliation Reports (Form WR).
 - (a) Every employer must file a summary of total compensation paid and Oregon tax withheld for each employee. This report must include a reconciliation of tax remitted to the department by the employer for the calendar year to the total of tax withheld from employees’ pay for the calendar year.
 - (b) The reconciliation report must be filed electronically with the department.
 - (c) If the reconciliation report is not filed within 30 days of the department’s notice to the employer of a failure to file, a \$100 failure-to-file penalty applies.
 - (d) If there is a difference between the amount paid to the department by the employer and the amount withheld by the employer from the employees’ wages, the employer must explain the difference on the report.
 - (e) The report due date is the same as the due date of the corresponding federal report. If the employer ceases doing business, the report is due within 30 days of termination of business.
 - (f) Section (3)(b) of this rule is effective for tax years beginning on or after January 1, 2017.

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(g) The department may grant an exception to the filing requirement in section (3) of this rule upon a showing of undue hardship. Undue hardship is based on the facts and circumstances specific to each payer and determined on a case-by-case basis.

(4) Penalties. The department will assess penalties, as described in ORS 316.202(5), if an employer or other payer fails to file W-2s by the due date as required under section (2)(e) of this rule or the employer or other payer files incorrect or incomplete W-2s.

(a) A W-2 is incorrect or incomplete if one or more of the following occur:

(A) Identifying employee information is missing, such as the first or last name or social security number.

(B) The W-2 contains an incorrect statement of state income tax withheld, federal income, or state income amounts. Obvious math or clerical errors are not considered an incorrect statement for this purpose.

(C) Other information is missing or incorrect on the W-2.

(b) An employer or other payer knowingly fails to file a W-2 by the due date if:

(A) The W-2 was not received by the department on or before the due date of the corresponding federal form W-2 for the tax year under consideration;

(B) The employer or other payer has been assessed the penalty under ORS 316.202(5)(a) for one or more filing periods preceding the period at issue; and

(C) The employer or other payer fails to file the W-2 upon written request to file by the department; or

(D) The department determines that the facts and circumstances in the particular case warrant penalty assessment.

(c) An employer or other payer knowingly files an incomplete, false or misleading W-2 if one or more of the following occur:

(A) The employer or other payer has a pattern of repeatedly filing incorrect W-2s;

(B) The employer or other payer failed to correct the W-2 upon discovering incorrect information;

(C) The employer or other payer issued a corrected W-2 upon written request of the department;

(D) The amount of the potential penalty is less than the cost of complying with the requirement to include correct information on the W-2;

(E) The department determines that the facts and circumstances in the particular case warrant penalty assessment.

(d) A penalty may be assessed under ORS 316.202(5)(b) even though a prior penalty assessed under ORS 316.202(5)(a) was waived under OAR 150-305-0062.

(5) If the employer or other payer fails to produce documentation to support the information on the W-2 or the number of W-2s required to be filed, the department will use the best information available to determine the appropriate penalty assessment amount.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.202
Hist.: 1-69 as 150-316.202(2); 11-73; 12-74; 12-19-75, Renumbered; RD 10-1983, f. 12-20-83, cert. ef. 12-31-83; RD 10-1984, f. 12-5-84, cert. ef. 12-31-84; RD 13-1987, f. 12-18-87, cert. ef. 12-31-87; RD 7-1992, f. & cert. ef. 12-29-92; RD 5-1993, f. 12-30-93, cert. ef. 12-31-93, Renumbered from 150-316.202(2)-(B); RD 7-1994, f. 12-15-94, cert. ef. 12-30-94; REV 7-1999, f. 12-1-99, cert. ef. 12-31-99; REV 16-2008, f. 12-26-08, cert. ef. 1-1-09; REV 2-2014, f. & cert. ef. 7-31-14; Renumbered from 150-316.202(3), REV 63-2016, f. 8-15-16, cert. ef. 9-1-16; REV 83-2016, f. 12-28-16, cert. ef. 1-1-17

150-418-0010

Tax Compliance Certificates (Child-Caring Agencies)

(1) For purposes of this rule, tax programs reviewed for compliance include:

- (a) Personal income tax;
- (b) Income tax withholding;
- (c) Transit payroll tax;
- (d) Corporation excise tax; and
- (e) Corporation income tax.

(2) The department may issue to a child-caring agency, as defined under ORS 418.205, a certificate that shows compliance with tax programs listed in section (1) of this rule upon request of a child-caring agency using forms approved by the department.

(3) A certificate may be issued to a child-caring agency under section (2) of this rule if:

(a) All required returns or reports have been filed, whether timely or not, or, in the absence of a return or report, a final assessment of tax has been issued by the department for the preceding three years and any tax period subsequent to the application date for certification; and

(b) Tax is paid in full for all subject tax program debts for the preceding three years from the application date for certification; or

(c) The child-caring agency is in compliance with a department-approved payment plan for all subject tax program debts for the preceding three years from the application date for certification.

Stat. Auth.: ORS 305.100, 418.255
Stats. Implemented: ORS 418.255
Hist.: REV 83-2016, f. 12-28-16, cert. ef. 1-1-17

Rule Caption: Personal Tax: Repealed tax credits: Long-term Care Insurance, Loss of Limbs, Elderly, Long-Term Care.

Adm. Order No.: REV 84-2016

Filed with Sec. of State: 12-28-2016

Certified to be Effective: 1-1-17

Notice Publication Date: 11-1-2016

Rules Repealed: 150-315-0190, 150-316-0075, 150-316-0100, 150-316-0210, 150-316-0215, 150-316-0517

Subject: 150-315-0190 — Long-term care insurance premiums credit sunset. No carryforward. Repeal rule.

150-316-0075 — Credit for Loss of Use of Limb(s) sunset. No carryforward. Repeal rule.

150-316-0100 — Oregon Credit for the Elderly sunset. No carryforward. Repeal rule.

150-316-0210 — Credit for Elderly Care sunset. No carryforward. Repeal rule.

150-316-0215 — Credit for Elderly Care sunset; therefore, evidence of eligibility no longer applicable. Repeal rule.

150-316-0517 — Long-term care insurance premiums credit expired; therefore, addition no longer applicable. Repeal rule.

Rules Coordinator: Lois Williams—(503) 945-8029

Rule Caption: Personal Tax: Split Joint Liability, Information Returns, Composite Return, Agriculture Workforce Housing, Childcare tax credits.

Adm. Order No.: REV 85-2016

Filed with Sec. of State: 12-28-2016

Certified to be Effective: 1-1-17

Notice Publication Date: 11-1-2016

Rules Amended: 150-316-0435, 150-314-0485, 150-315-0070

Rules Repealed: 150-315-0080, 150-315-0082, 150-315-0084, 150-315-0120

Subject: 150-316-0435 — References a publication number that no longer exists. Delete reference.

150-314-0485 — Remove the references to ORS 314.760 and “multiple nonresident income tax returns” (i.e. delete section 4) and remove the term “attach” and replace with “include.”

150-315-0070 — Require the transfer statement for the Agricultural Workforce Housing credit to be submitted within 30 days of the transfer; specify that the transferor and transferee retain a copy of the transfer notice for their records; and eliminate the reference to the “BIN.”

150-315-0080 — Dependent Care Credit sunset. No carry forward. Repeal rule.

150-315-0082 — Dependent Care Assistance Credit sunset. No carry forward. Repeal rule.

150-315-0084 — Dependent Care Information and Referral Services Credit sunset. No carry forward. Repeal rule.

150-315-0120 — Working Family Child-Care Credit sunset. No carry forward. Repeal rule.

Rules Coordinator: Lois Williams—(503) 945-8029

150-316-0435

Petitioning Department to Equally Split Joint Liability

(1) A tax liability incurred by spouses filing a joint tax return is joint and several. Each spouse is responsible for the entire liability. However, the department may split a joint tax liability equally between two separated or divorced spouses. Either spouse may file a petition to split the joint liability equally between the spouses. In order to split the liability, the department must be satisfied that payment of the entire liability by the petitioning spouse will cause undue hardship on the petitioner and petitioner’s household. Mere inconvenience is insufficient to establish hardship. A statement

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in the divorce decree is also insufficient to relieve either spouse of the liability.

(2) The conditions listed below may constitute hardship. The examples given are not intended to be all-inclusive.

(a) Annual household income of the petitioning spouse, number of dependents and limited assets within the household are such that petitioner could not, in the department's opinion, pay the entire liability within five years.

Example 1: The petitioning spouse receives social security income with no other income and only minimal assets.

Example 2: The petitioning spouse earns \$20,000 annually, is not receiving child or spousal support, and is the sole support of three adolescent dependents. Household assets are minimal. The liability owed jointly with the petitioner's ex-spouse is \$4,000.

(b) Major medical problems or a prolonged illness of either the petitioning spouse or a family member that either severely limits petitioning spouse's earning ability or creates an extreme financial burden on household resources.

Example 3: Petitioning spouse or family member has a major illness and has been forced to retire. The only household income is from social security.

Example 4: The petitioning spouse has a major illness and family is living on disability and attempting to meet high medical costs.

(3) Included within the petition must be:

(a) An explanation of how payment of the entire liability will cause undue hardship on the petitioner and petitioner's household;

(b) The current address of the non-petitioning spouse (if known);

(c) A statement of financial condition submitted on a form prescribed by the department;

(d) A copy of the legal separation or divorce decree; and

(e) An explanation of how the petitioner will pay the remaining liability.

(4) Following review of the petition, the department will either:

(a) Accept the petition, cause the liability to be split equally between spouses and notify both spouses of the action; or

(b) Notify the petitioning spouse the petition has not been accepted.

(5) Acceptance by the department of the petition is discretionary. If the department denies a petition to split a joint liability, the petitioner may appeal that denial to the Magistrate Division of the Oregon Tax Court.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 316.368

Hist.: RD 5-1993, f. 12-30-93, cert. ef. 12-31-93; RD 7-1994, f. 12-15-94, cert. ef. 12-30-94; REV 10-2013, f. 12-26-13, cert. ef. 1-1-14; Renumbered from 150-316.368, REV 65-2016, f. 8-15-16, cert. ef. 9-1-16; REV 85-2016, f. 12-28-16, cert. ef. 1-1-17

150-314-0485

Partnership Information Returns

(1) Partnership required to file. A partnership must file for Oregon an information return of its business activity and include other information as required by section (2) of this rule if the partnership:

(a) Has income that is derived from or connected with sources within Oregon; or

(b) Has one or more Oregon resident partners during the taxable year of the partnership.

(2) Information Required. Every partnership required to file a return under section (1) of this rule must file with Oregon:

(a) An Oregon Form OR-65 (Oregon Partnership Return of Income).

(b) An Oregon Depreciation Schedule if Oregon depreciation is different than federal.

(c) A copy of federal Form 1065 (U.S. Partnership Return of Income) or federal Form 1065-B (U.S. Return of Income for Electing Large Partnerships) and all attachments filed for federal. See section (3) for information regarding the submission of federal Schedule K-1s (Partner's Share of Income, Credits, Deductions, etc.).

(d) A schedule showing the disposition of all assets and liabilities if this is the final return of a terminated partnership. The schedule must include each asset's Oregon adjusted basis and fair market value.

(3) Federal Schedule K-1.

(a) The partnership must include a copy of each partner's federal Schedule K-1 if any of the following occurs during the partnership's taxable year:

(A) The partnership incurs a net loss (including capital losses or passive losses);

(B) There are changes to either the ownership structure or the profit/loss sharing percentages of the partnership; or

(C) Any Oregon modifications or amounts shown on the federal Schedule K (including guaranteed payments) are not divided according to each partner's partnership share of profits and losses.

(b) Exception. Partnerships that have no income connected with or derived from sources within Oregon and have no activity within Oregon must file a copy of the partner's federal Schedule K-1 only when:

(A) The partner was an Oregon resident partner at some time during the taxable year of the partnership; and

(B) Any of the situations described in paragraph (3)(a) occur. All other filing requirements of section (2) of this rule must still be satisfied.

(c) Substitute Schedule K-1. If the number of Schedule K-1s required to be included with the Oregon return exceeds ten, the partnership must include a summary of partner information in lieu of submitting each partner's Schedule K-1. The summary must include each partner's name, social security number or federal identification number, address, and profit/loss sharing percentage.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 314.724

Hist.: RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; RD 3-1995, f. 12-29-95, cert. ef. 12-31-95; RD 5-1997, f. 12-12-97, cert. ef. 12-31-97; Renumbered from 150-314.724, REV 34-2016, f. 8-12-16, cert. ef. 9-1-16; REV 85-2016, f. 12-28-16, cert. ef. 1-1-17

150-315-0070

Agriculture Workforce Housing Credit

(1) General Information.

(a) A credit is available to taxpayers who construct, install, or rehabilitate housing for agricultural workers and their immediate families.

(b) The credit is available for agriculture workforce housing projects that are physically begun on or after January 1, 1990.

(c) Depreciation and amortization expenses associated with the agriculture workforce housing project are not decreased by the amount of the tax credit allowed.

(d) The taxpayer's adjusted basis in the housing project is not decreased by any tax credits allowed.

(e) For tax years beginning on or after January 1, 2004, ORS 315.167 provides that the owner or operator of agriculture workforce housing or a contributor as described in ORS 315.163(6) must apply to the Oregon Housing and Community Services Department (OHCS) for a letter of credit approval no later than six months after beginning an agriculture workforce housing project.

(2) Qualifications for the Tax Credit.

(a) The agriculture workforce housing project must be located in Oregon to qualify for the credit.

(b) The housing project must be limited to occupancy by agricultural workers during the tax year in order to qualify for the credit. If the housing is occupied at any time during the year by persons other than agricultural workers and their immediate families, the housing will not qualify for the credit. Nor can the housing be used for any other function except housing for agricultural workers.

(c) The taxpayer claiming the credit must:

(A) Obtain a letter of credit approval from the OHCS; and

(B) Certify on an annual basis that any units that were occupied during the tax year were occupied only by agricultural workers or their immediate families. The letter of credit approval and the certification must be maintained in the taxpayer's records and made available to the department on request.

(d) The OHCS administers the application and eligibility process for this credit. See chapter 813, divisions 41 and 42 of the Oregon Administrative Rules, and contact OHCS for more information.

(3) Computation of the Tax Credit For Projects Completed in Tax Years Beginning On or After January 1, 2002

(a) The credit is equal to 50 percent of the costs directly associated with the construction or rehabilitation of the agriculture workforce housing project including costs for financing, construction, excavation, installation, and permits. Construction includes acquisition of new or used prefabricated or manufactured housing. Acquisition costs of land and existing improvements on that land used for the project are not included in the computation.

(b) The credit first may be claimed in the year the project is completed or in any of the nine succeeding tax years. No more than 20 percent of the total credit may be claimed in any one tax year. The housing is not required to be occupied prior to the end of the tax year in which the project is completed in order for the credit to be claimed.

(c) Tax credits not used in a tax year may be carried forward for up to nine years. Any credit carried forward is used first, before the allowable current year credit.

(d) Costs of rehabilitation include capital expenditures only. The allowable costs are those incurred for additions or improvements to prop-

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erty (or related facilities) with a useful life of five years or more. Rehabilitation costs do not include the cost of acquiring the building or an interest in the building.

(4) Computation of the Tax Credit for Projects Completed in Tax Years Beginning before January 1, 2002. The credit is equal to 30 percent of costs described in subsection (3)(a) if completed after December 31, 1995, and 50 percent if completed before December 31, 1995. The credit is claimed in equal installments over a consecutive five-year period beginning in the year the agriculture workforce housing project is completed. The credits may be carried forward for up to five years. Otherwise, the computation of the credit is the same as specified in section (3) of this rule.

(5) Disallowance and Forfeiture of Tax Credit. The tax credit will be disallowed and any prior years' credits forfeited in the case of:

(a) Fraud or misrepresentation by the taxpayer to obtain the credit.

(b) A taxpayer who is an owner or operator who fails to substantially comply with occupational health and safety rules, regulations, or standards. The Department of Consumer and Business Services will notify the department of any agriculture workforce housing project failing to substantially comply with these standards.

(c) A taxpayer who is an owner or operator who fails to obtain required registration as an agriculture workforce camp with the Department of Consumer and Business Services.

(d) A taxpayer who is an owner or operator of an agriculture workforce housing project that is not operated by a person who holds a valid endorsement as a farmworker camp operator, if required under ORS 658.730.

(6) Sale of Agriculture Workforce Housing Project. If the agriculture workforce housing project is sold, the original investor may continue to claim the tax credit, provided all other provisions are met.

Example: LeRay began construction of an agriculture workforce housing project on his property on July 1, 2016. The project was completed on December 15, 2016, and on that date complied with the applicable health and safety standards. The housing was registered with the Department of Consumer and Business Services, and LeRay obtained endorsement as a farm camp operator. LeRay must claim the credit on his 2016 return, even though no units are occupied until 2017. If LeRay sells the property, he may continue to claim the credit only by obtaining a statement from the new owner of the property, certifying that any occupied units are occupied only by agricultural workers and their immediate families. Upon audit or examination, LeRay must provide a statement for each year in which the credit is claimed if requested by the department.

(7) Transfer of Credit to Contributor. For tax years beginning on or after January 1, 2005, an owner or operator may transfer up to 100 percent of the total credit the owner or operator may claim. For tax years beginning on or after January 1, 2002 and before January 1, 2005, an owner or operator of agriculture workforce housing may transfer to one or more contributors up to 80 percent of the total credit the owner or operator may claim. A contributor claiming the credit and the owner or operator must file a joint statement with the Department of Revenue within 30 days of transfer of the tax credit. The statement must include:

(a) The owner or operator's name and federal employer ID number (FEIN);

(b) The contributor's name and FEIN;

(c) The amount of the credit transferred;

(d) The total amount of credit before any transfer to contributors; and

(e) Signatures of or on behalf of the owner or operator and the contributor.

[Publications: Contact the Oregon Department of Revenue for information about how to obtain a copy of the publication referred to or incorporated by reference in this rule pursuant to ORS 183.360(2) and ORS 183.355(1)(b).]

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 315.164

Hist.: 9-20-89, 12-31-89; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91, Renumbered from 150-316.116(Note)-(B); RD 7-1993, f. 12-30-93, cert. ef. 12-31-93, Renumbered from 150-316.154; RD 5-1994, f. 12-15-94, cert. ef. 12-31-94; RD 3-1995, f. 12-29-95, cert. ef. 12-31-95; REV 8-2001, f. & cert. ef. 12-31-01; REV 8-2002, f. & cert. ef. 12-31-02; REV 6-2004, f. 7-30-04, cert. ef. 7-31-04; REV 1-2014, f. & cert. ef. 7-31-14; Renumbered from 150-315.164, REV 45-2016, f. 8-12-16, cert. ef. 9-1-16; REV 85-2016, f. 12-28-16, cert. ef. 1-1-17

Rule Caption: Personal Tax: Penalty Waivers, 1099/W2 Deduction, Conference, Working Family Dependent Care and Taxes Paid Credits.

Adm. Order No.: REV 86-2016

Filed with Sec. of State: 12-28-2016

Certified to be Effective: 1-1-17

Notice Publication Date: 11-1-2016

Rules Adopted: 150-315-0121, 150-315-0125

Rules Amended: 150-305-0068, 150-305-0130, 150-305-0202, 150-316-0086

Subject: 150-305-0068 — The Working Family Household and Dependent Care Credit penalty will not be waived under the department's discretionary waiver process.

150-305-0130 — Clarify the filing requirements which allow expenses in the form of wages or compensation paid to be deducted.

150-305-0202 — Expand the types of methods allowed to file appeals beyond regular mail.

150-316-0086 — Specify that a taxpayer must keep the "proof" listed in the rule in their tax records and provide to the department on request and not attach it to their return.

150-315-0121 — Clearly identify the differences between the Oregon and federal credits and provide guidance for taxpayers to appropriately claim the new Working Family Household and Dependent Care Credit.

150-315-0125 — Under ORS 315.264(6), the Director is able to assess a new penalty under the new Working Family Household and Dependent Care Credit. The details of this new penalty are described for taxpayers and practitioners.

Rules Coordinator: Lois Williams—(503) 945-8029

150-305-0068

Discretionary Penalty Waivers

(1) Taxpayers who believe a penalty was imposed improperly may contest the penalty as provided in OAR 150-305-0060.

(2) For rules governing the waiver of penalty imposed under ORS 314.402, 316.177 or 316.992 see OAR 150-314-0205; ORS 316.177(4); OAR 150-316-0284, or 150-316-9650.

(3)(a) The following penalties are eligible for waiver under this rule:

(A) The five percent penalty under ORS 314.400(1) or 321.560(2) for failure to file a report or return by the due date (five percent failure-to-file penalty);

(B) The five percent penalty under ORS 314.400(1) or 321.560(2) for failure to pay a tax by the due date (five percent failure-to-pay penalty);

(C) The additional 20 percent penalty under ORS 314.400(2)(a) or 321.560(3) for failure to file a report or return within three months after the due date (25 percent failure-to-file penalty);

(D) The additional 25 percent penalty under ORS 314.400(2)(b) for failure to file a report or return more than three months after the due date and the taxpayer receives a Notice of Determination and Assessment (50 percent failure-to-file penalty); and

(E) The 100 percent penalty under ORS 305.992 for failure to file three consecutive reports or returns by the due date of the third year (100 percent failure-to-file penalty).

(b) The following penalties are not eligible for waiver under this rule:

(A) The 100 percent penalty imposed under ORS 305.265(13), 314.400(6), or 321.560(4);

(B) Civil or criminal penalties imposed under ORS Chapter 323 (cigarette and other tobacco products);

(C) Any penalty if the taxpayer was involved in an "abusive tax shelter" as defined in ORS 314.402(4) for the year at issue or any penalty imposed under ORS 314.403, 314.404 or 314.406; or

(D) The Working Family Household and Dependent Care Credit penalty under ORS 315.264.

(4) Taxpayers, or a taxpayer's representative authorized under ORS 305.230, may request that a failure-to-file or failure-to-pay penalty listed in subsection (3)(a) of this rule be waived. A waiver request is timely filed if the department receives it any time before the tax, penalty, and interest are paid in full, or up to one year after the tax, penalty, and interest are paid in full. The department's decision will be based upon the facts and circumstances in each case. To qualify for waiver, the taxpayer must:

(a) Make a written request that explains the reason for the taxpayer's failure to file a return or failure to pay the tax as required by law;

(b) Pay the balance of the account (other than an amount equal to the penalty amount that may be waived under this rule) for the tax period for which waiver is requested; and

(c) Meet all filing requirements for the tax program that assessed the penalty. Filing requirements for the tax program that assessed the penalty may be found in forms, instructions, or other forms of media provided by the department.

(5) Penalty Waivers Due to Circumstance beyond Taxpayer Control. The department will waive all of any penalty listed in subsection (3)(a) of this rule for any tax program if there are circumstances beyond the taxpayer's

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er's control that caused the failure to file or pay. The circumstance must have existed at the time the return or payment was due. The return must be filed and the tax must be paid within a reasonable period of time depending on the facts and circumstances of each case.

(a) Circumstances that are accepted by the department as "circumstances beyond the taxpayer's control" include, but are not limited to:

(A) Death or serious illness of the taxpayer or a member of the taxpayer's immediate family;

(B) Destruction by fire, a natural disaster, or other casualty of the taxpayer's home, place of business, or records needed to prepare the returns.

(C) Unavoidable and unforeseen absence of the taxpayer from the state that began before the due date of the return;

(D) A department employee provided erroneous written information to the taxpayer that caused the taxpayer to incur the penalty if:

(i) The taxpayer's reliance on the erroneous written information caused the failure of the taxpayer to pay or file timely;

(ii) The taxpayer supplied the department with complete information connected with the erroneous written information given; and

(iii) The taxpayer could not reasonably be expected to be knowledgeable in the tax matter connected with the erroneous written information; or

(E) The taxpayer's reliance on incorrect advice from a professional the taxpayer could reasonably assume was knowledgeable and experienced in the tax involved if:

(i) The taxpayer's reliance on the advice caused the failure of the taxpayer to pay or file timely;

(ii) The taxpayer supplied the professional with complete information connected with the advice given; and

(iii) The taxpayer could not reasonably be expected to be knowledgeable in the tax matter connected with the erroneous advice.

(b) Circumstances that are not accepted by the department as "circumstances beyond the taxpayer's control" include, but are not limited to:

(A) Reliance on a professional to merely prepare a return on time;

(B) Reliance on an employee of the taxpayer to prepare a return on time;

(C) Inability of the taxpayer to pay the tax unless there is also a cause listed in subsection (5)(a) of this rule.

(6) One-time penalty waiver.

(a) When a taxpayer does not qualify for relief under section (5) of this rule, the department will consider for waiver all of the penalty imposed under ORS 314.400(1) (five percent failure to file or pay penalty), 314.400(2)(a)(A) (25 percent failure-to-file penalty), or 321.560 (five percent failure to file or pay penalty or the 25 percent failure-to-file penalty) for one tax period if the taxpayer has not already received relief under this section for any tax period in the tax program that assessed the penalty, or in a "closely-related" tax program defined in subsection (6)(b) of this rule; and

(A) The taxpayer did not know that the taxpayer was subject to the tax program in which the penalty was imposed; or

(B) Has a history of filing and paying on time.

(b) "Closely-related" tax programs are:

(A) Transit payroll and withholding tax programs authorized under ORS 316.162 to 316.221;

(B) Forest Products Harvest Tax and Small Tract Forestland Severance Tax programs authorized under ORS Chapter 321; or

(C) Cigarette tax and Other Tobacco Products tax programs authorized under ORS Chapter 323.

(7) Payroll Tax Penalty Waivers. Taxes due under ORS 316.162 to 316.221 are collected at the source of payment and are held in trust for eventual payment to the State of Oregon. Because failure to remit trust funds or timely file reports related to trust funds is considered a breach of fiduciary duty, the standards for waiver of penalties imposed for such failures are higher than standards for waiver of penalties for other tax programs. For penalties imposed on withholding or transit payroll taxes due under ORS 316.162 to 316.221 and that do not qualify for waiver under subsections (5) or (6) of this rule, the department will provide waiver of penalties as follows:

(a) The department will waive the entire penalty imposed under ORS 314.400(1) (five percent failure to file or pay penalty) or 314.400(2)(a)(A) (25 percent failure to file penalty) for the most recent quarter due if the taxpayer has not received a penalty in the eight quarters preceding the most recent quarter.

(b) The department will waive half of the penalties imposed under ORS 314.400(1), 314.400(2)(a)(A), and 314.400(2)(a)(B) (50 percent failure-to-file penalty) if a taxpayer files the tax return and pays the tax, penal-

ty, and interest as provided in section (4)(b) of this rule within six months of the date shown on the Notice of Determination and Tax Assessment.

(c) The department will waive part of the 100 percent failure-to-file penalty imposed under ORS 305.992 as follows:

(A) The department will waive 70 percent of the 100 percent failure-to-file penalty if the taxpayer

(i) Files a withholding or transit district return before receiving a Request to File Notice, Notice and Demand to File, Combined Failure-to-File Notice, or any combination of these notices from the department that relates to the return the taxpayer filed; and

(ii) Pays the tax, penalty, and interest as provided in section (4)(b) of this rule within six months of filing the return.

(B) The department will waive 50 percent of the 100 percent failure-to-file penalty if a taxpayer:

(i) Files a withholding or transit payroll return after receiving a notice listed in section (7)(c)(A)(i) of this rule; and

(ii) Pays the tax, penalty, and interest as provided in section (4)(b) of this rule within six months of the date on the most recent notice.

(C) The department will waive 25 percent of the 100 percent failure-to-file penalty if the taxpayer, after receiving a Notice of Determination and Assessment, files the tax return and pays the tax, penalty, and interest as provided in section (4)(b) of this rule within six months of the date of the notice.

(8) Additional Penalty Waivers. For penalties imposed on taxes other than withholding or transit payroll taxes due under ORS 316.162 to 316.221 and that do not qualify for waiver under subsections (5) or (6) of this rule, the department will provide waiver of penalties as follows:

(a) The department will waive half of the penalties imposed under ORS 314.400(1), 314.400(2)(a)(A), and 314.400(2)(a)(B) (50 percent failure-to-file penalty) if a taxpayer files the tax return within 30 days of the date shown on the Notice of Determination and Tax Assessment. The department will not waive this penalty for the tax program or "closely-related" tax program (as defined in subsection (6)(b) of this rule) that assessed the penalty if the taxpayer:

(A) Has not filed as required by the due date of the return (including extensions) for any three of the most recent six filing periods; or

(B) Has received the 100 percent failure-to-file penalty under ORS 305.992.

(b) The department will waive part of the 100 percent failure-to-file penalty imposed under ORS 305.992 as follows:

(A) The department will waive 70 percent of the 100 percent failure-to-file penalty if the taxpayer files a return before receiving a Request to File Notice, Notice and Demand to File, Combined Failure-to-File Notice, or any combination of these notices from the department that relates to the return the taxpayer filed.

(B) The department will waive 50 percent of the 100 percent failure-to-file penalty if the taxpayer files a return after receiving a notice listed in section (8)(b)(A) of this rule.

(C) The department will waive 25 percent of the 100 percent failure-to-file penalty if the taxpayer:

(i) Received a Notice of Determination and Assessment; and

(ii) Files the return (other than transit district or withholding returns) related to the Notice of Determination and Assessment.

(9) Late payments made in connection with electronic filing. The department will waive the entire five percent failure-to-pay penalty imposed under ORS 314.400(1) if the taxpayer:

(a) Files an Oregon tax return on or before the due date of the return, excluding extensions;

(b) Submits the Oregon tax return in the same transmission as a federal tax return, using a department-approved alternative to filing a paper return;

(c) Pays any federal tax shown as due on the transmitted federal return on or before the due date using an electronic form of payment such as a credit card, debit card, or electronic funds transfer (ACH Debit);

(d) Pays any tax shown as due on the Oregon return within 30 days of the date shown on the Notice of Tax Assessment sent to the taxpayer;

(e) Proves to the department that failure to pay Oregon tax was due to a good faith, mistaken belief of the taxpayer that the state tax had been paid; and

(f) Has not received relief under this section before.

(10) The provisions of this rule apply to discretionary waiver requests received on or after July 31, 2007.

Stat. Auth.: ORS 305.100, 305.145

Stats. Implemented: ORS 305.145

Hist.: REV 6-2007, f. 7-30-07, cert. ef. 7-31-07; Renumbered from 150-305.145(4), REV 48-2016, f. 8-13-16, cert. ef. 9-1-16; REV 86-2016, f. 12-28-16, cert. ef. 1-1-17

ADMINISTRATIVE RULES

150-305-0130

When Deduction for Amounts Paid as Wages or Remuneration Permitted

(1) An individual or entity will not be allowed a deduction for wages or payments to individuals for personal services rendered if:

(a) The individual or entity fails to file information returns, such as 1099's or W-2's, as required by ORS 314.360 or 316.202 or by administrative rule; or

(b) The individual or entity files information returns for payments made to an individual as if the individual was an independent contractor and upon examination the individual is determined to have actually been an employee.

Example 1: Brian owns a convenience store. Brian hired Elmer to help stock shelves in the evenings. Brian did not issue W-2's for Elmer. Brian's expense for payments made to Elmer for services rendered are not deductible.

Example 2: Assume the same facts in Example 1, except that Brian issued a Form 1099 to Elmer. Upon examination of Brian's return it was determined that Elmer was actually an employee, subject to withholding. Brian's expense for the payments made to Elmer for services rendered are not deductible.

(2) In the case of a failure to file as described in subsection (1)(a) of this rule, the expense will be allowed if the individual or entity can show there was a circumstance beyond the individual or entity's control that caused the failure to file returns as required by law. Refer to OAR 150-305-0068 for examples of situations that are accepted by the department as a circumstance beyond the individual or entity's control.

(3) In the case of a misclassification as described under subsection (1)(b) of this rule, the expense will be allowed if the individual or entity can show reasonable cause as to why the appropriate returns were not filed. Reasonable cause will be considered if the individual or entity had relied on information from:

- (a) Judicial precedents;
- (b) Published rulings;
- (c) Technical advice memorandums or letter rulings;
- (d) Past Internal Revenue Service audits in which there were no assessments of employment tax for amounts paid to other individuals who held a similar position;
- (e) A recognized practice of the industry;
- (f) Advice from someone who would be considered knowledgeable in tax matters; or
- (g) Written advice from an employee of the Department of Revenue.

(4) The preceding are factors that would influence the department's decision regarding the existence of reasonable cause. It is not intended to be an exclusive list.

Example 3: Martha owns a hair salon employing Sam as an independent contractor. She issues Sam a Form 1099 at the end of each year showing the amount paid to Sam that year for services rendered. The Internal Revenue Service had examined Martha's payroll in a prior year and no changes or assessments were made to Martha's return regarding her wage expense. Martha produces the audit reports that show the Internal Revenue Service accepted her characterization of Sam as an independent contractor. Therefore, Martha had reasonable cause to classify Sam as an independent contractor.

(5) For the purposes of section (3) of this rule, the evidence of reasonable cause must be clear and convincing.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 305.217

Hist.: RD 9-1992, f. 12-29-92, cert. ef. 12-31-92; REV 6-2007, f. 7-30-07, cert. ef. 7-31-07; Renumbered from 150-305.217, REV 47-2016, f. 8-13-16, cert. ef. 9-1-16; REV 86-2016, f. 12-28-16, cert. ef. 1-1-17

150-305-0202

Language Used to Request a Conference or File Written Objections

(1) Requesting a Conference. A conference request must be mailed, emailed, faxed, or sent through Revenue Online at the address provided in the Notice of Deficiency or accompanying statement. In all events, it must be received within 30 days of the date on the Notice of Deficiency or accompanying statement. It must state the reason for the protest as well as stating in what respect the determination is erroneous. Any language indicating that a taxpayer is requesting an opportunity to meet with a department representative to discuss an adjustment must be considered a conference request.

(2) Filing Written Objections.

(a) If a taxpayer disagrees with a deficiency notice, and does not want a conference, the taxpayer may file written objections with the department.

(b) A written objection must be mailed, emailed, faxed, or sent through Revenue Online at the address provided in the Notice of Deficiency or accompanying statement. In all events, the objection must be received within 30 days of the date on the Notice of Deficiency or accompanying statement. It must state the reason for the protest as well as stating in what respect the determination is erroneous.

(c) Any language indicating that a taxpayer disagrees with an adjustment but which doesn't convey an intent to meet with a department representative must be construed as written objections.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 305.265

Hist.: RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; RD 10-1986, f. & cert. ef. 12-31-86; Renumbered from 150-305.265(5)-(B); RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; REV 5-2000, f. & cert. ef. 8-3-00; Renumbered from 150-305.265(5), REV 47-2016, f. 8-13-16, cert. ef. 9-1-16; REV 86-2016, f. 12-28-16, cert. ef. 1-1-17

150-315-0121

Working Family Household and Dependent Care Credit

As used in this rule, references to the Internal Revenue Code (IRC) mean the IRC as in effect on the date specified in ORS 315.004.

(1) Definitions for the purposes of ORS 315.264 and this rule:

(a) "Employment-related expenses" means employment-related expenses as defined in IRC section 21, without regard to the limitation in IRC section 21(c). See section (3) of this rule.

(b) "Earned income" means earned income as provided in IRC section 21.

(c) "Qualifying individual" means a qualifying individual as defined in IRC section 21.

(d) "Federal poverty level" means the federal poverty level for the same tax year as determined by the federal Department of Health and Human Services.

(e) "Household size" generally means the number of individuals, not to exceed eight, who are related by birth, marriage, or adoption, living in the home, and are allowed as exemptions on the taxpayer's federal return. There are exceptions for disabled qualifying individuals and children whose parents are divorced, legally separated, or permanently living apart. See section (5) of this rule for those household exceptions.

Example 1: Adam and Maggie are married and have one qualifying individual. Maggie is a full-time student for 12 months in 2016. They paid \$4,000 in employment-related expenses. Their adjusted gross income is \$39,000, which is Adam's wages. Maggie has no earned income. Because Maggie was a full-time student for 12 months of the year, she is considered to have \$3,000 (\$250 x 12) in attributable earned income. Their credit amount will be a percentage of \$3,000, which is the least of their employment-related expenses (\$4,000), the expense limitation (\$12,000 for one qualifying individual), his earned income (\$39,000), or her earned income (\$3,000).

Example 2: Sophia and Tyler live together but are not married; they file separate tax returns. They are the parents of two children, Ken and Leah. Sophia and Tyler provide equal support to the children. However, because Sophia's adjusted gross income is higher than Tyler's, neither Ken nor Leah is a qualifying child of Tyler unless Sophia releases the exemption for that child to Tyler. Sophia releases the exemption for Ken to Tyler, but not for Leah. Sophia claims Leah and has a household size of 2. Tyler claims Ken and has a household size of 2. Each parent may only claim one dependent in their household size. Sophia is not able to claim Ken and Tyler is not able to claim Leah in the household size because the other parent is already claiming that child.

Example 3: Marcus and Erin are married and have three children and also support Marcus's parents who do not live with Marcus and Erin in their home. Because they meet the federal tests for claiming individuals not living with them, their federal return allows seven exemptions. Marcus and Erin cannot increase their household size by the people they claim as dependents on their federal return that do not live with them. Their household size for purposes of the Working Family Household and Dependent Care Credit is five.

(2) To claim the credit, the taxpayer must provide all information requested on the form prescribed by the department and file the form with the tax return. Failure to file the completed form with the department may result in denial of the Working Family Household and Dependent Care Credit.

(3) Employment-related expenses must be paid by the taxpayer claiming the credit. Payments made by an entity or individual other than the taxpayer claiming the credit are not payments made by the taxpayer.

(a) Costs associated with employment-related expenses include:

(A) Expenses paid with amounts excluded from income as dependent care benefits under IRC section 129;

(B) Expenses paid from dependent care benefits provided as part of a cafeteria plan under IRC section 125; or

(C) Reimbursement of expenses as part of a flex spending arrangement under IRC section 125.

Example 4: Daron paid \$5,000 in employment-related expenses. He works for a company that offers dependent care benefits and contributes \$4,000 pre-tax to a flexible spending arrangement. Daron's employer reports \$4,000 of dependent care benefits in box 10 of his W-2. Daron also paid \$1,000 with after-tax dollars. Daron will determine his qualifying expenses based upon the total \$5,000 (\$4,000 + \$1,000) paid.

(b) Expenses paid by a federal or state assistance agency (such as Department of Human Services or the Employment-Related Day Care program) for household services or care of the qualifying individual on behalf of the taxpayer who is claiming the credit are not employment-related expenses.

Example 5: Leslie works full time and qualifies for state assistance in paying his child care expenses. The child care provider charges Leslie \$600 per month to care for his two children (\$7,200 per year). Of the \$600 per month, the state pays \$450 and Leslie has a copay of \$150. Leslie cannot claim the entire \$7,200 because he did not

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pay it. He can only claim \$1,800 (\$150 x 12), the amount he actually paid.

(4) If medical expenses are claimed as qualified expenses for the credit and as a deduction, the amount of medical expenses claimed as both shall be added to the taxable income for Oregon tax purposes.

(5) Household size exceptions:

(a) Disabled qualifying individuals can be included in the household size calculation even if they are not related to the taxpayer by birth, marriage, or adoption. An otherwise qualifying individual can be included in the household size if the taxpayer is not able to claim the individual as a dependent on their return for one of the following reasons:

(A) The individual had gross income equal to or more than the federal exemption amount for the corresponding tax year;

(B) The individual filed a joint return; or

(C) The taxpayer (or spouse if filing jointly) could be claimed as a dependent on another taxpayer's return.

Example 6. Carey's disabled parents live with her. They would otherwise qualify to be claimed as Carey's dependents on her return, except that they are married and file their own joint return. For this reason, Carey does not claim them on her return. Her parents qualify as her qualifying individuals for the credit. Her household size for the purpose of this credit is three.

(b) For taxpayers who are divorced, legally separated, or permanently living apart, an otherwise qualifying individual cannot be counted in the household size on more than one tax return.

Example 7. Branden and Shannon are divorced with two children, Dustin and Natalie. Dustin lives with Branden and Natalie lives with Shannon. Each parent pays the child care expenses for the child that lives with that parent. Shannon releases the dependent exemption for Natalie to Branden under IRC section 152(e). Natalie is counted in Shannon's household size and Dustin is counted in Branden's household size. Branden and Shannon each have a household size of two for purposes of this credit. Branden claims the employment-related expenses he paid for Dustin and Shannon claims the employment-related expenses she paid for Natalie on their returns.

[Publications: Contact the Oregon Department of Revenue for information about how to obtain a copy of the publication referred to or incorporated by reference in this rule pursuant to ORS 183.360(2) and 183.355(1)(b).]

Stat. Auth.: ORS 305.100, 315.264

Stats. Implemented: ORS 315.264

Hist.: REV 86-2016, f. 12-28-16, cert. ef. 1-1-17

150-315-0125

Working Family Household and Dependent Care Penalty

(1) Definitions. For the purposes of this rule and ORS 315.264, "knowingly" means the individual claimed, attempted to claim, or assisted someone else in claiming the credit for an ineligible amount, acting with awareness that the individual or other person was ineligible for all or a portion of the credit claimed, as demonstrated by the particular facts and circumstances, including, but not limited to, facts such as that the individual:

(a) Previously received the penalty imposition,

(b) Previously claimed, attempted to claim, or assisted someone else in claiming the credit for an ineligible amount, or

(c) Forged or altered documents or knew documents were forged or altered.

(2) When a subsequent penalty is imposed, the reason for the subsequent penalty does not need to be the same reason a prior penalty was imposed.

(3) The penalty may be imposed in the following amounts:

(a) For taxpayers knowingly claiming an ineligible credit amount:

(A) For the first offense, an amount equal to 10 percent of the amount of the credit claimed; and

(B) For any subsequent offense, an amount equal to 25 percent of the amount of the credit claimed.

(b) For individuals assisting taxpayers in making an ineligible claim, an amount equal to 25 percent of the credit claimed by the taxpayers.

Example 1: Jackie claimed a credit in the amount of \$2,500. She knowingly claimed the credit for an ineligible amount. The department adjusted her credit down to \$1,000. The department determines that Jackie meets the penalty requirements. Because this is Jackie's first offense, she will be charged a penalty in the amount of \$250 (10 percent of the amount claimed).

(4) The penalty imposed is not eligible for a discretionary penalty waiver under ORS 305.145.

(5)(a) The department will provide notice of penalty to the individual receiving the penalty. The notice will include the penalty amount accompanied by a statement of the individual's right to appeal the penalty, along with an explanation of the procedure for written objection or conference as specified in ORS 305.265(5).

(b) Assessments and billings will be final after the expiration of the appeal period specified in ORS 305.280, excluding ORS 305.280(3).

(6) Mailing of notice to the individual at the individual's last-known address will constitute giving of notice as prescribed in this rule.

Stat. Auth.: ORS 305.100, 315.264

Stats. Implemented: ORS 315.264, 305.145

Hist.: REV 86-2016, f. 12-28-16, cert. ef. 1-1-17

150-316-0086

Credit for Income Taxes Paid to Other States — Proof Required and Procedure for Obtaining the Credit

(1) The taxpayer must retain in their tax records and provide to the department upon request the following items:

(a) A complete copy of the other state's income tax return; and

(b) Proof of payment of the tax, such as:

(A) A copy of the check written to pay the tax at the time the other state's return is filed;

(B) Copies of W-2 statements verifying withholding paid to the other state;

(C) A copy of a cashier's check or other negotiable instrument;

(D) A copy of a canceled check showing payment of tax or estimated tax payments; or

(E) A receipt of tax payment.

(2) If the taxpayer is required to amend per section (5) of this rule, the taxpayer must retain a copy of the other state's amended return or audit report, whichever is applicable, and provide it to the department upon request.

(3) The credit may be claimed either at the time of filing the original Oregon return or subsequently. The timeliness of a claim for refund is determined by ORS 314.380 and 314.415.

Example 1: Ben, an Oregon resident, files his 2013 tax return and reports a loss from rental property he owns in Idaho. After an audit by Idaho, certain expenses related to the rental are disallowed resulting in taxable income from the rental. Ben files the amended Oregon return more than three years from the date he filed his 2013 tax return. Notwithstanding the limitations of ORS 314.415, Ben will receive the credit if the amended return is received by the department within two years after the date Idaho issues the audit report that disallowed the expenses.

(4) A taxpayer is allowed a credit for taxes paid to another state when the other state's taxes have been paid. If the other state's taxes have not been paid before the credit is claimed on the Oregon tax return, no credit shall be allowed. Once the other state's taxes have been paid, the taxpayer may file a refund claim in order to receive the credit on the Oregon return. Any refund due to the credit is subject to the limitations provided by ORS 314.415.

(5) If a subsequent change or correction is made to the taxpayer's liability that also changes the credit allowed under ORS 316.082 or 316.131, the taxpayer must amend to correct the Oregon return for which such credit was originally allowed.

Example 2: In 2016, Gary and Joanne file their 2015 joint income tax return and claim a credit for taxes paid to Montana in 2015 of \$500. In 2017, after Montana audits their tax return, they receive a refund of the entire \$500 (the amount of credit they originally claimed). Gary and Joanne must amend their 2015 Oregon tax return to show that no credit is available for taxes paid to Montana in 2015.

[Publications: Contact the Oregon Department of Revenue for information about how to obtain a copy of the publication referred to or incorporated by reference in this rule pursuant to ORS 183.360(2) and ORS 183.355(1)(b).]

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 316.082

Hist.: 1-69; 12-70; 12-31-81; 12-31-84, Renumbered from 150-316.082; RD 10-1986, f. & cert. ef. 12-31-86; RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; RD 9-1992, f. 12-29-92, cert. ef. 12-31-92; REV 5-2000, f. & cert. ef. 8-3-00; Renumbered from 150-316.082(3), REV 60-2016, f. 8-15-16, cert. ef. 9-1-16; REV 86-2016, f. 12-28-16, cert. ef. 1-1-17

Department of State Lands Chapter 141

Rule Caption: Amend existing special use rules to include geothermal resources installations.

Adm. Order No.: DSL 1-2017

Filed with Sec. of State: 1-12-2017

Certified to be Effective: 1-12-17

Notice Publication Date: 11-1-2017

Rules Amended: 141-125-0100, 141-125-0110, 141-125-0120, 141-125-0140, 141-125-0160, 141-125-0170

Rules Repealed: 141-075-0010, 141-075-0015, 141-075-0020, 141-075-0030, 141-075-0035, 141-075-0040, 141-075-0045, 141-075-0050, 141-075-0055, 141-075-0060, 141-075-0080, 141-075-0110, 141-075-0130, 141-075-0140, 141-075-0145, 141-075-0150, 141-075-0155, 141-075-0160, 141-075-0165, 141-075-0170, 141-075-0175, 141-075-0180, 141-075-0190, 141-075-0195, 141-075-0200, 141-075-0205, 141-075-0210, 141-075-0215, 141-075-0220, 141-075-0225, 141-075-0230, 141-075-0235, 141-075-0240, 141-075-0245, 141-075-0250, 141-075-0255, 141-075-0260, 141-075-0265, 141-075-0270, 141-075-0275, 141-075-0280, 141-075-0285, 141-075-0290, 141-075-0295, 141-075-0300, 141-075-0305, 141-075-

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0310, 141-075-0315, 141-075-0320, 141-075-0325, 141-075-0330, 141-075-0335, 141-075-0400, 141-075-0405, 141-075-0460, 141-075-0465, 141-075-0470, 141-075-0475, 141-075-0480, 141-075-0520, 141-075-0525, 141-075-0530, 141-075-0535, 141-075-0540, 141-075-0545, 141-075-0550, 141-075-0555, 141-075-0560, 141-075-0565, 141-075-0570, 141-075-0575

Subject: With the recent renewed interest in Oregon's geothermal resources, several companies wanting to explore for and develop geothermal resources on state-owned land have contacted the Department.

In reviewing the geothermal rules, both the Department and applicants have found them to be difficult to understand and unduly complicated. Additionally, many of the terms and conditions provided in the rules are inconsistent with those currently used by the Department in other leasing programs.

On June 8, 2010, the State Land Board authorized the Department to initiate rulemaking to amend the administrative rules governing the exploration for and development of geothermal resources. These rules have not been amended since their adoption by the Land Board on October 11, 1974.

During the initial phase of rulemaking, staff made the recommendation to incorporate geothermal resources into the Department's Special Use Rules (Division 125) rather than updating the existing geothermal rules. These rules already govern the exploration for and development of other types of renewable energy, including wind turbines and wind farms, solar energy installations and biomass generating facilities. The administrative procedures and policies are current in Division 125 (these rules were last amended in 2008). As stated above, the geothermal rules were last revised in 1974, and will require a major re-write in order to be consistent with the Department's current administrative policies and procedures. It is expected that the Department will save money and staff time by incorporating geothermal resources into Division 125.

Upon completion of the rulemaking effort, the Department will repeal the administrative rules governing the exploration for and development of geothermal resources (OAR 141-075-0010 through 141-075-0575). The content of these rules will be added to the special use rules to include the exploration for and development of geothermal resources (OAR 141-125).

Rules Coordinator: Sabrina L. Foward—(503) 986-5236

141-125-0100

Purpose And Applicability

- (1) These rules:
 - (a) Apply to the management of state-owned Trust and Non-Trust Land for special uses.
 - (b) Establish a process for authorizing such uses through the granting of leases, licenses and, short-term access authorizations (hereafter collectively referred to as a special use authorization).
 - (c) Do not apply to the granting of proprietary authorizations for uses specifically governed by other Department administrative rules
- (2) A special use is one not governed by other Department administrative rules. Special uses include, but are not limited to, using state-owned land (including historically filled land) for:
 - (a) Agriculture;
 - (b) Communications facilities;
 - (c) Industrial, business, commercial and residential purposes;
 - (d) Native seed harvesting;
 - (e) Scientific experiments and demonstration projects;
 - (f) Conventions, sporting and other events;
 - (g) Recreational cabins;
 - (h) Commercial outfitting and guiding services;
 - (i) Motion picture filming and set construction;
 - (j) Renewable energy projects including, but not limited to wind turbines and wind farms, solar energy installations, geothermal resources installations and biomass generating facilities, and their related transmission lines within the authorized area;
 - (k) Removal of semiprecious stones, petrified wood and fossils for commercial purposes;
 - (l) Parking lots;
 - (m) Materials and equipment storage;

- (n) Warehouses;
- (o) Marine service and repair facilities on state-owned upland;
- (p) Resorts and recreational facilities;
- (q) Golf courses;
- (r) Upland quarries;
- (s) Geological investigations;
- (t) Liquefied natural gas receiving plants;
- (u) Grazing on land other than that designated as rangeland;
- (v) Removal of juniper and other trees, plants or biomass for commercial use; and
- (w) Removal of sunken logs, woody debris and abandoned pilings for their commercial value.

(3) The Director may determine other uses and developments similar to those specified in OAR 141-125-0100(2) that are also subject to a special use authorization and these rules.

Stat. Auth.: ORS 273

Stats. Implemented: OR Const. Art. VIII, Sec. 2 & 5

Hist.: DSL 1-2002, f. 2-7-02, cert. ef. 3-1-02; DSL 3-2008, f. & cert. ef. 10-15-08; DSL 3-2015, f. 11-9-15, cert. ef. 12-1-15; DSL 1-2017, f. & cert. ef. 1-12-17

141-125-0110

Policies

(1) Pursuant to Article VIII, Section 5(2) of the Oregon Constitution, the State Land Board, through the Department, has a constitutional responsibility to manage all land (Trust and Non-Trust) under its jurisdiction "with the object of obtaining the greatest benefit for the people of this state, consistent with the conservation of this resource under sound techniques of land management."

(2) All Trust Land will be managed in accordance with the need to maximize long-term financial benefit to the Common School Fund.

(3) The Department will follow the guiding principles and resource-specific management prescriptions contained in the Asset Management Plan, and consider the comments received from federal, state, and local governments and interested persons when determining whether to authorize or condition a special use authorization on state-owned land.

(4) The use of state-owned land for the placement of communications facilities is recognized by the Department as a conditionally allowable use of that land, subject to and consistent with the requirements and provisions of the Telecommunications Act of 1996 and other applicable federal, state, and local laws.

(5) Each individual use of, or development placed on state-owned land will constitute a separate discrete activity subject to payment of compensation as required by these or other applicable Department rules, or as determined by the Director.

(6) Uses of, and developments placed in, on or over state-owned land pursuant to a special use authorization will conform with local (including comprehensive land use planning and zoning ordinance requirements), state, and federal laws.

(7) The Department will not grant a special use authorization if it determines that the proposed use or development would unreasonably impact uses or developments proposed or already in place within the requested area. Such a determination will be made by the Department after consulting with holders of leases, licenses, permits and easements granted by the Department in the requested area, and other interested persons.

(8) All uses subject to these rules must be authorized by a special use authorization issued by the Department. Authorization to occupy state-owned land cannot be obtained by adverse possession regardless of the length of time the use or development has been in existence.

(9) The Department may:

(a) Conduct field inspections to determine if uses of, and developments in, on or over state-owned land are authorized by, or conform with the terms and conditions of a special use authorization and, if not,

(b) Pursue whatever remedies are available under law to ensure that the unauthorized uses subject to a special use authorization are either brought into compliance with the requirements of these rules or removed.

(10) The Department will honor the terms and conditions of any existing valid lease or license for a special use granted by the Department including any that entitle the lessee or licensee to renewal if the holder of the authorization has complied with all terms and conditions of the authorization and applies to the Department for a renewal as prescribed in these rules.

(11) Holders of a license to conduct a demonstration project for a land-based (that is, not on state-owned submerged and submersible land) wind farm geothermal resource installation or solar energy installation will be given the first right to apply for a lease for the area authorized under the license.

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(12) The Department may, at its discretion, authorize a demonstration project for a land based renewable energy project as part of a lease with the commercial electrical energy generating installation.

(13) The Department may, at its discretion, deny a special use authorization if the applicant's financial status or past business practices, or both, indicate that the applicant may not:

(a) Be able to fully meet the terms and conditions of a special use authorization offered by the Department; or

(b) Use the land applied for in a way that meets the provisions of OAR 141-125-0110.

(14) Notwithstanding the provisions of ORS 274.885, the Department will not allow or authorize the removal of kelp or other seaweed for commercial purposes.

(15) Notwithstanding the provisions of these rules, the Department may:

(a) Initiate projects involving special uses of, or developments in, on or over the land it manages by itself or in conjunction with other persons;

(b) Request proposals for special uses of, or developments on land it manages and select and award a lease through a competitive bid process to develop the use(s) or development(s) based on the policies provided in OAR 141-125-0110; and

(c) Negotiate and accept compensation in the form of services in lieu of monetary payments provided for in these rules.

Stat. Auth.: ORS 273

Stats. Implemented: OR Const. Art. VIII, Sec. 2 & 5

Hist.: DSL 1-2002, f. 2-7-02, cert. ef. 3-1-02; DSL 3-2008, f. & cert. ef. 10-15-08; DSL 3-2015, f. 11-9-15, cert. ef. 12-1-15; DSL 1-2017, f. & cert. ef. 1-12-17

141-125-0120

Definitions

(1) "Agriculture" means the cultivation of land to grow crops or the raising of livestock.

(2) "Applicant" is any person applying for a special use authorization.

(3) "Appraised Value" means an estimate of the current fair market value of property derived by disinterested persons of suitable qualifications, for example, a licensed independent appraiser.

(4) "Asset Management Plan" is the plan adopted by the State Land Board that provides the policy direction and management principles to guide both the short and long term management by the Department of State Lands of the Common School Fund's real estate assets.

(5) "Authorized" is the area of state-owned land defined in the special use authorization for which a use is authorized.

(6) "Biomass" refers to renewable organic matter such as agricultural crops and residue, wood and wood waste, animal and human waste, aquatic plants and organic components of municipal and industrial wastes.

(7) "Biomass Generating Facility" includes, but is not limited to the furnaces, boilers, combustors, digesters, gasifiers, turbine systems and other related equipment used to produce electricity, steam, heat, or biofuel from biomass.

(8) "By-Products" means all commercially valuable products other than heat energy obtained in conjunction with the development of Geothermal Resources excluding oil, hydrocarbon gas, and other hydrocarbon substances.

(9) "Commercial" means a use that results in or is associated with any monetary consideration or gain.

(10) "Commercial Electrical Energy Generating Installation"

(a) Is any electrical energy generating facility:

(A) Operated as a commercial venture (as contrasted to being operated as a demonstration project);

(B) Connected to the regional power grid and used to meet local or regional demand for electricity; or

(C) Used to meet all or part of the electricity demand by a person who may otherwise have to purchase the electricity produced by the facility from another source.

(b) Does not include any solar, wind or hydroelectric devices operated by a person who uses them to generate electricity for their home and who sells excess self-generated electricity back to a utility under a net metering agreement.

(11) "Communications Facility" consists of the towers, antennas, dishes, buildings and associated equipment used to transmit or receive radio, microwave, wireless communications, and other electronic signals. The roads, pipes, conduits, and fiber optic, electrical, and other cables that cross state-owned land to serve a communications facility, however, are governed by the administrative rules for granting easements on state-owned land.

(12) "Comparative compensatory payment" is the amount of money paid to the owners of parcels that are similar to the state-owned land requested by an applicant for a use that is the same as, or similar to that requested by an applicant. When the applicant's requested use is in, on or over Trust Land, the comparative compensatory payment is the maximum amount of money private landowners receive for the same or similar uses in, on or over parcels that they own that are similar to the Trust Land requested by the applicant.

(13) "Compensation" or "Compensatory Payment" is the amount of money paid for a special use authorization to the Department for the use of Department-managed land.

(14) "Construction Period" as applied to wind, geothermal resources and solar energy projects is the time during which construction of the commercial electrical energy generating installation is underway.

(15) "Cropshare" is a method of determining the compensation to be paid by a lessee for the use of state-owned land for agricultural purposes in which the owner of the land receives a pre-agreed percentage of the value of the crop at the time it is harvested or sold.

(16) "Demonstration Project" is a limited duration activity of less than three years designed primarily to investigate or test the economic and technological viability of a concept or use of state-owned land under a license granted by the Department.

(17) "Department" means the Department of State Lands.

(18) "Development" is any structure (for example, a communications or cellular tower, shed or barn, fence, irrigation system, wind turbine, solar mirror or recreational cabin) authorized by the Department on an area of state-owned land managed by the Department.

(19) "Director" means the Director of the Department of State Lands or designee.

(20) "Geothermal Resources" means the natural heat of the earth, the energy, in whatever form, below the surface of the earth present in, resulting from, or created by or which may be extracted from, the natural heat, and all minerals in solution or other products obtained from naturally heated fluids, brines, associated gases, and steam, in whatever form, found below the surface of the earth, exclusive of helium or of oil, hydrocarbon gas, or other hydrocarbon substances, but including specifically:

(a) All products of geothermal processes, embracing indigenous steam, hot water, and hot brines;

(b) Steam and other gases, hot water and hot brines resulting from water, gas, or other fluids artificially introduced into geothermal formations;

(c) Heat or other associated energy found in geothermal formations; and

(d) Any by-product derived from them.

(21) "Historically Filled Lands" means those lands protruding above the line of ordinary high water, whether or not connected with the adjoining or opposite upland or riparian land on the same side of the body of water, which have been created prior to May 28, 1963 upon state-owned submerged and submersible land by artificial fill or deposit, and not including bridges, wharves and similar structures constructed upon state-owned submerged and submersible land by other than artificial fill or deposit.

(22) "Industrial, Business and Commercial Purpose" are uses of state-owned land not governed by other Department administrative rules. Such uses include, but are not limited to office buildings, manufacturing facilities, retail stores, outfitting and guide facilities and restaurants.

(23) "Lease" is a written authorization issued by the Department to a person to use a specific area of state-owned land for a special use under specific terms and conditions. The term of a lease is for one to 30 years.

(24) "Lessee" refers to any person having a special use lease granted by the Department authorizing a special use on state-owned land managed by the Department.

(25) "License" is a written authorization issued by the Department to a person allowing the non-exclusive, short-term use of a specific area of state-owned land for a specific use under specific terms and conditions. A special use license has a maximum term of less than three years.

(26) "Licensee" refers to any person having a special use license granted by the Department authorizing a special use on state-owned land managed by the Department.

(27) "Materials and Equipment Storage" means the storage of logs, hay, containers, automobiles, coal, machinery or other items or materials on state-owned land (exclusive of rock, sand, gravel and silt derived from state-owned submerged and submersible land which are governed by other administrative rules).

(28) "Non-Trust Land" is land owned or managed by the Department other than Trust Land. Examples of Non-Trust Land include state-owned

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Swamp Land Act Land, and submerged and submersible land (land below ordinary high water) under navigable and tidally influenced waterways.

(29) "Operation Period" as applied to wind, solar, geothermal resources and biomass energy projects begins when the delivery of electricity from the commercial electrical generating installation begins.

(30) "Outfitting and Guiding Services" include, but are not limited to commercial businesses involved in leading, protecting, instructing, training, packing, guiding, transporting, supervising, interpreting, or otherwise assisting any person in the conduct of outdoor recreational activities. The rental of equipment alone for use in outdoor recreational activities does not constitute commercial outfitting and guiding services.

(31) "Person" includes individuals, corporation, associations, firms, partnerships, limited liability companies and joint stock companies as well as any state or other governmental or political subdivision or agency, public corporation, public authority, or Indian Tribe.

(32) "Preference Right" means a riparian property owner's statutory privilege, as found in ORS 274.040(1), to obtain a lease without advertisement or competitive bid for the state-owned submerged and submersible land that fronts and abuts the riparian owner's property. The Department will not recognize a claim of lease preference right from a non-riparian owner. A person claiming the right of occupancy to submerged and submersible land under a conveyance recorded before January 1, 1981, has a preference right to the requested area.

(33) "Preference Right Holder" means the person holding the preference right to lease as defined in these rules and ORS 274.040(1).

(34) "Rangeland" is state land designated and managed by the Department for rangeland purposes.

(35) "Rangeland Purpose" is the use of rangeland for livestock grazing or conservation use.

(36) "Recreational Cabin" is a dwelling used only periodically or seasonally and is not the principal residence of the owner(s).

(37) "Semiprecious Stones" are gemstones having a commercial value that is less than precious stones such as diamonds, rubies, emeralds and sapphires. Semiprecious stones include, but are not limited to amethyst, garnet, jade, sunstone, topaz, tourmaline and zircon.

(38) "Short Term Access Authorization" is a non-renewable written authorization issued by the Department for a specific length of time determined by the Director that allows a person to enter a specific parcel of state-owned land for a particular purpose as described in OAR 141-125-0205.

(39) "Solar Energy Installation" includes, but is not limited to the photovoltaic panels, mirrors, power towers, heat engines, generators, transformers, inverters, parabolic troughs and other equipment required to produce electricity from solar energy.

(40) "Special Use" is a use of state-owned land not specifically governed by other Department administrative rules. Special uses are listed in OAR 141-125-0100(2) and (3).

(41) "Special Use Authorization" is a lease, license or short-term access authorization issued by the Department to a person to use a specific area of state-owned land for a special use under specific terms and conditions.

(42) "State Owned Land" is land owned or managed by the Department or its agents and includes Trust and Non-Trust Land.

(43) "Submerged Land" means land lying below the line of ordinary low water of all title navigable and tidally influenced water within the boundaries of the State of Oregon.

(44) "Submersible Land" means land lying above the line of ordinary low water and below the line of ordinary high water of all title navigable and tidally influenced water within the boundaries of the State of Oregon.

(45) "Sunken Log, Woody Debris and Abandoned Piling Salvage" means the retrieval of sunken logs, woody debris and abandoned pilings lying on, or partially or wholly embedded in state-owned land underlying Oregon's rivers and lakes that are removed for their commercial value.

(46) "Territorial Sea" has the same meaning as provided in ORS 196.405(6). It includes the waters and seabed extending three geographical miles seaward from the line of mean low water to the extent of state jurisdiction.

(47) "Trust Land" is land granted to the state upon its admission into the Union, or obtained by the state as the result of an exchange of Trust Land, or obtained in lieu of originally granted Trust Land, or purchased with trust funds, or obtained through foreclosure of loans using trust funds.

(48) "Upland Quarry" is a site on state-owned land from which rock, boulders, sand, gravel, silt or soil is removed for use for commercial and non-commercial purposes.

(49) "Wind Farm" is a facility consisting of wind turbines interconnected by an electrical collection system.

(50) "Wind Turbine" is a machine that converts the force of the wind into electrical energy. A wind turbine usually consists of one or more moving blades connected to an electrical generator that is mounted on a tower.

Stat. Auth.: ORS 273

Stats. Implemented: OR Const. Art. VIII, Sec. 2 & 5

Hist.: DSL 1-2002, f. 2-7-02, cert. ef. 3-1-02; DSL 3-2008, f. & cert. ef. 10-15-08; DSL 3-2015, f. 11-9-15, cert. ef. 12-1-15; DSL 1-2017, f. & cert. ef. 1-12-17

141-125-0140

Lease or License Application Review and Approval Process

(1) Upon receipt of an application for a lease or license, the Department will determine:

(a) If the application is complete;

(b) If the subject area is available for the requested use;

(c) What method will be used to determine the amount of compensation payable to the Department pursuant to OAR 141-125-0150 and 0160;

(d) If a lease or license under these rules is the required form of authorization, and

(e) If additional information is required concerning the:

(A) Proposed use of the state land; and

(B) Applicant's financial status, or past business or management practices, or both.

(2) The Department will then advise the applicant of its determination concerning each of the five factors in OAR 141-125-0140(1). Applications determined by the Department to be incomplete, or for an area in which the use would be incompatible will be returned to the applicant with a written explanation of the reason(s) for rejection.

(3) If an application rejected for incompleteness is resubmitted within 90 calendar days from the date the Department returned it to the applicant (as determined by the date of postmark) with all deficiencies noted by the Department corrected, no additional application fee will be assessed.

(4) If more than one application for a specific area is received by the Department for the same or conflicting uses subject to authorization by a lease, the Department may:

(a) Determine which proposed use best fulfills the policies specified in OAR 141-125-0110, and accept and proceed with that application and deny the others; or

(b) If neither use is determined by the Department to be demonstrably better, make the subject area available to the public by auction.

(5) Upon acceptance by the Department, the application will be circulated to various local, state and federal agencies and other interested persons including tribal governments, adjacent property holders, affected lessees and permittees, and easement holders for review and comment. As a part of this review, the Department will specifically request comments concerning:

(a) The presence of state or federal listed threatened and endangered species (including candidate species), and archaeological and historic resources within the requested area that may be disturbed by the proposed use;

(b) Conformance of the proposed use with local, state, and federal laws and rules;

(c) Conformance of the proposed use with the local comprehensive land use plan and zoning ordinances;

(d) Conformance with the policies described in OAR 141-125-0110 of these rules; and

(e) Potential conflicts of the proposed use with existing or proposed uses of the requested area.

(6) If the application is for a communications facility, the Department will request comments from the Federal Communications Commission, Public Utility Commission of Oregon, and any other persons owning or leasing communications facilities who advise the Department that they want to receive such applications.

(7) The Department may post a notice of an application and opportunity to comment at a local government building, public library, or other appropriate locations in order to ensure that minority and low-income communities are included and aware of a proposed use. The Department shall make paper copies of an application available to any person upon request.

(8) After receipt of comments concerning the proposed use, the Department will advise the applicant in writing:

(a) If changes in the use or the requested lease or license area are necessary to respond to the comments received;

(b) If additional information is required from the applicant, including but not limited to a survey of:

(A) State or federal listed threatened and endangered species (including candidate species) within the requested area; and/or

(B) Archaeological and historic resources within the requested area.

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(c) If the area requested for the lease or license will be authorized for use by the applicant through a lease or license, and

(d) Whether the subject area will be made available to the public through competitive bidding pursuant to OAR 141-125-0150. Only requests for leases may be subject to competitive bidding.

(9) If the Department decides to issue a lease to the applicant without competitive bidding, or a license, the Department will notify the applicant in writing of:

(a) The amount of compensation pursuant to OAR 141-125-0160 that the applicant must remit to the Department to obtain the authorization;

(b) Any insurance and surety bond required by the Department pursuant to the requirements of OAR 141-125-0180; and

(c) A draft copy of the lease or license

(10) The Department will not grant a lease or license to an applicant until:

(a) It has received all fees and compensation specified in these rules, and evidence of any required insurance and surety bond; and

(b) The requirements of OAR 141-125-0170(4) of these rules have been met;

(11) In addition to the provisions of OAR 141-125-0140(9), a special use authorization issued by the Department will not be valid until the holder has received all other authorizations required by the Department (such as a Removal-Fill Permit under ORS 196.800 to 196.990) and other applicable local, state, and federal governing bodies to use the state-owned land in the manner requested.

(12) The Director may refer any applications for a lease or license to the Land Board for review and approval.

(13) If an application is received and accepted by the Department for a lease on state-owned submerged and submersible land, the Department will, pursuant to the requirements of ORS 274.040, offer a preference right to lease to the eligible party as defined in OAR 141-125-0120(32) and (33), hereafter referred to as the preference right holder. The Department will take the following steps to offer this preference right:

(a) If the proposed lease area consists of a single parcel, or two or more contiguous parcels owned by the same person, the Department will extend the boundaries of the single parcel or combined group of single-ownership parcels perpendicular to the thread of the stream creating a single lease parcel that fronts and abuts the upland ownership.

(b) If the proposed lease area consists of parcels having different owners, the Department will subdivide the requested lease area into smaller parcels by extending lines perpendicular to the thread of the stream from the boundaries of, or within the boundaries of the adjacent riparian tax lot so that there is a separate lease parcel for each parcel of property that fronts and abuts the lease area.

(c) In accordance with the proposed use(s), the Department will calculate in a manner consistent with OAR 141-125-0160 a minimum annual compensatory payment for each lease parcel.

(d) The Department will notify each preference right holder in writing that a lease application has been approved by the Department and provide 30 calendar days from the date that the letter is postmarked for the preference right holder to exercise the preference right to take the lease at the established minimum annual compensatory payment.

(e) If the preference right holder has accepted the offer of a preference right to lease and has executed the lease form and all other documents and remitted the required minimum annual lease rental payment within the required 30 calendar day period, the Department will execute the lease.

(f) If the preference right holder does not exercise the preference right to take a lease applied for by another person, the Department will prepare and publish an advertisement for bids pursuant to ORS 274.040 and hold a public auction pursuant to OAR 141-125-0150. The highest qualified bidder will be awarded the lease. The minimum bid amount will be set by the Department.

Stat. Auth.: ORS 273

Stats. Implemented: OR Const. Art. VIII, Sec. 2 & 3

Hist.: DSL 1-2002, f. 2-7-02, cert. ef. 3-1-02; DSL 3-2008, f. & cert. ef. 10-15-08; DSL 3-2015, f. 11-9-15, cert. ef. 12-1-15; DSL 1-2017, f. & cert. ef. 1-12-17

141-125-0160

Compensation

(1) To establish the amount of annual compensation or minimum bid at auction, the Department will:

(a) Adhere to the policies contained in OAR 141-125-0110(1) and (2) of these rules, and

(b) Whenever practicable, base the amount on comparative compensatory payments for publicly or privately-owned parcels located as close as possible to the state-owned land requested by an applicant.

(2) In the event that reliable data concerning comparative compensatory payments are not available, the Department will select another method of determining the amount of compensatory payment or minimum bid at auction such as a percent of the appraised value of the requested area, percent of crop or product value, or percent of product produced.

(3) For the uses indicated in OAR 141-125-0160(4) through 141-125-0160(11), the Department will determine the amount of annual compensatory payment owed by the holder of a special use lease or license using the method(s) indicated.

(4) Agricultural Uses

As an alternative to basing the amount of compensation due for an agricultural use on comparative compensatory payments, the Department may, at its discretion, use a cropshare approach. If this methodology is used, the state's share will be no less than 25 percent of the value received by the holder of a special use lease or license in payment for each crop harvested from the authorized area.

(5) Communications Facilities

The holder of a special use lease or license for a communications facility must remit to the Department on a basis provided in the authorization both:

(A) The full amount of the base annual compensation determined by the Department to be the comparative compensatory payment for similar communications facilities; and

(B) A payment equal to 25 percent of the rental received by the lessee during the previous 12 month period from sublessees and sublicensees using the subject facility authorized by the lease or license.

(b) If the holder of a lease or license for a communications facility allows other persons to use the facility (for example, to place or attach antennas, microwave dishes, or other signal broadcasting or receiving equipment on the site or to a tower), the holder of the authorization must record and report data concerning the number sublessees and sublicensees, and the amount of compensation received from them to the Department on a basis and at an interval set by the Department and included as a provision of the license or lease.

(6) Upland Quarry

(a) The holder of a special use lease or license for an upland quarry must remit to the Department:

(A) Eight percent of the gross revenue received by the lessee or licensee from the sale of the rock, boulders, sand, gravel, silt or soil removed by the lessee or licensee, or

(B) The compensation rate in effect at the time of removal as provided in OAR 141-014 (Rules for Authorizing Leases and Licenses for the Removal or Use of Rock, Sand, Gravel and Silt Derived from State-Owned Submerged and Submersible Land) for "shorecast dredge spoils" if the lessee or licensee uses the rock, boulders, sand, gravel, silt or soil.

(b) Data concerning the quantity of rock, boulders, sand, gravel, silt or soil removed and sold, and the revenue received from any sales will be recorded and reported by the lessee or licensee to the Department on a basis and at an interval set by the Department and included as a provision of the license or lease.

(c) In addition to the compensation required under OAR 141-125-0160(6)(a), the holder of a special use license or lease for an upland quarry is required to pay the compensation due for any easements (for example, roads leading into the quarry and power lines crossing state land) or other forms of authorization required by Department rules.

(7) Semiprecious Stones, Petrified Wood and Fossils

Any person removing semiprecious stones, petrified wood or fossils for commercial purposes must remit to the Department within 30 calendar days of the removal of any semiprecious stones, petrified wood and fossils:

(a) Compensatory payment in the amount of 10 percent of the market value of the semiprecious stones, petrified wood and fossils; and

(b) Photocopies of the evidence used by the lessee or licensee to determine the market value of the semiprecious stones, petrified wood and fossils removed. This evidence must accompany the payment of compensation owed. Documentation suitable to the Department includes, but is not limited to a sales receipt (if the material is sold to another party); an appraisal by a gemologist or mineral dealer; or advertisements for the sale of similar material in lapidary magazines or trade journals.

(8) Retrieval of Sunken Logs, Woody Debris and Abandoned Pilings

(a) The holder of a special use license or lease to retrieve sunken logs, woody debris and abandoned pilings from state-owned submerged and submersible land for their commercial value must remit to the Department 10 percent of the gross revenue received by the lessee or licensee from the sale of any logs or lumber products produced from the logs.

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(b) Data concerning the quantity of lumber recovered or sold and revenue received from any sales must be recorded and reported by the lessee or licensee to the Department on a basis to be set by the Department and included as a provision of the license or lease.

(c) In addition to the compensation required under OAR 141-125-0160(8)(a), the holder of a special use lease or license to retrieve sunken logs, woody debris and abandoned pilings must also pay the compensation due for any easements (for example, storage of logs on state-owned land) or other forms of authorization required by the Department.

(9) Wind Turbines/Wind Farms

(a) The holder of a special use lease or license must remit to the Department:

(A) During the demonstration project period the greatest of:

(i) \$500;

(ii) \$5.00 per acre of land within the authorized area; or

(iii) The comparative compensatory payment received by other landowners for similar demonstration projects.

(B) During the construction period a one-time installation fee equal to \$3,000 times the number of megawatts of nameplate rated capacity for each wind turbine to be installed as a part of that phase of the development.

(C) During the operation period:

(i) 2.5 percent of the gross revenue received by the lessee for, or the value of the electricity generated by each turbine during from the start of the operation through year 10;

(ii) 3.5 percent of the gross revenue received by the lessee for, or the value of the electricity generated by each turbine from year 11 through year 15;

(iii) 4.0 percent of the gross revenue received by the lessee for, or the value of the electricity generated by each turbine from year 16 until the termination of the operation of that turbine.

(D) During the decommissioning period:

An amount to be determined by the Director based on the compensation which could reasonably be expected to be received by the Department for the use of the land encumbered by the wind power project.

(b) Notwithstanding the provisions of OAR 141-125-0160(9)(a), the director reserves the right to establish another rate of compensation to be charged by the Department during the construction and operation periods based on factors unique to an operation (for example, distance of the operation from major transmission lines and variability of the wind) and comparative compensatory payments.

(c) The lessee or licensee will record and report the amount of electricity generated by each wind turbine and wind farm under lease as well as the gross revenue resulting from that generation on a basis to be determined by the Department and included as a provision of the lease. Gross revenue is defined as all revenues earned through the sale of the electricity by the lessee to purchasers.

(d) In the event the lessee or licensee consumes all, or a portion of the electricity generated by the wind turbine and wind farm, the Department will establish a value for that electricity based on what the lessee or licensee would have to pay a utility for the equivalent amount of electricity delivered to the lessee's or licensee's point of demand as well as information provided by the lessee.

(e) In addition to the compensation required under OAR 141-125-0160(9)(a) and (b) the holder of a lease or license for a wind turbine and wind farm is required to pay to the Department the compensation due for any easements (for example, transmission lines crossing state land) or other forms of authorization required by the Department.

(10) Solar Energy Installation

(a) The holder of a special use lease or license for a solar energy installation must remit to the Department:

(A) During the demonstration project period the greatest of:

(i) \$500;

(ii) \$5.00 per acre of land within the authorized area; or

(iii) The comparative compensatory payment received by other landowners for similar demonstration projects.

(B) During the construction, operation and decommissioning periods, an amount to be determined by the Director based on comparative compensatory payments.

(b) Data concerning the amount of generation and its value will be recorded and reported by the lessee to the Department on a basis to be determined by the Department and included as a provision of the license or lease.

(c) In addition to the compensation required under OAR 141-125-0160(10)(a) and

(b) The holder of a special use lease or license for solar energy installation is required to pay the compensation due for any easements (for example, transmission lines crossing state land) or other forms of authorization required by the Department.

(11) Geothermal Energy Installation

(a) The holder of a special use lease or license for a geothermal energy installation must remit to the Department:

(A) During the demonstration project period the greatest of:

(i) \$500 per year;

(ii) \$5.00 per acre of land within the authorized area per year; or

(iii) The comparative compensatory payment received by other landowners for similar demonstration projects per year.

(B) During the construction, operation and decommissioning periods, an amount to be determined by the Director based on comparative compensatory payments. (i) The Director shall take into consideration current industry standards for annual comparative compensatory payments by reviewing the current Bureau of Land Management Code of Federal Regulations, current comparative compensatory payments received by other states, and comparative compensatory payments received by private landowners under free market conditions.

(b) Data concerning the amount of generation and its value will be recorded and reported by the lessee to the Department on a basis to be determined by the Department and included as a provision of the license or lease.

(c) Upon the sale, exchange or other disposition for value of by-products produced in conjunction with the production of Geothermal Resources under a license or lease, the holder shall pay royalties as follows:

(A) Demineralized water -- A royalty on the sale of demineralized water shall be reported and paid to the Department monthly. The royalty payment shall be the greatest of:

(i) One percent of the gross sale price of demineralized water sold, exchanged, or otherwise disposed of for value in any calendar month; or

(ii) The comparative royalty rate received by other landowners for demineralized water regionally.

(B) Heavy metals, nonhydrocarbon gases, and miscellaneous precipitates -- A royalty on the sale of heavy metals, nonhydrocarbon gases, and miscellaneous precipitates shall be reported and paid to the Department monthly. The royalty payment shall be the greatest of:

(i) Five percent of the gross sale price of all heavy metals, miscellaneous precipitates, and nonhydrocarbon gases sold, exchanged, or otherwise disposed of for value in any calendar month; or

(ii) The comparative royalty rate received by other landowners for all heavy metals, miscellaneous precipitates, and nonhydrocarbon gases sold, exchanged, or otherwise disposed of regionally

(d) In addition to the compensation required under OAR 141-125-0160(11)(a), (b) and (c), the holder of a special use lease or license for a geothermal energy installation is required to pay the compensation due for any easements (for example, transmission lines crossing state land) or other forms of authorization required by the Department.

(12) Biomass Generating Facility

(a) The holder of a special use lease or license for a commercial electrical energy generating installation using biomass must remit to the Department:

(A) During the demonstration project period the greatest of:

(i) \$500,

(ii) \$5.00 per acre of land within the authorized area, or

(iii) The comparative compensatory payment received by other landowners for similar demonstration projects.

(B) During the construction, operation and decommissioning periods, an amount to be determined by the Director based on comparative compensatory payments.

(b) Data concerning the amount of generation and its value will be recorded and reported by the lessee to the Department on a basis to be determined by the Department and included as a provision of the license or lease.

(c) In addition to the compensation required under OAR 141-125-0160(12)(a), the holder of a special use lease for biomass generating facility is required to pay the compensation due for any easements (for example, transmission lines crossing state land) or other forms of authorization required by the Department.

(d) If the biomass used to fuel a generating facility is obtained from state-owned land, the Director will determine the amount of compensation owed by the lessee for the use of this material.

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(13) Regardless of the type of use that is subject to a special use authorization, the amount of annual compensation received by the Department will not be less than:

- (a) \$500 per year for all leases except those for communications facilities;
- (b) \$750 per year for special use leases for communications facilities;
- (c) \$100 per year for licenses; or
- (d) The minimum bid when the lease is awarded through public auction.

(14) Communications facilities located on Non-Trust Land outside of the designated limits of a city may be exempt from the mandatory compensation payments specified in OAR 141-125-0160(5) pursuant to the provisions of ORS 758.010(1). However, the owners of such facilities must apply for and obtain a lease or license from the Department.

Stat. Auth.: ORS 273

Stats. Implemented: OR Const. Art. VIII, Sec. 2 & 5

Hist.: DSL 1-2002, f. 2-7-02, cert. ef. 3-1-02; DSL 3-2008, f. & cert. ef. 10-15-08; DSL 3-2015, f. 11-9-15, cert. ef. 12-1-15; DSL 1-2017, f. & cert. ef. 1-12-17

141-125-0170

General Terms and Conditions

(1) The term of a special use lease will not exceed 30 years unless otherwise approved by the Director. The Department will determine the length of a lease based on the nature of the use intended for the requested site. The Department may, at its discretion, provide as a provision of the lease that it may be renewed for a term to be determined by the Department.

(2) The term of a license will be less than three years. A license may, upon receipt by the Department of a written request, be renewed up to two times at the discretion of the Department for a maximum term of one year each time.

(3) Leases and licenses will be offered by the Department for the minimum area determined by the Department to be required for the requested use.

(4) A special use authorization issued by the Department will be on a form supplied by the Department that has been approved for legal sufficiency by the Department of Justice pursuant to ORS 291.045 to 291.047 (Public Contract Approval).

(5) The holder of a lease or license may request the Department close all or portions of the authorized area to public entry or restrict recreational use by the public to protect the persons, property, developments and/or crops from harm.

(6) The Department or its authorized representative(s) will have the right to enter into and upon the authorized area at any time for the purposes of inspection or management, or to conduct noxious plant or pest abatement, or for wildfire control.

(7) The holder of a special use authorization must dispose of all waste in a proper manner and must not permit debris, garbage or other refuse to either accumulate within the authorized area or be discharged into any waterway.

(8) Unless otherwise agreed to in writing as a provision of the authorization, the holder of a special use authorization may not interfere with lawful public use of an authorized area, or obstruct free transit across state land, or intimidate or otherwise threaten or harm public users of state land.

(9) The holder of a special use authorization must cooperate and comply with:

(a) Appropriate county agencies and the Oregon Department of Agriculture in the detection, prevention and control of noxious plants. The Department will rely on the Oregon Department of Agriculture for information concerning which noxious plants present on an authorized area require corrective action by the lessee or licensee, or the Oregon Department of Agriculture or its agents;

(b) The Oregon Department of Agriculture and the Department in the management of plant pests and diseases; and

(c) The Department and other agencies in the detection, prevention and control of wildfires on an authorized area.

(10) Unless otherwise agreed to in writing in the special use authorization, the holder of the authorization, must remove any or all developments as directed by the Department within 90 calendar days of the date of the expiration or termination of the authorization. The holder of a lease for a renewable energy project must remove any or all developments as directed by the Department within one year of the date of the expiration or termination of the authorization. If the holder of the special use authorization refuses to remove the subject developments, the Department may remove them and charge the holder for doing so.

(11) The holder of a special use authorization will not allow any other use to be made of, or occur on the site or facility that is not specifically authorized:

(a) By that authorization; or

(b) By the Department in writing prior to the use.

(12) The holder of a special use authorization must maintain all operations within the authorized area in a manner that conserves fish and wildlife habitat; protects water quality; and does not contribute to insect or animal infestation, soil erosion or the growth of noxious plants.

(13) The holder of a special use authorization must maintain all buildings, machinery, equipment and similar structures and improvements located within the authorized area in a good state of repair as determined by the Department.

(14) If requested by the Department, a holder of a special use authorization must present evidence to the Department prior to the use that they have obtained:

(a) All authorizations required by local, state, and federal governing bodies to undertake the proposed use;

(b) Any authorization that may be required to obtain access or to cross land belonging to a person other than the Department to undertake the use; and

(c) A surety bond and comprehensive or commercial general liability insurance required by the Department.

(15) The Department may require that a person who is granted a:

(a) Special use license by the Department to conduct an investigation or demonstration project using wind, solar energy or biomass to generate electricity to provide the results obtained from the investigation or demonstration project, or both, to the Department, or

(b) Short term access authorization by the Department for scientific or research purposes to provide the data obtained or developed from the investigation (for example, geological core logs or biological surveys) to the Department.

(16) The holder of a lease or license will indemnify the State of Oregon and the Department of State Lands against any claim or costs arising from or related to a release of a hazardous substance on or from the authorized area. Additionally, the Department may require that the holder of a short term access agreement also provide the same indemnification contingent on the use of the authorized area requested.

(17) A holder of a lease or license that provides for a renewal must reapply to the Department using a form provided by the Department and remit the required application processing fee to the Department. Unless otherwise allowed by the Director, this form must be received by the Department along with the required application processing fee at least 180 calendar days prior to the expiration of the lease or license for which renewal is requested.

Stat. Auth.: ORS 273

Stats. Implemented: OR Const. Art. VIII, Sec. 2 & 5

Hist.: DSL 1-2002, f. 2-7-02, cert. ef. 3-1-02; DSL 3-2008, f. & cert. ef. 10-15-08; DSL 5-2015, f. & cert. ef. 12-29-15; DSL 1-2017, f. & cert. ef. 1-12-17

Rule Caption: Establish an identification/notification process for historically filled lands, and requirements for creating new lands.

Adm. Order No.: DSL 2-2017

Filed with Sec. of State: 1-12-2017

Certified to be Effective: 1-12-17

Notice Publication Date: 12-1-2017

Rules Adopted: 141-068-0000, 141-068-0010, 141-068-0020, 141-068-0030, 141-068-0040, 141-068-0050, 141-068-0060, 141-068-0070, 141-068-0080, 141-068-0090, 141-068-0100, 141-068-0110, 141-068-0120, 141-068-0130, 141-068-0140

Rules Amended: 141-067-0130, 141-067-0150, 141-067-0155, 141-067-0170, 141-067-0180, 141-067-0195, 141-067-0215, 141-067-0220, 141-067-0270, 141-067-0300

Rules Repealed: 141-067-0200

Subject: Senate Bill 912 was passed during the 2015 regular legislative session. This bill clarifies the distinction between “historically filled lands” and “new lands” for purposes of determining ownership and transfer of ownership of lands created upon submersible or submerged lands by artificial fill or deposit. Re-affirms the State Land Board’s authority to sell, lease or trade the newly defined “historically filled lands,” identical to their authority over “new lands.” Establishes process for State Land Board to identify and declare state’s interest in historically filled lands and to provide notice of dec-

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laration. This legislation is based on recommendations from the Filled Lands Advisory Group (FLAG) that reported on

its work to the State Land Board in June 2014. This rulemaking addresses the recommendations of the FLAG and sets up the process and procedures for inventorying historically filled lands and notifying affected stakeholders. OAR 141-067 will be amended to reflect the adoption of OAR 141-068. The process for identifying and selling or exchanging historically filled or new lands will be removed from division 67 and placed in division 68.

Rules Coordinator: Sabrina L. Foward—(503) 986-5236

141-067-0130

Purpose and Applicability

These rules:

(1) Establish procedures for the sale, exchange, and purchase of certain types and classifications of land and other interests including mineral and geothermal resource rights in land managed or to be managed by the State Land Board and the Department of State Lands in order to comply with all Constitutional and statutory requirements including, but not limited to: Oregon Constitution Article VIII, Section 5(2), and ORS 270, 271, 272, 273, and 274.

(2) Do not pertain to the leasing of lands or the granting of easements across lands managed by the State Land Board and the Department of State Lands, which are governed by other Department administrative rules.

(3) Apply to all land transactions (for example, sales, exchanges and purchases) for the South Slough National Estuarine Research Reserve as established in ORS 273.553.

(4) Do not apply to:

(a) The sale of submerged, submersible fronting upon the Pacific Ocean, or

(b) Land sold by the Department under the administrative rules of Procedure for the Recovery of Escheat Property (OAR chapter 141 division 030) or the Administration of Estates – Probate (OAR chapter 141 division 035)

(c) Contracts for the sale of timber or other forest products.

(d) The sale of historically filled lands or new lands as administered through OAR 141-068.

Stat. Auth.: ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Stats. Implemented: ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Hist.: DSL 2-2002, f. 4-12-02, cert. ef. 7-1-02; DSL 6-2009, f. & cert. ef. 7-1-09; DSL 2-2016, f. 5-13-16, cert. ef. 6-1-16; DSL 2-2017, f. & cert. ef. 1-12-17

141-067-0150

Definitions

(1) “Abutting” means immediately adjacent to or facing.

(2) “Apparent Successful Purchaser” is the person who is the highest acceptable bidder and who has agreed to the terms and conditions of a land sale prior to the final approval of the sale by the State Land Board.

(3) “Applicant” is any person who submits a written request to the Department to purchase or exchange state land or interests in land.

(4) “Appraisal” or “Appraisal Report” means a written statement setting forth an opinion as to the market value of the lands or interests in lands as of a specific date(s) prepared by a qualified appraiser in accordance with the Uniform Standards of Professional Appraisal Practices (USPAP) standards.

(5) “Asset Management Plan” or “AMP” is the plan adopted by the State Land Board that provides the policy direction and management principles to guide both the short and long term management by the Department of State Lands of its real estate assets.

(6) “Bargain” is a process by which the Department and another person attempt to agree to a final sale price of state land or interests in state land.

(7) “Bargain and Sale Deed” is a form of a deed that conveys real property from a seller to a buyer but does not guarantee clear title.

(8) “Bid” means a written or oral monetary commitment to purchase land or interest in land offered at the specified time and place by a person determined by the Department as provided in OAR 141-067-0220 of these rules to be eligible to participate in an auction process.

(9) “Deed” means a written, legal instrument that conveys an estate or interest in real property when it is properly executed and delivered.

(10) “Director” means the Director of the Oregon Department of State Lands or designee.

(11) “Department” means the Department of State Lands.

(12) “Department Estimate of Value” is the monetary value of a land parcel established by the Department and approved by the State Land Board based on a critical review of the appraisal report; any review appraisal information; and other relevant or supporting data. The value may be derived, at the discretion of the Director, by considering factors or costs as are appropriate and applicable to the transaction.

(13) “Easement” is an authorization granted by the Department that gives a person the use of a specifically designated parcel of state-owned land for a specific purpose and length of time. An easement does not convey any proprietary or other rights of use to the holder other than those specifically granted in the easement authorization.

(14) “Filled Lands” as defined in ORS 274.705 (1) means submerged and submersible lands reclaimed artificially through raising such lands above the highest probable elevation of the tides to form dry land, by placement of a fill or deposit of earth, rock, sand or other solid imperishable material.

(15) “Formerly Submerged and Submersible Lands” are lands such as de-watered channels that once were part of the submerged and submersible lands of a navigable body of water but are no longer part of the waterway due to the dynamic forces of the waterway.

(16) “Geothermal Resources” as defined in ORS 522.005 means the natural heat of the earth, the energy, in whatever form, below the surface of the earth present in, resulting from, or created by, or that may be extracted from, the natural heat, and all minerals in solution or other products obtained from naturally heated fluids, brines, associated gases, and steam in whatever form, found below the surface of the earth, exclusive of helium or of oil, hydrocarbon gas or other hydrocarbon substances, but including, specifically:

(a) All products of geothermal processes, including indigenous steam, hot water and hot brines;

(b) Steam and other gases, hot water and hot brines resulting from water, gas, or other fluids artificially introduced into geothermal formations;

(c) Heat or other associated energy found in geothermal formations; and

(d) Any by-product derived from them.

(17) “High Bid” means the highest monetary commitment to purchase land offered by a person eligible to participate in a land sale auction.

(18) “Highest and Best Use” means the reasonably probable and legal use of vacant or an improved property which is physically possible, appropriately supported, financially feasible, and that results in the highest value.

(19) “Individual Person” means a natural person and does not include such entities as a corporation, public agency, political subdivision or association.

(20) “Land Acquisition Evaluation” is an analytical review of land or interest being considered for acquisition by the Department to determine whether or not the land or interests should be acquired by purchase or exchange. The review includes:

(a) An examination of the physical, land management, financial, natural resource, recreational and cultural resource aspects of the land or interest; and

(b) A comparison of the information from (a) above, with the acquisition criteria and strategies of the Asset Management Plan.”

(21) “Land Disposal Evaluation” is an analytical review of state land or interest being considered for sale or exchange to determine whether or not the land or interest should be retained or disposed. The review includes:

(a) An examination of the physical, land management, financial, natural resource, recreational and cultural resource aspects of the land or interest; and

(b) A comparison of the information from (a) above, with the disposal criteria and strategies of the Asset Management Plan.

(22) “Land Exchange” means a simultaneous conveyance of land or interest in state land for land or interest in land of another entity of equal value (either appraised or Department-estimate of value).

(23) “Land Exchange Agreement” is a non-binding agreement between the Department and another party that sets out the terms of the exchange proposal and the responsibilities of each party to complete the exchange. The agreement, at a minimum, describes the lands to be exchanged; assigns responsibility for completion of and payment for appraisals, surveys, land use applications, advertising, closing and any special studies including environmental audits; and establishes a reasonable time schedule for completion.

(24) “Lease” means a valid enforceable contract executed by the Department and signed by the lease applicant (called lessee) allowing the

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use of a specific area of state land for a specific use under specific terms and conditions specified in the lease contract and these rules.

(25) “Lessee” refers to any person having a valid lease issued by the Department.

(26) “Market Value” or “Fair Market Value” means the most probable price in cash, or terms equivalent to cash, which land or interests in land should bring in a competitive and open market under all conditions requisite to a fair sale, where the buyer and seller each acts prudently and knowledgeably, and the price is not affected by undue influence.

(27) “Mineral and Energy Resource Potential Analysis” is an analysis of the mineral and geothermal interests of a parcel to determine if any minerals or energy resources exist in commercially valuable and extractable abundance.

(28) “Mineral and Geothermal Resource Rights” are all mineral rights as defined in ORS 273.775(1), including soil, clay, stone, sand, and gravel, and all geothermal resources, as defined in 273.775(2), together with the right to make use of the surface as may be reasonably necessary for prospecting for, exploring for, mining, extracting, reinjecting, storing, drilling for, and removing, such minerals, materials, and geothermal resources.

(29) “Minimum Bid” is the lowest monetary commitment to purchase land offered from a person eligible to participate at a land sale auction that the Department will accept.

(30) “Non-Trust Land” or “Statutory Land” is state-owned land managed by the Department other than Trust Land. Examples of Non-Trust Land include state-owned Swamp Land Act Land, and submerged and submersible land (land below the line of ordinary high water) under navigable waterways.

(31) “Person” includes individuals, corporations, associations, firms, partnerships, limited liability companies and joint stock companies as well as any state or other governmental or political subdivision or agency, public corporation, public authority, or Indian Tribe.

(32) “Public Body” means the State of Oregon or any port organized under the laws of Oregon or dock commission of any city of this state.

(33) “Public Trust Values” are the rights and interests held by the public to use and enjoy submerged and submersible lands and waters of the state for fishing, navigation, recreation and commerce (also termed “jus publicum rights”).

(34) “Qualified Appraiser” is a person who is a state-certified appraiser, or a salaried public employee of the federal government, the State of Oregon or a political subdivision of the federal government or the State of Oregon engaged in the performance of the duties of the employee as defined in ORS 674.100(2)(h).

(35) “Quitclaim Deed” is a form of deed in which any interest the grantor possesses in the property described in the deed is conveyed to the grantee without warranty of title.

(36) “Rangelands” means Trust and Non-Trust Lands that are classified by the Department for management primarily for livestock grazing largely on uncultivated forage areas with limited improvements or development.

(37) “Reserved Interest” means an interest in the land that is retained by the Department from a conveyance of the title to the state land.

(38) “South Slough National Estuarine Research Reserve” is a component of the National Estuary Reserve System situated at South Slough (Coos County) established under ORS 273.553.

(39) “South Slough Management Commission” is the public body established in ORS 273.554 for the purpose of directing the management of the South Slough National Estuarine Research Reserve.

(40) “State Forester” is as described in ORS 526.005(03).

(41) “State Land” means real property, including improvements, or any interest in real property (for example, timber or minerals) managed by the State Land Board and the Department of State Lands as Trust or Non-Trust Land.

(42) “State Land Board” or “Board” means the constitutionally created body consisting of the Governor, Secretary of State and the State Treasurer that is responsible for managing the assets of the Common School Fund as well as for additional functions placed under its jurisdiction by law.

(43) “Submerged Land” means land lying below the line of ordinary low water of all title navigable and tidally influenced waters within the boundaries of the State of Oregon.

(44) “Submersible Land” means land lying between the line of ordinary high water and the line of ordinary low water of all title navigable and tidally influenced waters and all islands, shore lands or other such lands

held by or granted to this state by virtue of her sovereignty, wherever applicable within the boundaries of the State of Oregon.

(45) “Trust Lands” or “Constitutional Lands” is all land granted to the state for the use of schools upon its admission into the Union, or obtained by the state as the result of an exchange of Trust Land, or obtained in lieu of originally granted Trust Land, or purchased with trust funds, or obtained through foreclosure of loans using trust funds.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Stats. Implemented: ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Hist.: DSL 2-2002, f. 4-12-02, cert. ef. 7-1-02; DSL 6-2009, f. & cert. ef. 7-1-09; DSL 2-2016, f. 5-13-16, cert. ef. 6-1-16; DSL 2-2017, f. & cert. ef. 1-12-17

141-067-0155 Policies

(1) Pursuant to Article VIII, Section 5(2) of the Oregon Constitution, the State Land Board has a constitutional responsibility to manage all land (Trust and Non-Trust) under its jurisdiction “with the object of obtaining the greatest benefit for the people of this state, consistent with the conservation of this resource under sound techniques of land management.”

(2) In order to achieve the constitutional mandate described above and to maximize the financial return to the Common School Fund from Trust Lands, the Department will seek to obtain the full fair market value for any land or interests in land sold or exchanged.

(3) Trust Lands will be sold or exchanged in a manner that complies with state law while ensuring absolute adherence to both constitutional and Admission Act trust responsibilities as determined by the State Land Board and subject to review by the courts.

(4) The Department will follow the guiding principles and resource-specific management prescriptions contained in the Asset Management Plan.

(5) In order to carry out the directives of the Asset Management Plan the Department may initiate efforts, subject to approval of the State Land Board, to purchase, sell or exchange Trust and/or Non-Trust Lands.

(6) Any Trust Land or interest in Trust Land may be exchanged for other land or interest in land, of equal or superior value. The newly acquired land or interest in land shall become Trust Land.

(7) The Director may, with State Land Board approval, purchase, sell or exchange lands in any such size, configuration or class (e.g. forest, agriculture, commercial).

(8) The State Forester may initiate and process land exchanges involving Common School Forest Lands under its management as allowed in the management agreement between State Land Board, the Department of State Lands and the State Forester. Such land exchanges require the approval of the State Land Board.

(9) Qualified persons and agencies may apply to purchase or exchange state land or interests in state land at any time. An application fee, as required by these rules, shall be included with each application. The Department reserves the right to accept or reject any application as well as to prioritize land sale and exchange projects according to available agency funds and income potential.

(10) The Department will not sell or exchange state-owned submerged land except to facilitate remedial action conducted pursuant to a plan approved by the Oregon Department of Environmental Quality (DEQ) or the U.S. Environmental Protection Agency (EPA) and with DEQ or EPA oversight. In instances when the Department chooses to sell or exchange submerged lands under circumstances as stated in these rules, such transaction shall occur only upon a finding that the transaction will provide a net gain in public trust values to the people of Oregon when viewed alone or in conjunction with other nearby or related sites. The State Land Board must approve all sales or exchanges of state-owned submerged land.

(11) The Department recognizes that uncertainty exists as to the extent of the State’s ownership of some formerly submerged and submersible lands. Actions to determine and assert the State’s interest, if any, in formerly sub-merged and submersible land should be done in a prompt and orderly manner and as funding allows. The State Land Board authorizes the Department to negotiate settlements in lieu of litigation, when and where appropriate, with regard to the ownership of formerly submerged and submersible lands.

(12) The Department may exchange or sell submersible lands subject to the approval of the State Land Board, based on its finding that the proposed transaction will accrue a net gain of public trust values to the people of Oregon when viewed alone or in conjunction with other nearby or related lands within the control of the applicant.

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(13) The State Land Board authorizes the Director or designee to issue such certificates of sale, deeds or conveyances as are necessary to carry out the land transactions approved by the State Land Board in conformance with these rules. Such instruments shall include, but not be limited to bargain and sale, limited warranty and quitclaim deeds, and be drawn in a manner to transfer any and all rights and interests to the buyer/exchange partner that the Department may hold or has agreed to convey.

(14) Land or interest in land sold to another state agency or political subdivision under the provisions of ORS 270.100 shall be used for public purpose or benefit, and not be sold for resale to a private purchaser. Restrictions to further this policy shall be included in the deed and be enforceable through such terms as, but not limited to, reversionary clauses.

(15) The State Land Board shall recognize and adhere to all terms and conditions of valid existing leases and easements as they affect proposed land sales or exchanges.

(16) The State Land Board shall retain all mineral and geothermal resource rights (as defined) except as allowed under OAR 141-067-0320.

(17) The Department will seek certification of these rules by the Department of Administrative Services (DAS) as permitted under OAR 125-045-0210. These rules are intended to carry out land transactions in a manner consistent with DAS rules for the Disposition and Acquisition of Real Property Interests (OAR 125-045).

(18) DAS approval is not required for:

(a) Sale of Non-Trust Land (except those lands sold at less than the appraised value);

(b) Sale of Trust Land;

(c) Any land exchange;

(d) Any release, sale or exchange of mineral and geothermal resource rights.

Stat. Auth.: ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Stats. Implemented: ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Hist.: DSL 6-2009, f. & cert. ef. 7-1-09; DSL 2-2016, f. 5-13-16, cert. ef. 6-1-16; DSL 2-2017, f. & cert. ef. 1-12-17

141-067-0170

Land Exchanges

(1) Except as provided in OAR 141-067-0300 or as limited by 141-067-0155, the Department may exchange any lands or interests in lands for any other lands to meet objectives of the Asset Management Plan or the South Slough National Estuarine Research Reserve Management Plan. Exchanges shall be made on the basis of value. The Department may accept a monetary payment or reserve rights as part of the consideration to the extent required for a fair transaction.

(2) The Department may initiate a land exchange without requiring that an application be submitted.

(3) Any person, eligible to do so, may submit an application to the Department to initiate a land exchange. The application must be submitted on a form provided by the Department.

(4) The Department will notify the lessee, if any, by registered or certified mail and the applicant of receipt of the land exchange application. Within a reasonable time after receipt of the land exchange application, the Director will conduct an initial review of the application and determine the action to be taken including but not be limited to:

(a) Rejecting the application. A rejected application shall be returned to the applicant with the reasons for its rejection clearly stated. The lessee, if any, will also be notified. An additional non-refundable application fee will not be required for an application that is resubmitted within 120 calendar days of its rejection.

(b) Accepting the application for further processing; or

(c) Requesting more information.

(5) Following initial review and acceptance of the application, the Department will:

(a) Complete a Land Disposal Evaluation and Land Acquisition Evaluation of the lands involved in the exchange;

(b) Initiate the applicable elements of the public interest review process.

(6) If the Director determines to proceed with the land exchange proposal, the Department will negotiate a Land Exchange Agreement with the applicant. The State Land Board shall approve the Land Exchange Agreement.

(7) The Department may group together similar land exchange applications for more efficient processing. The willingness of applicants or other interested parties to pay for or share in the cost of appraisals, surveys, pub-

lic notices or other expenses may be a factor in the Department's prioritization of land exchange proposals.

Stat. Auth.: ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Stats. Implemented: ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Hist.: DSL 2-2002, f. 4-12-02, cert. ef. 7-1-02; DSL 6-2009, f. & cert. ef. 7-1-09; DSL 2-2016, f. 5-13-16, cert. ef. 6-1-16; DSL 2-2017, f. & cert. ef. 1-12-17

141-067-0180

Public Interest Review Process; Public Meetings and Hearings

(1) After an application has been accepted for further processing or at anytime the Department decides to sell or exchange land the Department will notify, in writing, all affected lessees (by registered or certified mail) and adjacent lessees of a potential land sale or land exchange.

(2) Lessees affected by a land exchange proposal will be given notice that if a written protest is submitted by an affected lessee to the Department within 20 calendar days of the mailing a public hearing will be held on the exchange proposal. Such a hearing will be scheduled as described in OAR 141-067-0180(7).

(3) The Department will notify, in writing, all adjacent landowners, and all affected school districts, city and county governments, including the county board of commissioners of a potential land sale or land exchange. The notice will offer all entities and persons an opportunity to comment on the proposal.

(4) Notify, in writing, those individuals and public interest groups that have indicated, through prior contact with the Department, an interest in potential land sales or land exchanges.

(5) Notify the Department of Administrative Services as described in OAR 141-067-0190.

(6) The Department may hold a public meeting on any land sale or exchange proposal to solicit public comment and explain the proposal. The Department will give 45 calendar days notice of any such meeting(s) to adjacent land owners, lessees, interested parties, agencies and local governments by mail and press releases or public notice in a newspaper of general circulation within the county in which the proposal is located. The public meeting information will also be posted on the Department's website.

(7) The Department will hold a public hearing on the proposal if it receives a timely written protest of a land exchange proposal from an affected lessee. The hearing will be cancelled or not scheduled if, anytime after the lessee's written protest is received, the Department rejects the land exchange proposal or the applicant withdraws the application. The hearing will be held at least 45 calendar days, but not more than 90 calendar days, after the written protest has been received by the Department. All affected lessees of land considered for exchange will be notified of the hearing by certified or registered mail. All others will be given notice in the same manner as described in OAR 141-067-0180(6). All comments by the lessees or their representatives and all other interested parties will be recorded and compiled in the hearing record for review by the State Land Board or Director. The affected lessee and all registered public hearing attendees will be notified of any decision of the Director or the State Land Board resulting from the public hearing.

Stat. Auth.: ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Stats. Implemented: ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Hist.: DSL 2-2002, f. 4-12-02, cert. ef. 7-1-02; DSL 6-2009, f. & cert. ef. 7-1-09; DSL 2-2016, f. 5-13-16, cert. ef. 6-1-16; DSL 2-2017, f. & cert. ef. 1-12-17

141-067-0195

Resolving Ownership of Formerly Submerged and Submersible Lands

(1) Any person interested in resolving ownership of formerly submerged and submersible lands may meet with the Department to discuss the facts concerning the creation and ownership of the lands in question.

(2) Based on the facts presented, as well as the Department's own investigation, the Department may do the following:

(a) Agree that the Department has no interest in the formerly submerged or submersible land;

(b) Determine who is entitled to purchase the formerly submerged or submersible land under these rules;

(c) Enter into litigation to resolve the ownership issue, including but not limited to a suit to quiet title;

(d) Enter into negotiation in lieu of litigation with the person to resolve the ownership question;

(e) Request more information from the landowner or person; or

(f) Pursue other actions aimed at resolving the ownership question.

(3) Factors the Department may weigh in determining its course of action include but are not limited to:

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- (a) The chronological history of the creation of the formerly submerged or submersible land;
- (b) The identity of the person(s) who created the formerly submerged or submersible land;
- (c) The past actions of the Department regarding the sale of submersible lands;
- (d) The identity of the current riparian owner;
- (e) The cause for the change in the location of the waterway; and
- (f) The relative strength of the Department's ownership claim.

Stat. Auth.: ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985
Stats. Implemented: ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985
Hist.: DSL 6-2009, f. & cert. ef. 7-1-09; DSL 2-2016, f. 5-13-16, cert. ef. 6-1-16; DSL 2-2017, f. & cert. ef. 1-12-17

141-067-0215

Sale of Submerged and Submersible Lands

(1) Any person may submit an application to purchase submerged and submersible land. The application must be submitted on a form provided by the Department. A non-refundable application fee in the amount shown in OAR 141-067-0165 must be included with the application.

(2) The sale of submerged lands is limited to lands subject to remedial environmental action pursuant to a plan approved by DEQ or EPA.

(3) Applications will be processed in accordance with the applicable provisions of OAR 141-067-0220 and 141-067-0155.

(4) The applicant will be required to acknowledge the character of the land being applied for and the title interest in the land held by the Department. Further, the applicant must waive all claims against the State, including but not limited to claims for the return of the purchase price, if all or part of the land are determined to not belong to the Department.

(5) Following notice that the land is available for sale, the applicant, at their own expense, shall have a survey of the land prepared. The survey must:

(a) Be prepared by a registered land surveyor approved by the Department in writing before the start of the survey work;

(b) Connect and conform to adjacent surveys acceptable to the Department, to the extent reasonably practicable; and

(c) Be notarized and submitted to the Department along with a hard copy map that is also notarized and electronic file in a format of the Department's choosing.

Stat. Auth.: ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985
Stats. Implemented: ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - RS 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985
Hist.: DSL 6-2009, f. & cert. ef. 7-1-09; DSL 2-2016, f. 5-13-16, cert. ef. 6-1-16; DSL 2-2017, f. & cert. ef. 1-12-17

141-067-0220

General Procedures for Land Sales (Except OAR 141-067-0215)

(1) These general procedures apply to the processing of all land sale applications, except sales of formerly submerged and submersible land (under 141-067-0300), and release of mineral and geothermal resource rights to owners of residential real property (under 141-067-0320). The Department may offer land for sale at any time without having first received an application from an individual or person. (Refer to 141-067-0230 for additional requirements for the sale of rangelands.)

(2) Any person who is eligible to do so as described in OAR 141-067-0160, may submit an application to purchase state land.

(3) Upon receipt of the application, the Department will conduct an initial review of the land sale application, including but not limited to:

(a) A determination whether or not the land described in the land sale application is a legal lot of record as described in ORS Chapter 92;

(b) A determination, of the Department's rights and interests in the land or interests in land described in the land sale application, based, if necessary, on a preliminary title report by the Department or its agent;

(c) A Land Disposal Evaluation of the lands described in the land sale application;

(d) The results of the DAS notice process, if applicable, as described in OAR 141-067-0190;

(e) The applicable elements of the public interest review process as described in OAR 141-067-0180 of these rules; and

(f) A determination of whether the proposal is consistent with the policies set forth in OAR 141-067-0155.

(4) The Department will notify the lessee, if applicable (by registered or certified mail) and the applicant of receipt of the land sale application. Within a reasonable time after receipt of the sale application and following

completion of the initial review, the Director will determine the action to be taken including, but not limited to:

(a) Rejecting the application. A rejected application shall be returned to the applicant with the reasons for its rejection clearly stated. The lessee, if any, will also be notified. An additional non-refundable application fee will not be required for an application that is resubmitted within 120 calendar days of its rejection;

(b) Accepting the application for further processing; or

(c) Requesting more information.

(5) The Department may group together similar land sale applications for more efficient processing and to attract more buyer interest. The willingness of applicants or other interested parties to pay for or share in the cost of appraisals, surveys, advertising or other expenses may be a factor in the Department's prioritization of land sales applications for processing.

(6) If following the initial review of the land sale application is accepted for further processing, the Director will within a reasonable time:

(a) Classify as "available for sale" the land under consideration; or

(b) Not classify the lands under consideration as "available for sale."

If the decision is to not classify the land as "available for sale" the Department will terminate further processing of the land sale application. As soon as possible after the Director's determination, the Department will notify the applicant and, if applicable, the lessee (by registered or certified mail) of the Director's decision.

(7) If the lands are classified as "available for sale":

(a) The Director will determine the method of sale for the land as described in OAR 141-067-0270 and request the State Land Board's approval of the land sale;

(b) The Department, its agent, or the applicant will, take such action as is necessary to obtain a legal lot of record determination as described in ORS 92 before the final closing of the sale;

(c) The Department will exercise its authorities under any applicable lease contract provisions allowing for the land to be sold without the encumbrance of the lease;

(d) The Department, its agent, or the applicant, will obtain a land appraisal in accordance with the provisions of OAR 141-067-0310; and

(e) The Department will determine the Department Estimate of Value as the minimum bid, reserve price or final purchase price, as applicable, depending on the approved method of sale.

(8) The Department will conduct the sale in accordance with the method of sale established by the Director and approved by the State Land Board.

(9) The Department, its agent or the applicant will give public notice of the proposed land sale by publication in a local newspaper of general circulation within the county where the proposed land sale is located and on the Department's website. The newspaper notice will be published for at least one day per week for at least three consecutive weeks prior to the sale. The Department will notify all landowners and lessees of land adjacent to the land being offered for sale of the sales procedure and all pertinent information concerning the proposed land sale.

(10) The Department may, at any time prior to the closing, withdraw from the sale process any or all of the lands subject to the land sale. If lands are withdrawn from sale under these rules, any monetary deposit on the land withdrawn will be refunded to the owner.

Stat. Auth.: ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985
Stats. Implemented: ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985
Hist.: DSL 2-2002, f. 4-12-02, cert. ef. 7-1-02; DSL 6-2009, f. & cert. ef. 7-1-09; DSL 2-2016, f. 5-13-16, cert. ef. 6-1-16; DSL 2-2017, f. & cert. ef. 1-12-17

141-067-0270

Methods for Conducting Land Sales

(1) The director shall recommend to the State Land Board the method for conducting a land sale based upon the policies described in OAR 141-067-0155 and as set forth in these rules.

(2) The following methods shall be used:

(a) Direct sale at Department Estimate of Value. This method is generally used for the sale of: Certain Trust and Non-Trust land transactions involving agencies of the federal government with powers of eminent domain.

(b) Direct sale at Department Estimate of Value with reversionary rights, existing leases or other reserved interests, limitations and encumbrances. This method is used principally for land sales to state agencies and political subdivisions and is aimed at assuring that the land will continue to be used for public purposes after it has been transferred.

(c) Direct sale to a qualified lessee, or if not applicable, to an adjacent landowner at a sale price based on a Department Estimate of Value.

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(d) Sale to the highest bidder via oral or sealed bid auction or combination thereof; minimum bid or reserve price approved by the Director. This method is used for all classes of Trust and Non-Trust land except as otherwise described in these rules.

(e) Sale to the highest bidder via oral or sealed bid auction with an eligible lessee having the right to bid last to exceed the final high bid; minimum bid or reserve price established by the Director based on Department Estimate of Value. This method is used for qualified rangeland lessees as described in OAR 141-067-0230 or for those lessees with lease contract terms and conditions that clearly and explicitly provide this opportunity.

(f) Negotiated sale. This method allows the Department to negotiate or bargain for the highest sale price possible from among interested parties.

(g) Brokered Sale. This method allows for the Department to offer land through a State of Oregon licensed real estate broker at a fair market value and to negotiate the final sale price with a buyer through the broker. A brokerage fee may be paid to the Department's broker or the buyer's agent or both in accordance with generally accepted real estate practices. This method is used when local real estate market conditions indicate and the land being offered best fits disposal through a more traditional marketing approach.

(3) The Department reserves the right, but not the obligation, to offer all property to lessees, followed by adjacent landowners and others when the Director determines that doing so will provide the greatest benefit for the people of the state and not conflict with the Department's constitutional and statutory obligations.

(4) The Director will report to the State Land Board the land sale method chosen for each sale and the reasons supporting the choice of sale method. The land sale method must be approved by the State Land Board.

(5) If the sale method selected involves an auction, the Department will establish the sale procedures to be followed including, but not limited to: the form and schedule for bid submittals; the amount of deposit required; the time and location of the bid openings and/or oral auction; the minimum bid or reserve price; preliminary terms and conditions of sale; payment options and any additional costs to be borne by the successful purchaser. The Department will fully disclose these procedures and all other pertinent information to the public as well as give ample advance public notice of the auction.

Stat. Auth.: ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985
Stats. Implemented: ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985
Hist.: DSL 2-2002, f. 4-12-02, cert. ef. 7-1-02; DSL 6-2009, f. & cert. ef. 7-1-09; DSL 2-2016, f. 5-13-16, cert. ef. 6-1-16; DSL 2-2017, f. & cert. ef. 1-12-17

141-067-0300

Procedures for Resolving Claims to Formerly Submerged or Submersible Land (does not apply to lands described in OAR 141-067-0215)

(1) The Director may issue a quitclaim deed to resolve a cloud of title over formerly submerged and submersible land. Such land may be, but is not limited to, areas that once were submerged or submersible land but are no longer connected to or a part of a state-owned (navigable) body of water due to the dynamic forces of the waterway. Such lands may be disposed of after the Department has completed a review of the facts and determined the extent, if any, of the state's ownership interest in the land.

(2) Any person may submit an application to resolve a claim to formerly submerged and submersible land. The application must be submitted on a form provided by the Department and include the appropriate application fee. Upon receipt of the application, and in order to determine the extent, if any, of the state's ownership claim, the Department will conduct an initial review of the application, including but not limited to:

(a) A determination whether or not the parcel(s)/lot(s) described in the land sale application are legal lots of record as described in ORS Chapter 92;

(b) A determination, based, if necessary, on a preliminary title report conducted by the Department or its agent, of the Department's rights and interests in the land or interests in land described in the land sale application; and

(c) A Land Sale Evaluation of the lands involved in the application;

(d) The results of the DAS notice process, if applicable, as described in OAR 141-067-0190;

(e) The applicable elements of the public interest review process as described in OAR 141-067-0180.

(3) The Department will notify any lessees (by certified or registered mail) and the applicant of the receipt of the sale application within 90 calendar days. Based on the initial review of the application, the Director will take, but not be limited to, the following actions:

(a) Reject the application. A rejected application will be returned to the applicant with an explanation of the reasons for its rejection clearly stated. An additional non-refundable application fee will not be required for an application that is resubmitted within 120 calendar days of its rejection;

(b) Accept the application for further processing; or

(c) Request more information and later determine the merit of the application based on the information submitted.

(4) Upon acceptance of the application for further processing the Department and the applicant will meet to negotiate an agreement establishing the terms and conditions of the transaction, the responsibilities of each party and the transaction schedule. The Department may impose additional requirements or conditions on the issuance of the deed, including but not limited to indemnification of waiver of claims against the Department and the State of Oregon.

(5) The Department may, where feasible and deemed to be in the best interests of the public to do so, require the quitclaim grantee to issue a similar quitclaim to the Department for the existing submerged and submersible land fronting and abutting the grantee's land on the waterway as it exists at the time of the transaction.

Stat. Auth.: ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985
Stats. Implemented: ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985
Hist.: DSL 2-2002, f. 4-12-02, cert. ef. 7-1-02; DSL 6-2009, f. & cert. ef. 7-1-09; DSL 2-2016, f. 5-13-16, cert. ef. 6-1-16; DSL 2-2017, f. & cert. ef. 1-12-17

141-068-0000

Purpose and Applicability

These rules:

(1) Govern the identification of State's interest in historically filled lands by the Department of State Lands (Department).

(2) Govern the notification process of State's interest in historically filled lands by the Department.

(3) Govern the process to clearing title to historically filled lands and new lands.

(4) Govern the sale, exchange and reservation of historically filled lands by the Department.

(5) Govern the creation, sale, exchange and reservation of new lands by the Department.

(6) Do not govern the land sale or exchange of state-owned trust lands, or mineral and geothermal resource rights as administered in OAR 141-067.

(7) Do not govern the issuance of state leases, easements or other local, state or federal permits for historically filled lands and new lands.

(8) Do not govern the placement of rip-rap; structures constructed by a drainage or diking district; tidegates; wharves; or other uses of state-owned submerged and submersible lands as administered in OAR 141-082.

(9) Do not govern the placement of bridges or other crossings of state-owned submerged and submersible lands as administered in OAR 141-122.

(10) Do not govern the removal or fill of material in waters of the state as administered in OAR 141-085.

Stat. Auth.: ORS 183, 273 & 274
Stats. Implemented ORS 274.905-274.956

Hist.: DSL 2-2016, f. 5-13-16, cert. ef. 6-1-16; DSL 2-2017, f. & cert. ef. 1-12-17

141-068-0010

Definitions

(1) "Abutting" means immediately adjacent to or facing.

(2) "Affected Property Owners" refers to those people listed in the records of the county assessor as owners of property fronting, abutting or underlying, or having a recorded easement allowing access to a waterway segment at the time that the Department undertakes a State's interest study of the subject waterway.

(3) "Applicant" is any person who submits a written request to the Department to create, purchase or exchange land or interests in land.

(4) "Appraisal" or "Appraisal Report" means a written statement setting forth an opinion as to the market value of the lands or interests in lands as of a specific date(s) prepared by a qualified appraiser in accordance with the Uniform Standards of Professional Appraisal Practices (USPAP) standards.

(5) "Deed" means a written, legal instrument that conveys an estate or interest in real property when it is properly executed and delivered.

(6) "Department" means the Department of State Lands.

(7) "Declaration" is a written statement by the Land Board concerning the nature and extent of the state's interest to historically filled lands in a waterway segment under study.

(8) "Director" means the Director of the Oregon Department of State Lands or designee.

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(9) "Easement" is an authorization granted that gives a person the use of a specifically designated parcel of land for a specific purpose and length of time. An easement does not convey any proprietary or other rights of use to the holder other than those specifically granted in the easement authorization.

(10) "Fair Market Value" means the most probable price, as of a specified date, in cash, or in terms equivalent to cash for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller acting prudently, knowledgeably, and assuming that neither is under undue duress.

(11) "Geothermal Resources" as defined in ORS 522.005 means the natural heat of the earth, the energy, in whatever form, below the surface of the earth present in, resulting from, or created by, or that may be extracted from, the natural heat, and all minerals in solution or other products obtained from naturally heated fluids, brines, associated gases, and steam in whatever form, found below the surface of the earth, exclusive of helium or of oil, hydrocarbon gas or other hydrocarbon substances, but including, specifically:

(a) All products of geothermal processes, including indigenous steam, hot water and hot brines;

(b) Steam and other gases, hot water and hot brines resulting from water, gas, or other fluids artificially introduced into geothermal formations;

(c) Heat or other associated energy found in geothermal formations; and

(d) Any by-product derived from them.

(12) "Highest and Best Use of Filled Land" means to treat the land (not including improvements) as if it were a part of the adjacent, or larger upland parcel, rather than an isolated land-locked parcel, unless the parcel is solely created by filled land. Filled land must be appraised with this definition unless the Department has given specific instructions to the contrary.

(13) "Historically Filled Lands" as defined in ORS 274.905, means those lands protruding above the line of ordinary high water, whether or not connected with the adjoining or opposite upland or riparian lands on the same side of the body of water that were created upon submersible or submerged lands by artificial fill or deposit before May 28, 1963. Historically filled lands does not include bridges, wharves and similar structures constructed upon submersible or submerged lands by other than artificial fill or deposit.

(14) "Interest" means right, title, or legal share in something.

(15) "Interested persons" means any person that has requested to be notified of certain Department actions within an area, or who has previously provided comment on a similar agency action.

(16) "Line of Ordinary High Water" as defined in ORS 274.005, means the line on the bank or shore to which the high water ordinarily rises annually in season.

(17) "Line of Ordinary Low Water" as defined in ORS 274.005, means the line on the bank or shore to which the low water ordinarily recedes annually in season.

(18) "New Lands" as defined in ORS 274.905 means those lands protruding above the line of ordinary high water, whether or not connected with the adjoining or opposite upland or riparian land on the same side of the body of water, that were created upon submersible or submerged lands by artificial fill or deposit on or after May 28, 1963 and not including bridges, wharves and similar structures constructed upon submersible or submerged lands by other than artificial fill or deposit.

(19) "Person" includes individuals, corporations, associations, firms, partnerships, limited liability companies and joint stock companies as well as any state or other governmental or political subdivision or agency, public corporation, public authority, or Indian Tribe.

(20) "Public Interest" as used in ORS 274.940 includes the values, rights and interests that the public holds in historically filled lands for recreation, conservation of resources, or navigation."

(21) "Quitclaim Deed" is a form of deed in which any interest the grantor possesses in the property described in the deed is conveyed to the grantee without guaranteeing that interest or its title.

(22) "Real Market Value" or "RMV" means the current real market value of the property (not including improvements) assigned to the land or comparable tax lot by the county tax assessor.

(23) "Reserved Interest" means an interest in the land that is retained by the Department from a conveyance of the title to the state land.

(24) "State Land Board" or "Board" means the constitutionally created body consisting of the Governor, Secretary of State and the State Treasurer that is responsible for managing the assets of the Common

School Fund as well as for additional functions placed under its jurisdiction by law.

(25) "Submerged Lands" as defined in ORS 274.005, means lands lying below the line of ordinary low water of all navigable waters within the boundaries of this state as heretofore or hereafter established, whether such waters are tidal or nontidal.

(26) "Submersible Lands" as defined in ORS 274.005, means lands lying between the line of ordinary high water and the line of ordinary low water of all navigable waters and all islands, shore lands or other such lands held by or granted to this state by virtue of her sovereignty, wherever applicable, within the boundaries of this state as heretofore or hereafter established, whether such waters or lands are tidal or nontidal.

Stat. Auth.: ORS 183, 273 & 274

Stats. Implemented ORS 274.905-274.956

Hist.: DSL 2-2016, f. 5-13-16, cert. ef. 6-1-16; DSL 2-2017, f. & cert. ef. 1-12-17

141-068-0020

General Provisions

(1) Pursuant to Article VIII, Section 5(2) of the Oregon Constitution, the State Land Board has a constitutional responsibility to manage all land (Trust and Non-Trust) under its jurisdiction "with the object of obtaining the greatest benefit for the people of this state, consistent with the conservation of this resource under sound techniques of land management."

(2) Pursuant to Oregon law as defined in ORS 274, all tidally influenced and title navigable waterways (referred to as state-owned submerged and submersible land) have been placed by the Oregon State Legislature under the jurisdiction of the State Land Board and the Department, as the administrative arm of the State Land Board.

(3) State-owned submerged and submersible lands are managed to ensure the collective rights of the public, including riparian owners, to fully use and enjoy this resource for commerce, navigation, fishing, recreation and other public trust values. These rights are collectively referred to as "public trust rights."

(4) All references in these rules to "state-owned submerged and submersible lands" include state-owned submerged lands or submersible lands or both.

(5) The Department recognizes that uncertainty exists as to the extent of the State's interest in historically filled lands. Actions to determine and assert the State's interest, if any, in historically filled lands should be done in a prompt and orderly manner and as funding allows. The State Land Board authorizes the Department to negotiate settlements in lieu of litigation, when and where appropriate, with regard to the ownership of historically filled lands.

(6) The State Land Board authorizes the Director to issue land sale contracts, deeds or conveyances as are necessary to carry out the land transactions approved by the State Land Board in conformance with these rules. Such instruments shall include, but not be limited to quitclaim deeds, and be drawn in a manner to transfer any and all rights and interests (excluding mineral and geothermal resource rights) to the buyer/exchange partner that the Department may hold or has agreed to convey.

(7) Administrative fees delineated in these rules shall be adjusted on January 1 of every year based on Portland-Salem, OR-WA Consumer Price Index for All Urban Consumers for All Items as published by Labor Statistics of the US Department of Labor. The calculated adjustment shall be rounded up to the nearest dollar.

(8) The real market valuations described in OAR 141-068-0070(9), (10), and (11) rules shall be adjusted on January 1 of every year based on Portland-Salem, OR-WA Consumer Price Index for All Urban Consumers for All Items as published by Labor Statistics of the US Department of Labor. The calculated adjustment shall be rounded up to the nearest \$10 dollars.

(9) The State Land Board authorizes the Director to (without further State Land Board approval) issue land sale contracts, deeds or conveyances as are necessary to carry out the land transactions, in conformance with these rules, for:

(a) Historically filled lands where no State interest is determined to exist; and

(b) Historically filled lands that are determined to be of low value and low public interest values are present per OAR 141-068-0080(5)(d).

(10) The State Land Board shall recognize and adhere to all terms and conditions of valid existing leases and easements as they affect proposed land sales or exchanges.

(11) The State Land Board shall retain all mineral and geothermal resource rights (as defined) except as allowed under OAR 141-067-0320.

(12) It is the policy of the State Land Board that public access to a waterway shall be preserved to the extent practicable. The Department may

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require a public easement to, or along the waterway, as a condition of a land sale.

(13) Pursuant to ORS 274.950, the State Land Board shall not assert title to historically filled lands after December 31, 2025 unless the Board had made a declaration of State's interests prior to the date.

(14) Excluded from OAR141-068-0020(13) are:

(a) Historically filled lands over which the State Land Board asserted title prior to January 1, 2016;

(b) Historically filled lands fronting upon the Pacific Ocean; or

(c) Lands in the portion of the Lower Willamette River that includes the Portland Harbor Superfund Site as delineated by the United States Environmental Protection Agency.

Stat. Auth.: ORS 183, 273 & 274

Stats. Implemented ORS 274.905-274.956

Hist.: DSL 2-2016, f. 5-13-16, cert. ef. 6-1-16; DSL 2-2017, f. & cert. ef. 1-12-17

141-068-0030

Identification of State's Interest in Historically Filled Lands

(1) Upon direction from the Board to determine whether any interest remains or is vested in the State of Oregon with respect to historically filled lands in a segment of a waterway, the Department shall take the following steps:

(a) Post a public notice on the Department's website;

(b) Submit a press release to media in the study area; and

(c) Inform affected property owners, affected local, state and federal agencies, state legislators representing the district where the segment is located, any local port district, any local federally recognized tribes, any local watershed councils, national estuary programs and soil and water districts, and other interested persons.

(2) In conducting a study the Department shall take, at a minimum, the following steps:

(a) Analyze existing filled lands inventories, plat maps and deeds, historic low and high water lines as reported by the United States Army Corps of Engineers, aerial photography and tax lot information as compiled and digitized by the Department;

(b) Identify the purpose and date that the fill was placed, if possible;

(c) Identify the current site characteristics and use; and

(d) Evaluate any new information that can be collected by researching the local property records, or that may be provided by affected property owners or other stakeholders.

(3) Upon completion of a study the Department shall prepare and submit to the Board a draft report setting forth the Department's findings and conclusions as to whether any historically filled lands are located within the area under study.

(4) Upon completion of the draft report, the Department shall:

(a) Post a public notice on the Department's website;

(b) Submit a press release to media in the study area; and

(c) Provide appropriate public notice to affected property owners, affected local, state and federal agencies, any local port district, any local federally recognized tribes, any local watershed councils, national estuary programs and soil and water districts, and other interested persons concerning the draft report.

(5) The Department shall provide an opportunity for the public to submit written comments on the draft report and to submit other evidence concerning the presence of historically filled lands.

(6) The Department may post a notice of a draft report and opportunity to comment at a local government building, public library, or other appropriate locations in order to ensure that minority and low-income communities are included and aware of a study and draft report. The Department shall make paper copies of materials available to any person upon request.

(7) The Department shall hold public workshops and informational meetings in the study area as appropriate.

(8) The Department shall hold a public hearing in the area of affected lands if it receives a written request within thirty (30) days after the posting of notice of the draft report by the Department.

(9) Following the notification and opportunity for a public hearing, the Board may adopt the draft report as final, or the Board may refer the report to the Department for further action.

(10) Upon adoption of a final report, the Board shall declare the nature and extent of the State's claim to any interest that remains vested in the State of Oregon as identified in the final report.

(11) A declaration by the Board is not a final agency order.

Stat. Auth.: ORS 183, 273 & 274

Stats. Implemented ORS 274.905-274.956

Hist.: DSL 2-2016, f. 5-13-16, cert. ef. 6-1-16; DSL 2-2017, f. & cert. ef. 1-12-17

141-068-0040

Notification of a State Land Board Declaration

(1) Following a Board declaration, the Department shall:

(a) Post a public notice on the Department's website;

(b) Submit a press release to media in the study area; and

(c) Provide notice to affected local, state and federal agencies, state legislators representing the district where the study area is located, any local port district, any local federally recognized tribes, any local watershed councils, national estuary programs and soil and water districts, and other interested persons.

(2) The Department shall give notice by registered mail or by certified mail, return receipt requested, to each owner of record of land identified as having a State interest in the property. This notice shall include a copy of the declaration made with respect to the land and a statement informing the owner of record of a point of contact at the Department and options available to the owner of record based on the notice.

(3) The notice shall use common description and maps shall be designed to identify the land or waterway in a manner intelligible to the layperson and useful in establishing the exact location of the state claim in relation to existing descriptions.

(4) The Department shall record the declaration with the county of record for parcels determined to have a State interest.

Stat. Auth.: ORS 183, 273 & 274

Stats. Implemented ORS 274.905-274.956

Hist.: DSL 2-2016, f. 5-13-16, cert. ef. 6-1-16; DSL 2-2017, f. & cert. ef. 1-12-17

141-068-0050

Resolving Ownership of Historically Filled Lands prior to State Land Board declaration and New Lands

(1) Notwithstanding the provisions of OAR 141-068-0030 through OAR 141-068-0040, any person with a potential interest in a property that wishes to resolve ownership of historically filled lands prior to declaration (including those lands excluded per OAR 141-068-0020(14)), or new lands may meet with the Department to discuss the facts concerning the creation and ownership of the lands in question.

(2) The Department shall charge an investigation fee of \$250 if requested to complete a Strength of Claim checklist. The director has the discretion to waive this fee. A waiver must be in writing and explain the rationale for the waiver.

(3) The Department shall take the steps listed in OAR 141-068-0030(2) when completing an investigation.

(4) The Department shall complete a Strength of Claim checklist that summarizes the findings of the Department's investigation.

(5) Based on the facts presented, as well as the Department's own investigation, the Department may do the following:

(a) Agree that the Department has no interest in the historically filled land and offer to provide a conveyance that clears title to the lands as allowed under these rules;

(b) Begin the process to sell or clear title to the historically filled lands as provided under these rules;

(c) Enter into litigation to resolve the ownership issue, including but not limited to a suit to quiet title;

(d) Enter into negotiation in lieu of litigation with the person to resolve the ownership question;

(e) Request more information from the landowner or person; or

(f) Pursue other actions aimed at resolving the ownership question.

(g) A conveyance issued under OAR 141-068-0050(5)(a) may be carried out by the Director, and does not require further State Land Board approval.

Stat. Auth.: ORS 183, 273 & 274

Stats. Implemented ORS 274.905-274.956

Hist.: DSL 2-2016, f. 5-13-16, cert. ef. 6-1-16; DSL 2-2017, f. & cert. ef. 1-12-17

141-068-0060

Land Sale Application Requirements

(1) An application to clear title, buy or exchange land subject to these rules must be submitted on a form provided by the Department.

(2) Each land sale applicant must submit with the application a correct and concise description of the land(s) involved in the requested transaction.

(3) A single application may include multiple contiguous land parcels.

(4) The application fee for historically filled land, and existing new lands sales or land exchanges is \$500 per application.

(5) An application to create new lands under OAR 141-068-0100 shall serve as the application fee to purchase if approved by the State Land Board.

Stat. Auth.: ORS 183, 273 & 274

Stats. Implemented ORS 274.905-274.956

Hist.: DSL 2-2016, f. 5-13-16, cert. ef. 6-1-16; DSL 2-2017, f. & cert. ef. 1-12-17

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141-068-0070

Application Review Process

(1) Upon receipt of an application, the Department will determine whether it is complete. In order to be complete, an application must meet the requirements of OAR 141-068-0060 (all sections of the application must be correctly filled out), and must be signed and dated by the applicant. Applications determined to be incomplete will be returned to the applicant with a written explanation of the reason(s) for rejection.

(2) If a rejected application is resubmitted within 120 calendar days from the date the Department returned it to the applicant, no additional application fee will be assessed.

(3) The Department will prioritize the processing of complete applications based on the following factors:

- (a) An impending transaction or financing of the property in question;
- (b) Department resources available to process the application requests;

(c) Other factors as delineated by the Director.

(4) If determined by the Department to be complete, the application shall be circulated to affected local, state, and federal agencies; holders of valid authorizations granted by the Department in the requested area; any local port district, any local federally recognized tribes, any local watershed councils, national estuary programs and soil and water districts, and other interested persons. As a part of this review, the Department will specifically request comments concerning:

(a) The presence, type and location of state or federally listed species (including threatened, endangered, candidate and sensitive species), and archeological and historic resources within the lands;

(b) Current or historic use of the lands for fishing or recreation;

(c) Existing public access to the water from lands, road, or right of way across the lands;

(d) Importance of the lands to existing or future navigational needs.

(5) The Department may post a notice of an application and opportunity to comment at a local government building, public library, or other appropriate locations in order to ensure that minority and low-income communities are included and aware of a proposed action. The Department shall make paper copies of an application available to any person upon request.

(6) If the Department does not find evidence of significant public interests per ORS 274.940, then the Department may determine that there are “low” public interests in the lands.

(7) If the Department finds that there are recreational, navigational, or fish and wildlife interests (per ORS 274.940) in the property, the Department may determine that there are “moderate” to “high” public interests in the lands.

(8) The Department shall evaluate the value of the State’s interest in the lands under review. The valuation shall be based on the Real Market Value (RMV) of the property’s land, not including structures, as determined by the County Assessor. This process for valuation shall be applied to determine parcels eligible for settlement under OAR 141-068-0080(4).

(9) Land where the State’s interest in the property is determined to be less than \$20,000 shall be considered “low value”.

(10) Land where the State’s interest in the property is determined to be greater than \$20,000 and less than \$100,000 shall be considered “moderate value”.

(11) Land where the State’s interest in the property is determined to be greater than \$100,000 shall be considered “high value”.

(12) If the RMV is found to be artificially depressed for any extenuating circumstance, the Department may select another comparable tax lot(s) as the basis for establishing the valuation.

(13) The Department shall complete an Evaluation Form that provides:

- (a) The results of the Department’s due diligence;
- (b) The results from the valuation of the State’s interests in the lands;
- (c) The applicable elements from the public review and comment period; and

(d) A determination of whether the proposal is consistent with the general provisions set forth in OAR 141-068-0020.

(14) The review requirements of this section do not apply for a person requesting a conveyance that clears title when the Department has determined that there is no State interest in the historically filled land.

Stat. Auth.: ORS 183, 273 & 274

Stats. Implemented ORS 274.905-274.956

Hist.: DSL 2-2016, f. 5-13-16, cert. ef. 6-1-16; DSL 2-2017, f. & cert. ef. 1-12-17

141-068-0080

Land Sale Approval Process

(1) An applicant and the Department may enter into a negotiated sale at any time. A negotiated sale shall include:

(a) An appraisal or appraisal report must be completed on the land if the initial evaluation determines the value to be over \$100,000. If the initial Department evaluation determines the property to be under \$100,000 in value, the RMV is used to establish the value; and

(b) A schedule of the costs to be borne by the applicant and those administrative costs to be reimbursed to the Department by the applicant.

(2) A negotiated sale may include factors including, but not limited to:

(a) The relative strength of the state’s ownership claim;

(b) Access or lack of access;

(c) The potential loss of public interest values by extinguishing the State’s interest in the property;

(d) An evaluation of any existing authorizations or property rights either on, or adjacent to the land; and

(e) Any requirement to impose deed restrictions or issue easements in order to protect public interest values.

(3) The Department may participate in a negotiated sale for:

(a) A parcel determined to be of “high value” as described in OAR 141-068-0070(11); or

(b) Upon public review and findings, the Department determines that there are “moderate” to “high” public interests in the lands.

(4) All negotiated sales shall go to the State Land Board for final approval.

(5) The Department shall provide the following sale options for lands determined to have “low” public interest values, and to be of “low value” to “moderate value”:

(a) The Department shall offer to provide a conveyance that clears title to the lands as allowed under these rules.

(b) No compensation is required for the issuance of a conveyance that clears title for a parcel that is determined to be of “low value” as described in OAR 141-068-0070(9).

(c) The Department shall offer to issue a conveyance that clears title for compensation at 50% of real market value of the State’s interest in the property for a parcel that is determined to be of “moderate value” as described in OAR 141-068-0070(10).

(d) A conveyance issued under OAR 141-068-0080(5)(b) may be carried out by the Director and does not require further approval from the State Land Board.

Stat. Auth.: ORS 183, 273 & 274

Stats. Implemented ORS 274.905-274.956

Hist.: DSL 2-2016, f. 5-13-16, cert. ef. 6-1-16; DSL 2-2017, f. & cert. ef. 1-12-17

141-068-0090

Land Sale Conditions

(1) The Department will offer the type of deed (for example: quit-claim deed or bargain and sale deed) it deems to be the most legally defensible and best represents the known rights and interests held by the State in the land or interest in land being conveyed in the transaction.

(2) The Department may enter into a land sale contract that allows the applicant to make annual installment payments over no more than five years when purchasing the property.

(3) The Department and an applicant may agree to enter into a land sale contract where payment to the Department is made through a lien against the property if:

(a) The applicant is over the age of 65; or

(b) The applicant has a level of income that is less than 80% of the median income in the county where the property is located.

(4) Any land sale contract negotiated under OAR 141-068-0090(2) or (3) shall include an interest rate as defined in ORS 82.010, set at the time of the agreement.

(5) As part of a negotiated sale, the Department may request additional requirements or conditions on the issuance of a deed, including but not limited to indemnification of and waiver of claims against the Department and State of Oregon.

(6) An offer by the Department to enter into a land sale or exchange is valid for 12 months. If the transaction is not completed within 12 months, the Department may:

(a) Revoke the offer and require a new application and fee in order to continue; or

(b) The Director may extend the deadline in writing to an agreed upon timeframe.

(7) When the land sale or land exchange process has been completed, including the payment of the purchase price and fulfillment of the terms of

ADMINISTRATIVE RULES

the land sale or land exchange agreement, the Director will execute and deliver to the purchaser a deed in a manner and form prescribed by these rules. The Department may choose to conduct closing through an escrow agent.

(8) All assignments of land sale contracts shall be executed and acknowledged in the same manner as a deed to land or real property. All requests for assignment of land sale contracts shall be in writing. Written consent of the Department is required for any assignment. The Department shall issue the deed to the assignee upon full payment of the purchase price or the remaining balance of the land sale contract.

(9) The Department shall record, in the appropriate county office, any and all deeds it receives as a result of a land exchange or purchase.

(10) The grantee shall record any conveyance issued by the Department it received as a result of a land exchange or purchase. A copy of the recorded document shall be submitted to the Department.

(11) The Department may, where feasible and deemed to be in the best interests of the public to do so, require the grantee to issue a similar deed to the Department for the existing submerged and submersible land fronting and abutting the grantee's land on the waterway as it exists at the time of the transaction.

Stat. Auth.: ORS 183, 273 & 274

Stats. Implemented ORS 274.905-274.956

Hist.: DSL 2-2016, f. 5-13-16, cert. ef. 6-1-16; DSL 2-2017, f. & cert. ef. 1-12-17

141-068-0100

Permission to Create New Lands

(1) Pursuant to ORS 274.920, no one other than the United States, while engaged in the promotion of navigation, shall artificially create new lands by fill or deposit upon submersible or submerged lands without the approval of the owner of such lands and the owner of the adjoining or opposite upland on the same side of the body of water.

(2) Any person requesting to create new lands from state-owned submerged and submersible lands shall meet with Department staff to discuss the proposed project and use before submitting an application to the Department. This meeting may be in person or through other means acceptable to the Department. The Department may invite other government entities to take part in a pre-application meeting.

(3) Any person requesting to create new lands from state-owned submerged and submersible lands shall apply for permission to create the new lands.

(4) The application fee for requesting to create new lands is \$1,000 per application. A single application may include multiple contiguous land parcels.

(5) An application to create new lands shall be circulated to affected local, state, and federal agencies; holders of valid authorizations granted by the Department in the requested area; any local port district, any local federally recognized tribes, any local watershed councils, national estuary program and soil and water districts, and other interested persons. As a part of this review, the Department will specifically request comments concerning:

(a) The presence, type and location of state or federally listed threatened and endangered species (including threatened, endangered, candidate and sensitive species), and archeological and historic resources within the lands;

(b) Current or historic use of the lands for fishing or recreation;

(c) Existing public access to the water from lands, road, or right of way across the lands;

(d) Importance of the lands to existing or future navigational needs.

(6) The Department may waive the circulation requirement described in OAR 141-068-0100(5) if the action or development has been previously reviewed by the listed agencies and other interested persons, and the results are documented by the Department.

(7) The Department may post a notice of an application and opportunity to comment at a local government building, public library, or other appropriate locations in order to ensure that minority and low-income communities are included and aware of a proposed action. The Department shall make paper copies of an application available to any person upon request.

(8) A request to create new lands may be taken to the State Land Board for review and approval. If a request for approval is submitted to the State Land Board, then the Department shall provide findings and a recommendation for the Board's consideration.

Stat. Auth.: ORS 183, 273 & 274

Stats. Implemented ORS 274.905-274.956

Hist.: DSL 2-2016, f. 5-13-16, cert. ef. 6-1-16; DSL 2-2017, f. & cert. ef. 1-12-17

141-068-0110

Sale or Exchange of New Lands

(1) The Department shall follow the provisions of ORS 274.925 to ORS 274.937 when offering an eligible person the right to purchase certain new lands.

(2) Notwithstanding the provisions of OAR 141-068-0110(1), any person may apply to purchase or exchange new lands per OAR 141-068-0060. The application shall be processed and reviewed per OAR 141-068-0070.

(3) Notwithstanding the provisions of OAR 141-068-0110(1), the sale or exchange of new lands shall be a negotiated sale subject to the provisions of OAR 141-068-0080 and OAR 141-068-0090.

Stat. Auth.: ORS 183, 273 & 274

Stats. Implemented ORS 274.905-274.956

Hist.: DSL 2-2016, f. 5-13-16, cert. ef. 6-1-16; DSL 2-2017, f. & cert. ef. 1-12-17

141-068-0120

Reservation of New and Historically Filled Land

(1) Pursuant to ORS 274.940, the Department may reserve new and historically filled lands from sale, transfer or lease where upon notice and hearing the Department determines that the public interest requires the lands to be preserved for recreation, conservation of fish and wildlife or the development of navigation facilities. But in case of such reservation, the adjoining or opposite upland or riparian owner shall be allowed reasonable access across such reserved historically filled lands to navigable water.

(2) The Department shall use the comments received during public review and other findings when considering whether lands shall be reserved from sale.

(3) The Department shall hold a public hearing in the affected community prior to reserving the new or historically filled lands from sale.

(4) The Department will give 30 calendar days' notice of a public hearing to adjacent land owners, lessees, interested persons, agencies and local governments by mail or e-mail, and press release. The public hearing information will also be posted on the Department's website.

(5) A determination that the public interest requires new and historically filled lands to be reserved is not a final agency order.

Stat. Auth.: ORS 183, 273 & 274

Stats. Implemented ORS 274.905-274.956

Hist.: DSL 2-2016, f. 5-13-16, cert. ef. 6-1-16; DSL 2-2017, f. & cert. ef. 1-12-17

141-068-0130

Compliance with the Department of Administrative Service (DAS) Rules for the Disposition and Acquisition of Real Property

(1) Before acquiring any land by purchase or exchange or selling or exchanging any land or interests in land, the Department will notify the Department of Administrative Services Facilities Division (DAS) on an approved form. DAS will notify all state agencies and political subdivisions of the anticipated transaction.

(2) The Department will seek certification of these rules (OAR 141-068) as permitted by 125-045-0210.

(3) DAS approval is not required for the sale of New Land, where ORS 274.905 to 274.940 gives a person or public body a right to purchase New Lands.

Stat. Auth.: ORS 183, 273 & 274

Stats. Implemented ORS 274.905-274.956

Hist.: DSL 2-2016, f. 5-13-16, cert. ef. 6-1-16; DSL 2-2017, f. & cert. ef. 1-12-17

141-068-0140

General Requirements for Appraisals

(1) Appraisals conducted for land sales, purchases or exchanges shall comply with the following requirements:

(a) Be conducted by a State of Oregon-licensed appraiser familiar with the type of property to be appraised and in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP) standards.

(b) Unless directed otherwise by the Department, the appraisal shall estimate the fair market value of the property based on its Highest and Best use, taking into account the contributory value of all offered interests in the property such as water rights, minerals, or timber to the extent that such interests are consistent with the highest and best use of the property.

(c) The appraisal report must include sufficient description of the property, highest and best use analysis, valuation methodology and support materials to fully document and justify the appraiser's estimate of fair market value.

(d) The Department may, based on the particular use of the appraisal, impose additional requirements or conditions on the appraisal.

(2) For land sales, purchases or exchanges where the estimated fair market value of the lands or interest in lands is \$100,000 or less, the

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Department may utilize a “desk appraisal” or a “letter opinion of value” as the Appraisal required under these rules.

(3) For purposes of this section, a “desk appraisal” is a written statement setting forth an opinion as to the market value of the lands or interest in lands as of a specific date. A desk appraisal conducted for land sales, purchases or exchanges shall comply with the following requirements:

(a) The desk appraisal must be conducted by an employee of the Department. A desk appraisal need not be prepared in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP), as desk appraisals performed by an employee of the Department are not required to be performed by State of Oregon-licensed appraiser pursuant to ORS 674.100(2)(h).

(b) Unless directed otherwise by the Department, the desk appraisal shall estimate the fair market value of the property based on its highest and best use, taking into account the contributory value of all offered interests in the property such as water rights, minerals, or timber to the extent that such interests are consistent with the highest and best use of the property.

(c) The desk appraisal must include a sufficient description of the characteristics of the property, a highest and best use analysis, a description of the valuation methodology, and a description of the support materials utilized to fully document and justify the estimate of fair market value. The description of the characteristics of the property, and description of the characteristics of properties used as comparison to the property, may be based on aerial and topographic photographs and maps and on generally accepted property data resources, such as the United States Department of Agriculture — Natural Resources Conservation Service, county assessor tax lot information, multiple listing services, and similar resources. Field inspections of the property and of the properties used as comparison to the property are not required as part of the desk appraisal.

(4) For purposes of this section, a “letter opinion of value” is a written statement from a real estate professional licensed under ORS 696 setting forth an opinion as to the market value of the lands prepared in accordance with the requirements of OAR 863-015-0190(3).

Stat. Auth.: ORS 183, 273 & 274

Stats. Implemented ORS 274.905-274.956

Hist.: DSL 2-2016, f. 5-13-16, cert. ef. 6-1-16; DSL 2-2017, f. & cert. ef. 1-12-17

Department of Transportation, Highway Division Chapter 734

Rule Caption: Oregon Coordinate System: Expansion of coordinate zones

Adm. Order No.: HWD 5-2016

Filed with Sec. of State: 12-16-2016

Certified to be Effective: 12-16-16

Notice Publication Date: 11-1-2016

Rules Amended: 734-005-0015

Subject: In 2011 the Oregon Transportation Commission adopted new rules defining the Oregon Coordinate System as authorized by 2011 Senate Bill 877. This amendment adds 19 additional Oregon Coordinate Reference System mapping projection coordinate zones to 734-005-0015. The new zones cover additional portions of the state of Oregon to meet the needs of geospatial professionals in the state.

Rules Coordinator: Lauri Kunze—(503) 986-3171

734-005-0015

Coordinate System Parameters

(1) Oregon State Plane Coordinate System Of 1927

(a) North Zone:

(b) South Zone:

(2) Oregon State Plane Coordinate System Of 1983

(a) North Zone:

(b) South Zone:

(3) Oregon Coordinate Reference System Zones.

(a) Baker Zone:

(b) Bend-Burns Zone: (former name: Bend-Vale Zone):

(c) Bend-Klamath Falls Zone:

(d) Bend-Redmond-Prineville Zone:

(e) Burns-Harper Zone:

(f) Canyon City-Burns Zone:

(g) Canyonville-Grants Pass Zone:

(h) Coast Range North Zone:

(i) Columbia River East Zone:

(j) Columbia River West Zone:

(k) Cottage Grove-Canyonville Zone:

(L) Dayville-Prairie City Zone:

(m) Denio-Burns Zone:

(n) Dufur-Madras Zone:

(o) Eugene Zone:

(p) Grants Pass-Ashland Zone:

(q) Gresham-Warm Springs Zone:

(r) Halfway Zone:

(s) La Grande Zone:

(t) Medford-Diamond Lake Zone:

(u) Mitchell Zone:

(v) North Central Zone:

(w) Ochoco Summit Zone:

(x) Ontario Zone:

(y) Oregon Coast Zone:

(z) Owyhee Zone:

(aa) Pendleton Zone:

(bb) Pendleton-La Grande Zone:

(cc) Pilot Rock-Ukiah Zone:

(dd) Portland Zone:

(ee) Prairie City-Brogan Zone:

(ff) Riley-Lakeview Zone:

(gg) Salem Zone:

(hh) Santiam Pass Zone (former name: Sweet Home-Sisters Zone):

(ii) Siskiyou Pass Zone:

(jj) Ukiah-Fox Zone:

(kk) Wallowa Zone:

(LL) Warner Highway Zone:

(mmm) Willamette Pass Zone:

Stat. Auth.: ORS 184.616, 184.619, Ch.179 OL 2011

Stats. Implemented: ORS 209.130, 209.155, 209.250, 390.770, Ch.179 OL 2011

Hist.: HWD 13-2011, f. 12-22-11, cert. ef. 1-1-12; HWD 5-2016, f. & cert. ef. 12-16-16

Rule Caption: Real Property Land Use Authorizations

Adm. Order No.: HWD 6-2016

Filed with Sec. of State: 12-16-2016

Certified to be Effective: 12-16-16

Notice Publication Date: 11-1-2016

Rules Ren. & Amend: 734-050-0105 to 734-035-0140

Subject: The previous program authorization rule did not effectively outline when the department can authorize use of real property when a lease or easement is not appropriate. The rule was moved from a non-applicable division, renumbered and amended to adjust language that brings program administration process in line with practice.

Rules Coordinator: Lauri Kunze—(503) 986-3171

734-035-0140

Authorization for the Use of Department Real Property in Lieu of a Lease or Easement

(1) The Department may issue written authorization for the use of real property under the jurisdiction of the Department, in lieu of an easement or lease, when in the judgment of the Department’s Right of Way Manager any of the following are true:

(a) The fair market value of the real property is difficult to ascertain or is negligible due to the size, location, configuration, or other features of the parcel of real property sought to be used; or

(b) The fair market value of the real property is difficult to ascertain or is negligible as a result of the existence of local land use restrictions on the parcel of real property sought to be used; or

(c) The benefit to the Department in having the real property occupied and maintained exceeds the probable fair market value of the parcel of real property sought to be used.

(2) The charge for use of the real property shall be based on the costs incurred by the Department in the issuance of the written authorization as set forth below. For all authorizations the user of the real property shall pay an initial use charge of \$50, \$150 or \$250, as determined by the Department, based on the amount of research and preparation required to issue the authorization. Thereafter, the user of the real property shall pay an annual use charge at the rate of:

(a) \$0 — when the benefits to the Department exceed the probable fair market value of the parcel of real property sought to be used; or

(b) \$100 — when little or no field inspection and no plan review is required to issue the authorization, and no on-going inspection of the use is required; or

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(c) \$250 — when field inspection, plan review, or both, are required to issue the authorization, or when on-going inspection of the use is required.

Stat. Auth.: ORS 184.616, 184.619, 366.205

Stats. Implemented: ORS 366.395

Hist.: 2HD 1-1982, f. & ef. 5-26-82; Renumbered from 734-050-0105, HWD 6-2016, f. & cert. ef. 12-16-16

Higher Education Coordinating Commission Chapter 715

Rule Caption: Increases maximum student enrollment fee, establishes fact page disclosure requirement, and increases school license fees.

Adm. Order No.: HECC 5-2016

Filed with Sec. of State: 12-16-2016

Certified to be Effective: 1-1-17

Notice Publication Date: 11-1-2016

Rules Amended: 715-045-0001, 715-045-0007, 715-045-0033

Subject: Under OAR 715-045-0001 (24), the Higher Education Coordinating Commission (HECC) is proposing to increase the maximum amount a Private Career School can charge in an enrollment fee from \$150 to a maximum of \$250. This allows schools that carry higher costs of equipment and supplies (ex. manufacturing and design) to secure an enrollment commitment from students commensurate to the costs of preparing for their start.

Under OAR 715-045-007 (1) (c) and (2), the HECC is proposing to increase existing school licensing fees to recover costs associated with oversight of Private Career Schools and providing services to students, licensees, career school faculty and representatives. The proposed increase is that of 30% in the traditional income ranges and sets a progressive schedule for those with tuition income over \$1,000,000 at increments of \$276 for every \$250,000 in tuition income above the base range of up to one million. The proposed increase under sub (2) sets higher fees for new school applications, which require a great deal of technical assistance to would be applicants, staff intensive reviews and due diligence, coordination with other licensing boards, accrediting bodies and/or experts. Existing fees are not sufficient to cover costs, and the associated tasks take time and resources away from oversight of existing schools and student/consumer protection needs. The proposed change in sub (2) is from \$1,425 for in-state applications to \$4,000, and from \$3,125 for out-of-state applicants to \$6,000.

Under OAR 715-045-0033 - Standards for Advertising - the HECC is proposing to add a fact page disclosure requirement for Private Career Schools. An informational tool for students and a reinforcement of truth in advertising. A school licensed to offer instruction as a Private Career School for one or more programs shall provide students, prior to enrollment, a copy of a basic program and school fact page for each program for which a certificate or diploma is offered.

Rules Coordinator: Kelly Dickinson—(503) 947-2379

715-045-0001

Definitions

The following definitions apply to OAR 715-045-0001 through 715-045-0210, unless otherwise indicated by the context:

(1) “Ability to benefit” is a term used in reference to federal Title IV federal student aid regulations and the methods of determining whether a student has the requisite academic skills necessary to successfully complete a program of study, to be used only for the purposes of establishing eligibility for Title IV funding.

(2) “Addendum” used in reference to a school’s catalog means a separate document that contains revisions of policies or other information appearing in the school catalog. Information listed in an addendum to a catalog should be incorporated into the catalog at the next printing of the catalog. An addendum does not include errata, but errata can appear on the same page as addendum information, if properly labeled.

(3) “Advertising” means any form of public notice used in recruiting and promoting activities, however disseminated, including but not limited to print media, catalogs, and other school publications, signs, mailing

pieces, radio or television ads, audiovisual material, and the internet on behalf of a licensed school.

(4) “Agent” has the meaning given in ORS 345.010(1).

(5) “Application for admission” or “admission application” means a form, separate from the enrollment agreement, which is submitted by an applicant prior to the signing of the enrollment agreement and evaluated by the school for admission purposes. Schools may charge a non-refundable application fee; however, the fee must be clearly identified on the application.

(6) “Application fee,” when used in reference to a school’s admissions process, or “admission fee” means the initial fee charged by a school to cover those expenses incurred by the school in establishing an admissions file for a prospective student. The application or admission fee is not inclusive of and does not preclude other fees necessary to assess the suitability of a student for the intended program, or that student’s appropriate level of placement in the program based on prior training, education, or experience. At the school’s option, the application fee may be non-refundable. The school shall not charge an application fee of more than \$50.00.

(7) “Approved” means accepted by the Higher Education Coordinating Commission or by the commission’s executive director in matters relating to school licensing requirements.

(8) “Assessment” or “Performance Assessment” when used in reference to the instructional program, as outlined in OAR 715-045-0009, means a performance-based evaluation of an applicant’s progress towards mastery of the stated competencies of the instructional program.

(9) “At-risk” means the school demonstrates a pattern or history of one or more of the following conditions that the Executive Director of the Higher Education Coordinating Commission determines, may cause potential serious problems for the continued successful and profitable operation of the organization:

(a) Failure to meet the standards of financial responsibility or reporting;

(b) Misrepresentation;

(c) Frequent substantiated complaints filed with the Higher Education Coordinating Commission;

(d) A decrease in enrollment from the previous reporting period of 50 percent or more or 25 students, whichever is greater;

(e) Staff turnover from the previous reporting period of 50 percent or more or three staff, whichever is greater; and

(f) If conditions listed in paragraphs (d) and (e) of this subsection can be shown to be caused by unusual circumstance or reason the school may request an exemption from an “at risk” designation. Exemption request will be evaluated by the Executive Director of the Higher Education Coordinating Commission.

(10) “Auxiliary facility” means a facility that does not use or list its address as a school location and:

(a) Absorbs a temporary overload that the principal facility cannot accommodate; or

(b) Provides a specialized training facility away from the principal school location; or

(c) Provides training under contract that is not open to general enrollment; or

(d) Is a site approved by the Higher Education Coordinating Commission for teaching a short-term course that is taught by registered teachers from the principal facility.

(11) “Barbering” has the meaning given in ORS 690.005.

(12) “Bona fide organization or group” means any body or entity that is nationally chartered or recognized by a national or state educational/occupational policy board that has operated or functioned in good faith without fraud or deceit for at least 25 years.

(13) “Capacity to complete” means that a student has the cognitive or physical capacity to complete a program of study, with or without reasonable accommodations, and become employment eligible in the specific field of training for which they are enrolling. A school has an obligation to determine whether applicants have capacity to complete during the admissions process, and to assess this capacity when information is obtained or received by the school through any means which suggests the student may not have capacity to complete the program. Any information obtained shall be treated as confidential and kept in a secure manner. Capacity to complete must be assessed before enrollment is completed; however, if information is received by the school after instruction has commenced that cognitive or physical circumstances exist that may impede a student’s satisfactory progress through their program of study, capacity to complete must be assessed immediately after receipt of such information, and appropriate adjustments, accommodations, or tuition refunds made.

ADMINISTRATIVE RULES

(14) "Chairperson" means the person who is responsible for overseeing the business of the advisory committee.

(15) "Class" means a scheduled meeting of persons for instructional purposes.

(16) "Clinic lab" or "clinic floor" means a place where students perform assigned instructional tasks identified in the approved curriculum on models or the general public.

(17) "Completion" means the student has satisfactorily finished all the requirements of the program in which he or she is enrolled, has fulfilled the terms of the enrollment agreement, and has been awarded an appropriate certificate, diploma, or completion document.

(18) "Continuing education" means the enrollment in and completion of ongoing instruction outside the normal teaching schedule, which upgrades a teacher's skills and knowledge with the intent of making the teacher more proficient and current in subject matter taught, instructional methodology, or other skills and knowledge relevant to the teaching of adult learners.

(19) "Course" means an aggregation of classes to achieve a completed set of competencies.

(20) "Discount" means a specified amount of money to be deducted at the time of enrollment from the costs associated with an instructional program, according to a specified set of criteria. The criteria and details of any discounts offered by a school will be given to all persons eligible to receive the discount, and documented and maintained as part of a school's approved advertising. A discount that is granted must be listed as a discount on the enrollment agreement, and is not revocable.

(21) "Discrimination" means any act that unreasonably differentiates treatment, intended or unintended, or any act that is fair in form but discriminatory in operation, either of which is based on age, disability, national origin, race, color, marital status, religion, sex or sexual orientation, or any other protected class.

(22) "Distance learning instruction" means education provided by written correspondence or any electronic medium for students enrolled in a private career school in pursuit of an identified occupational objective, but not attending classes at an approved school site or training establishment.

(23) "Enrollment" means a student has agreed to the purchase of a course or program of instruction offered by a school and has signed an enrollment agreement, however named, that commits both the student and the school to a legal and binding obligation. Instruction in a program or course may not begin without a signed enrollment agreement in place.

(24) "Enrollment fee" means the fee a school charges that covers those expenses incurred by a school in processing the student enrollment agreement and establishing a student records system. The enrollment fee is limited to a maximum amount of \$250, and is identified as an enrollment fee on the student enrollment agreement.

(25) "Errata" in reference to a school's catalog means a listing of errors appearing in a school's published catalog and the corrections of those errors. Errors do not include revisions to policies or other information in the catalog. Errata may be published only via electronic means, at the discretion of the school, in which case a reference in the school catalog must be included that specifies the URL or website where errata may be found. Errors included on the errata list should be corrected in the next printing of the school's catalog.

(26) "Esthetics" has the meaning given in ORS 690.005.

(27) "Evaluation fee" means any fee, however named, covering those expenses incurred by a school in evaluating a prospective student's prior training, education, experience, or other indicators of beginning level of mastery in technical program competencies before enrolling in a program of instruction at the school, or for other uses of an assessment for competency evaluation (e.g., licensing reciprocity) approved by the Executive Director of the Higher Education Coordinating Commission. The evaluation fee shall not exceed the reasonable costs incurred by the school in administering and scoring the assessment, preparing official documentation, providing appropriate feedback to the applicant, and designing a program of study based on the assessment results (if applicable).

(28) "Executive Director" means the Executive Director of the Higher Education Coordinating Commission, or the executive director's designee.

(29) "Fiscal reporting period" means the period of time for which the school provides financial information required by the Higher Education Coordinating Commission. The fiscal reporting period is identified by the school owner in the initial license application and must remain consistent unless a written request for a change is approved by the Superintendent. The fiscal reporting period may be the calendar year or another 12-month time period.

(30) "Fund" means the private career school Tuition Protection Fund (TPF).

(31) "Grant," as used in reference to tuition assistance, means actual funds made available through any source to prospective or enrolled students through an application process whereby applicants must meet predetermined criteria and may or may not be required to maintain a certain status or performance criteria in order to retain the award. For in-house grants, funds in the amount of the full amount of the award for grants awarded on an annual basis will be deposited by the school in an account separate from the school's operating funds at the time of the award, or at the beginning of each new year of an on-going award, and drawn out by the school as the tuition is earned. For third party grants, all monies received by the school on behalf of the student will be deposited into an account separate from the school's operating funds and drawn out as the tuition is earned. In-house grants are revocable only in the amount that has not been earned by the student, according to the terms of the grant award, which are to be articulated to the recipient of the award and agreed upon by signature through an official award letter. The signed award letter will be kept in the student's file, and a copy given to the student. Any grant awarded a student from any source will be documented on the enrollment agreement as a grant at the time of the award. If the award is made after the initial enrollment agreement has been signed, a rider to that agreement must be executed and attached.

(32) "Gross tuition income" means all direct tuition charges from programs for which the school is licensed under OAR chapter 715, division 45, including any laboratory fee. Total gross tuition income does not include:

(a) Tuition refund;

(b) Enrollment and application fees; or

(c) Costs for books, supplies, tools, and equipment purchased by students.

(33) "Hair design" has the meaning given in ORS 690.005.

(34) "In default" is defined in ORS 345.115(5) as "when a course or program is discontinued or canceled or the school closes prior to completion of contracted services."

(35) "Incentive," as used in reference to tuition assistance, means a monetary reward or inducement offered by a school for the purpose of encouraging or motivating a student to perform a specific action, such as completing or course or instructional program within a certain period of time. Any terms or conditions that apply to an incentive must be published by the school, and maintained as part of the school's approved advertising. Students who are working towards an incentive award will have in their file a copy of the terms and conditions of the incentive along with a record of the date each condition is satisfied. Once all conditions have been satisfied the incentive is considered earned and cannot be cancelled or revoked. A rider to the enrollment agreement must be prepared at the time of award detailing the application of the incentive to the student's outstanding financial obligation.

(36) "License" means a license to operate a private career school.

(37) "Nail technology" has the meaning given in ORS 690.005.

(38) "On-site review" means a visit to the school by authorized staff from the Higher Education Coordinating Commission who may review the facilities, classrooms, and school records; talk with students, staff, and administrators; and determine whether the school is in compliance with Oregon law.

(39) "Operating" or "operation" means any form of marketing, advertising, instruction, recruitment, or any other activity regulated under ORS Chapter 345 and OAR chapter 715, division 45.

(40) "Placement" means the student has been employed in the occupation for which trained.

(41) "Post-secondary" for the purposes of recognizing private career schools in Oregon as institutions of post-secondary study means any school licensed under ORS Chapter 345 that:

(a) Admits as regular students, or maintains as a majority of its enrollment, those students who have earned a recognized high school diploma, the equivalent of a recognized high school diploma, or a GED certificate, or who are beyond the age of compulsory education in the State of Oregon, and

(b) Is authorized by the Higher Education Coordinating Commission to offer one or more educational programs beyond secondary education.

(42) "Probation" means that a school has been officially notified by the Executive Director of the Higher Education Coordinating Commission that it has deficiencies that must be corrected within a specified time.

(43) "Program" means an aggregation of courses to meet an identified occupational objective.

ADMINISTRATIVE RULES

(44) "Program advisory committee" means a representative group appointed by the school, which advises the school ownership and administration.

(45) "Program improvement plan" or "school improvement plan" means a written plan that describes how the school will resolve or comply with violations of state rule or regulation assessed, or correct any deficiencies identified, by the Executive Director of the Higher Education Coordinating Commission, and usually includes interim outcome measures to track progress towards the overall improvement goals.

(46) "Pro rata" means in accordance with a fixed proportion.

(47) "Published Class Schedule" (for the purpose of calculating tuition charges) means the period of time between the commencement of classes and the student's last date of attendance as offered by the school and scheduled by the student.

(48) "Recruiting" means personally soliciting or attracting a person or persons by a school or its agent(s) with the intention of actively pursuing enrollment in the school. Recruiting does not include leaving materials at or near an office or other site for a person to pick up of his or her own accord or handing a brochure or other materials to a person.

(49) "Registration" means the process by which directors, agents, or teachers either request registration by the Superintendent to teach at the school or notify the Superintendent of their appointment of an agent to represent the school.

(50) "Reporting period" means the period of time that corresponds with the school's fiscal year on which the school bases all individual program student completion and placement reporting that must be submitted to the Higher Education Coordinating Commission. The school's fiscal year may be the calendar year or another 12-month time period.

(51) "Resident instruction" means education provided at an approved school site or training establishment for students enrolled in and attending classes at the school facility in pursuit of an identified occupational objective.

(52) "Revocation" as referenced in OAR 715-045-0012 means that the Executive Director of the Higher Education Coordinating Commission has notified an employee of a licensed private career school that because of violations of 715-045-0012(9)(a)-(c) the commission's approval of the employee's registration is permanently withdrawn. When notice of revocation is issued, the employee shall be notified and upon written request, shall be granted a contested case hearing under the Administrative Procedures Act, ORS Chapter 183.

(53) "Revoke" means the Higher Education Coordinating Commission terminates the school license. When the license is revoked, the school is not authorized to continue operating. Probation or suspension may, but is not required to, precede revocation.

(54) "Rider" means an attachment, schedule, amendment, or other writing that is added to the enrollment agreement that alters the terms, conditions, or financial obligation of the original instrument without altering the instrument in its entirety. The contents of a rider to the enrollment agreement are understood to be incorporated into the enrollment agreement.

(55) "Scholarship" means actual funds, from any source, made available to prospective or enrolled students through an application process whereby applicants must meet predetermined criteria and may or may not be required to maintain a certain status in order to retain the award. For in-house scholarships, funds in the amount of the full amount of the award for scholarships awarded on an annual basis will be deposited by the school in an account separate from the school's operating funds at the time of the award, or at the beginning of each new year of an on-going award, and drawn out by the school as the tuition is earned. For third party scholarships, all monies received by the school on behalf of the student will be deposited into an account separate from the school's operating funds and drawn out as the tuition is earned. In-house scholarships are revocable according to the terms of the scholarship award, which are to be articulated to the recipient of the award and agreed upon by signature through an official award letter. The signed award letter will be kept in the student's file, and a copy given to the student. Any scholarship awarded a student from any source will be documented on the enrollment agreement as a scholarship at the time of the award. If the award is made after the initial enrollment agreement has been signed, a rider to that agreement must be executed and attached.

(56) "Self-directed instruction" means a course of instruction or an instructional program in which the instructional materials and curriculum are sufficient in design and scope to prepare a student for the program's occupational objectives without the provision of direct instruction. These objectives can be achieved without regular or scheduled interaction either

by mail, telephone, or in person between the student and faculty employed by the school and do not require the school to measure attendance or lesson completion for satisfactory progress.

(57) "School" or "career school" or "private career school" has the meaning given in ORS 345.010(4).

(58) "Short term course" means a course no longer than 16 clock hours in duration.

(59) "State advisory committee" means a representative, statutory advisory committee appointed by the Superintendent of Public Instruction, consisting of members who shall serve for terms of three years ending June 30.

(60) "Structured work experience" or "externship" means a worksite educational activity that correlates the value of classroom training and on-site job performance, is an integral part of the student's training plan, and is supervised/evaluated by appropriate school personnel.

(61) "Supplement" in reference to a school's catalog means a document that is separate from the catalog and which contains new information not appearing in the catalog, or information that is related, but in addition, to information already appearing in the catalog. Information contained in a catalog supplement may or may not need to be incorporated into the catalog at the next regular revision and printing of the catalog.

(62) "Suspension" as referenced in OAR 715-045-0012 means that the Executive Director of the Higher Education Coordinating Commission has notified an employee of a licensed private career school that because of violations of 715-045-0012(9)(a)-(c) the commission's approval of the employee's registration is temporarily withdrawn. When notice of suspension is issued, the employee shall be notified and upon written request, shall be granted a contested case hearing under the Administrative Procedures Act, ORS Chapter 183.

(63) "Suspend" means the Executive Director of the Higher Education Coordinating Commission has notified a school that because of deficiencies, it may not advertise, recruit, enroll students, or begin instruction of new students, but may remain open to complete training of currently enrolled students. Probation may, but is not required to precede suspension.

(64) "Teachout" means a defaulting school or the Higher Education Coordinating Commission makes provisions for students enrolled at the time of the default to complete a comparable program at no additional cost beyond the original enrollment agreement with the defaulting school. Teachout arrangements, if made by the defaulting school, shall be approved in advance by the commission's executive director and, if ongoing, approved annually by the executive director.

(65) "Transcript" means a written record that shall include, but is not limited to, name and address of student, first and last date of attendance, all programs or courses undertaken, grades achieved, whether the courses or programs were successfully completed, and signature of a school official.

(66) "Tuition" means money or other compensation paid or credited to a school by a student or on behalf of a student that is applied to the costs of instruction and training actually received or to be received by the student.

(67) "Tuition aid" or "Tuition assistance" means any award of monetary value, including, but not limited to, scholarships, grants, discounts, or incentives offered by a career school or by a third party, that is received by a student who will enroll in, or is enrolled in, a specific program of instruction, and is:

(a) Provided directly to the student for the purposes of covering, in full or in part, the costs of tuition or other allowed educational expenses incurred by the student, or

(b) Paid or credited to a career school on behalf of the student by the school or a third party for the purpose of covering, in full or in part, the costs of tuition or other allowed educational expenses incurred by the student.

(68) "Withdrawal fee" means any fee, however named, covering those expenses incurred by a school in processing student paperwork relating to program changes (i.e., course additions/drops or transfers) or withdrawal from school and so identified on the student enrollment agreement.

Stat. Auth.: ORS 345.020

Stats. Implemented: ORS 345.030 & 345.325

Hist.: 1 EB 31-1986, f. & ef. 7-23-86; EB 11-1990, f. & cert. ef. 2-1-90; EB 13-1996, f. & cert. ef. 7-26-96; ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01; ODE 21-2002, f. 9-26-02 cert. ef. 10-1-02; ODE 17-2003, f. 12-30-03, cert. ef. 1-1-04; ODE 15-2006, f. 12-11-06, cert. ef. 1-1-07; ODE 13-2008, f. & cert. ef. 5-23-08; ODE 13-2008, f. & cert. ef. 5-23-08; ODE 3-2010, f. & cert. ef. 2-8-10; ODE 27-2012, f. 9-13-12, cert. ef. 9-17-12; Renumbered from 581-045-0001 by HECC 2-2014, f. & cert. ef. 4-23-14; HECC 3-2016, f. & cert. ef. 3-9-16; HECC 5-2016, f. 12-16-16, cert. ef. 1-1-17

ADMINISTRATIVE RULES

715-045-0007

License Fees

(1)(a) Before issuing a career school license under ORS 345.010 to 345.450, the Executive Director shall collect a nonrefundable, annual license fee based on the fee schedule below in OAR 715-045-0007(1)(c) for In-State Schools and OAR 715-045-0007(1)(d) for Out-of-State Schools.

(b) For purposes of ORS 345.080, "tuition income" means "gross tuition income," as that term is defined at OAR 715-045-0001 and 715-045-0007.

(c) In-State Schools: Tuition Income Range — Fee:

(A) \$0–15,000 — \$780;

(B) 15,001–50,000 — \$1,040;

(C) 50,001–125,000 — \$1,300;

(D) 125,001–250,000 — \$1,853;

(E) 250,001–500,000 — \$2,405;

(F) 500,001–750,000 — \$2,958;

(G) 750,001–1,000,000 — \$3,510;

(H) Over 1,000,000 — The base rate of (G) above plus \$276 for every \$250,000 over \$1,000,000.

(d) Out-of-state Schools: Tuition Income Range — Fee:

(A) \$0–50,000 — \$2,405;

(B) 50,001–250,000 — \$2,958;

(C) 250,001–500,000 — \$3,510;

(D) 500,001–750,000 — \$4,063;

(E) 750,001–1,000,000 — \$4,615;

(F) Over 1,000,000 — The base rate of (E) above plus \$276 for every \$250,000 over \$1,000,000.

(2) Applications for a new license must be accompanied by a nonrefundable application fee of \$4,000 for In-State applicants and \$6,000 for Out-of-State applicants.

(3) The Commission shall collect a nonrefundable fee of \$12 to conduct a search of a closed career school's transcripts and, if any are found, provide four copies of a former student's transcript. If more than four copies are requested, the requestor shall pay a nonrefundable fee of \$2 for each additional copy.

(4) Teacher registration applications shall be accompanied by a nonrefundable application fee of \$75.

(5) Requests to verify a teacher's registration, training, or experience shall be accompanied by a nonrefundable verification fee of \$25.

(6) Applications for teacher trainee registrations must be accompanied by a nonrefundable registration fee of \$7.

(7) Requests to determine whether an out-of-state applicant for a cosmetology license is qualified to take a test of the Board of Cosmetology shall be accompanied by a nonrefundable review fee of \$25.

(8) The Commission shall collect a nonrefundable fee of \$100 for processing:

(a) Career school license renewal applications submitted after the applicable due date established in OAR 715-045-0062. This fee shall be in addition to any civil penalties that may be assessed for renewal applications that are not submitted in compliance with the requirements of OAR 715-045-0062 and any other applicable rules.

(b) Payments to the Tuition Protection Fund established under ORS 345.110 after the due dates established in OAR 715-045-0029. This fee shall be in addition to any civil penalties that may be assessed for payments to the Fund that are not submitted in compliance with the requirements of OAR 715-045-0029 and any other applicable rules.

(9) The Commission shall collect the annual, nonrefundable cosmetology school inspection fee of \$100 established in ORS 345.450 from schools teaching hair design, barbering, esthetics, or nail technology. This inspection fee shall be transferred to the Health Licensing Office.

(10)(a) The Commission shall assess a nonrefundable fee of \$200 for investigations of career schools when the commission determines that a career school has violated any provision of ORS 345.010 to 345.450, or any rule adopted pursuant to ORS 345.010 to 345.450.

(b) If the Commission must engage an individual or business, such as a forensic accountant or an attorney, for assistance in conducting an investigation, then the commission shall assess a nonrefundable fee in an amount equal to the investigative costs incurred by the commission; however, the amount of the fee may not exceed \$5,000.

(11) Applications for a new program must be accompanied by a nonrefundable application fee of \$1,000 for each new program submitted for review and approval which was not offered at the time of the career school's initial application to the Commission.

Stat. Auth.: ORS 345.080

Stats. Implemented: ORS 345.080

Hist.: EB 13-1996, f. & cert. ef. 7-26-96; Renumbered from 581-045-0002, ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01; Renumbered from 581-045-0007 by HECC 2-2014, f. & cert. ef. 4-23-14; HECC 9-2014, f. & cert. ef. 12-18-14; HECC 7-2015(Temp), f. & cert. ef. 6-25-15 thru 12-21-15; HECC 12-2015, f. & cert. ef. 9-21-15; HECC 13-2015(Temp), f. & cert. ef. 9-23-15 thru 3-20-16; HECC 2-2016, f. & cert. ef. 3-9-16; HECC 5-2016, f. 12-16-16, cert. ef. 1-1-17

715-045-0033

Standards for Advertising

(1) Printed school publications, brochures, or pamphlets shall be on file at the school and available upon request to any prospective student, enrolled student, and the Department.

(2) A school catalog shall meet the requirements of OAR 715-045-0019.

(3) Upon request of the student, the school must provide the following information no later than at the time the student signs an enrollment agreement:

(a) Number of students enrolled in the program at the beginning of the current reporting period;

(b) Number of students who enrolled in the program during the last reporting period;

(c) Number of students who left the program without completing it during the last reporting period;

(d) Number of students who graduated from the program during the last reporting period; and

(e) Number of those who graduated and were placed or working full time in directly related occupations during the last reporting period.

(4) Subsections (3)(b) through (e) of this rule do not apply to prelicense schools as in OAR 715-045-0014.

(5) A school shall have records available to document any statements made by the school through its advertising including salary and placement claims.

(6) A school shall not advertise that it is endorsed, recommended, or approved by the Higher Education Coordinating commission or the commission's executive director. The school may use the phrase "licensed by the Oregon Higher Education Coordinating Commission" in its advertising material.

(7) If a school offers programs licensed by the commission and also offers programs that do not require licensure, the school shall clearly identify each type of program in any publication.

(8) Any school that performs services for the public shall conspicuously display in the reception area a sign indicating that exclusively either students or employees, or both perform its services.

(9) A school licensed to offer instruction as a Private Career School for one or more programs shall provide students, prior to enrollment, a copy of a basic program and school fact page for each program for which a certificate or diploma is offered. The fact page shall include information regarding:

(A) The total cost of the program;

(B) Programmatic and institutional accrediting bodies;

(C) Transfer of credit to other accredited institutions, listing of any transfer articulation agreements with other institutions and in an attached document make available to students the related transfer articulation prerequisite information;

(D) Program length, and the average time students take to graduate by program, and at whole school level;

(E) Graduation rate;

(F) Median borrowing (federal and private loans) amount, and median annual loan payments of students;

(G) Loan default rate;

(H) Job placement success which is defined as a percent of students who are employed in the field of study (by program);

(I) Median starting salary for graduates;

(J) Gainful employment results as outlined under U.S. Department of Education accountability metrics; and

(i) The Commission, at its discretion, may waive the requirement above for non-career/non-vocational academic programs offered by regulated and licensed Oregon non-profits.

(ii) A school is licensed to offer instruction shall submit to the Commission a copy of the program fact page for each program on or before September 1 of each year commencing 2017.

Stat. Auth.: ORS 345.325 & SB 326.051

Stats. Implemented: ORS 345.325

Hist.: 1EB 257, f. 1-3-77, ef. 7-1-77; 1 EB 30-1986, f. & ef. 7-23-86; EB 11-1990, f. & cert. ef. 2-1-90; EB 13-1996, f. & cert. ef. 7-26-96; ODE 23-2000(Temp), f. 7-27-00, cert. ef. 7-27-00 thru 1-22-01; Renumbered from 581-045-0021, ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01; ODE 21-2002, f. 9-26-02 cert. ef. 10-1-02; Renumbered from 581-045-0033 by HECC 2-2014, f. & cert. ef. 4-23-14; HECC 5-2016, f. 12-16-16, cert. ef. 1-1-17

ADMINISTRATIVE RULES

Land Use Board of Appeals Chapter 661

Rule Caption: Amendments to change word limit for briefs; requires certification of rule compliance; house keeping amendments

Adm. Order No.: LUBA 1-2016

Filed with Sec. of State: 12-22-2016

Certified to be Effective: 1-1-17

Notice Publication Date: 12-1-2016

Rules Amended: 661-010-0000, 661-010-0005, 661-010-0015, 661-010-0021, 661-010-0025, 661-010-0030, 661-010-0035, 661-010-0050, 661-010-0068, 661-010-0075

Subject: Summary of 2016 Proposed Amendments to OAR Chapter 661 Division 010

Service of Notice

OAR 661-010-0015(2) and (3)(f)(D): Requires that when a local government provides only electronic mail addresses for persons whom written notice of the land use decision or limited land use decision was mailed, a petitioner fulfills its service of notice obligation for those persons by sending a copy of the notice of intent to appeal to those persons via electronic mail. Clarifies that a notice of intent to appeal must be served on all persons to whom written notice of the land use decision or limited land use decision was mailed, either through the United States Postal Service or by electronic mail.

OAR 661-010-0021(5)(c)(C): Clarifies that an amended or refiled notice of intent to appeal must be served on all persons to whom written notice of the original or reconsidered land use decision or limited land use decision was mailed, either through the United States Postal Service or by electronic mail.

Petition for Review

OAR 661-010-0030(1): Clarifies that the filing of a single Notice of Intent to Appeal permits only one petition for review. The rules have always referred to Notice of Intent to Appeal and petition for review in the singular, but the Board felt that the clarification was important. This amendment makes clear that the correct practice is one petition for review per single notice of intent to appeal.

OAR 661-010-0030(2)(b): This amendment proposes a change from the 50-page limit for briefs to a word count of 14,000 words (still double-spaced text in 14 point font). The amendment also includes a new accommodation for parties that lack a word processor, permitting a brief of either 50 pages for a typewritten brief in 14 point font, or 35 pages for a type written brief in 12 point font. Since the implementation of our January 1, 2014 amendment that called for 14 point font briefs with double spacing, LUBA has received a number of briefs that violate page length, font size, and/or spacing, resulting in parties submitting what constitutes overlength briefs without permission from the board. This amendment is in response to that trend, and the word count approach makes it easier to determine violations of the brief length requirement. The idea of a word count with a certificate of compliance comes from the filing requirements in the Oregon Rules of Appellate Procedure. ORAP 5.05(2).

OAR 661-010-0030(2)(d): Reiterates the amendment that permits 12 point font if the brief is produced on a typewriter.

OAR 661-010-0030(2)(j): Requires certificate of compliance with petition for review and response brief requirements; Introduces Exhibit 7.

OAR 661-010-0030(4)(b)(B): Modifies the content of petition for review rule to require only a brief summary of argument.

Response to a Cross Petition Brief

OAR 661-010-0035: Clarifies that a response brief responding to a cross petition for review is due at the same time as a response brief responding to a petition for review.

Intervention

OAR 661-010-0050: Clarifies that a single motion to intervene permits the filing of one intervenors' brief as appropriate.

Stays

OAR 661-010-0068(4): Revises the rule to conform to LUBA's prior practice of accepting cashier's checks or bank-certified checks in lieu of an undertaking.

Housekeeping

Several rules have been amended to ensure that the prefix of "OAR" precedes a reference to "661-010- 00**." In addition, the term "intervenor-petitioner" has been revised to read "intervenor-petitioners." OAR 661-010-0000 is modified to provide for the effective date of different versions of OAR Chapter 661 Division 10 based on the date of filing, as amended.

Exhibit 7

This new exhibit is the template for the certificate of compliance for petitions for review and response briefs as required by OAR 661-010-0032(2)(j).

Rules Coordinator: Scott Hilgenberg—(503) 373-1265

661-010-0000

Introduction

Scope of Rules and Effective Date: All proceedings commenced by a notice of intent to appeal filed after January 1, 2017 shall be governed by these rules. Any proceedings commenced by a notice of intent to appeal filed on or before January 1, 2017 shall be governed by OAR 661-010-0005 through 661-010-0075 as effective January 1, 2014. Proceedings commenced on or before January 1, 2014 shall be governed by OAR 661-010-0005 through 661-010-0075 as effective on the date the notice of intent to appeal was filed.

Stat. Auth.: ORS 197.820(4)

Stats. Implemented: ORS 197.805

Hist.: LUBA 1-1979(Temp), f. & ef. 11-1-79; LUBA 2-1980, f. & ef. 4-29-80; LUBA 1-1983, f. & ef. 10-3-83; LUBA 2-1983(Temp), f. & ef. 10-5-83; LUBA 1-1987, f. & ef. 12-30-87; LUBA 1-1992, f. & cert. ef. 1-21-92; LUBA 2-1992, f. & cert. ef. 3-19-92; LUBA 1-1994, f. & cert. ef. 6-22-94; LUBA 1-1998, f. 2-12-98, cert. ef. 3-1-98; LUBA 1-2001, f. 10-15-01, cert. ef. 1-1-02; LUBA 1-2010, f. 6-30-10, cert. ef. 7-1-10; LUBA 1-2014, f. & cert. ef. 2-26-14; LUBA 1-2016, f. 12-22-16, cert. ef. 1-1-17

661-010-0005

Purpose

These rules are intended to promote the speediest practicable review of land use decisions and limited land use decisions, in accordance with ORS 197.805–197.855, while affording all interested persons reasonable notice and opportunity to intervene, reasonable time to prepare and submit their cases, and a full and fair hearing. The rules shall be interpreted to carry out these objectives and to promote justice. Technical violations not affecting the substantial rights of parties shall not interfere with the review of a land use decision or limited land use decision. Failure to comply with the time limit for filing a notice of intent to appeal under OAR 661-010-0015(1) or a petition for review under OAR 661-010-0030(1) is not a technical violation.

Stat. Auth.: ORS 197.820(4)

Stats. Implemented: ORS 197.805

Hist.: LUBA 1-1979(Temp), f. & ef. 11-1-79; LUBA 2-1980, f. & ef. 4-29-80; LUBA 1-1983, f. & ef. 10-3-83; LUBA 1-1987, f. & ef. 12-30-87; LUBA 1-1992, f. & cert. ef. 1-21-92; LUBA 2-1992, f. & cert. ef. 3-19-92; LUBA 1-1994, f. & cert. ef. 6-22-94; LUBA 1-2001, f. 10-15-01, cert. ef. 1-1-02; LUBA 1-2016, f. 12-22-16, cert. ef. 1-1-17

661-010-0015

Notice of Intent to Appeal

(1) Filing of Notice:

(a) The Notice, together with two copies, and the filing fee and deposit for costs required by section (4) of this rule, shall be filed with the Board on or before the 21st day after the date the decision sought to be reviewed becomes final or within the time provided by ORS 197.830(3)–(5). A notice of intent to appeal plan and land use regulation amendments processed pursuant to ORS 197.610 to 197.625 shall be filed with the Board on or before the 21st day after the date the decision sought to be reviewed is mailed to parties entitled to notice under ORS 197.615. A Notice filed thereafter shall not be deemed timely filed, and the appeal shall be dismissed.

(b) The date of filing a notice of intent to appeal is the date the Notice is received by the Board, or the date the Notice is mailed, provided it is mailed by registered or certified mail, and the party filing the Notice has proof from the post office of such mailing date. If the date of mailing is relied upon as the date of filing, the date of the receipt stamped by the United States Postal Service showing the date mailed and the certified or registered number is the date of filing.

(c) If a Notice is received without payment of the fee and deposit required by section (4) of this rule, the petitioner will be given an opportu-

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nity to submit the required fee and deposit. If the filing fee and deposit for costs are not received within the time set by the Board, the Board shall dismiss the appeal.

(d) If the Board determines that a Notice identifies more than one final decision as the subject of appeal, the Board shall notify the petitioner. The Board shall dismiss the Notice if the petitioner fails to submit within the date specified by the Board either a written election to appeal only one decision, or a separate Notice and separate filing fee and deposit, as required by section (4) of this rule, for each additional decision.

(2) Service of Notice: The Notice shall be served on the governing body, the governing body's legal counsel, and all persons identified in the Notice as required by subsection (3)(f) of this rule on or before the date the notice of intent to appeal is required to be filed. Service of the Notice as required by this section may be in person or by first class mail. However, where the local government provides only an electronic mail address for a person identified in the Notice as required by subsection (3)(f)(D), service shall be by electronic mail. The date of serving such notice shall be the date of personal service, mailing, or electronic mailing.

(3) Contents of Notice: The Notice shall be substantially in the form set forth in Exhibit 1 and shall contain:

(a) A caption which sets forth the name(s) of the person(s) filing the Notice, identifying the person(s) as petitioner(s), and the name of the governing body, identifying the governing body as respondent;

(b) Below the caption the heading "Notice of Intent to Appeal";

(c) The full title of the decision to be reviewed as it appears on the final decision;

(d) The date the decision to be reviewed became final;

(e) A concise description of the decision to be reviewed, or a copy of either the notice of decision or the decision to be reviewed;

(f) The name, address and telephone number of each of the following:

(A) The Petitioner. If the petitioner is not represented by an attorney, the petitioner's name, address and telephone number shall be included. If an attorney represents the petitioner, the attorney's name, address and telephone number shall be substituted for that of the petitioner. If two or more petitioners are unrepresented by an attorney, one petitioner shall be designated as the lead petitioner, but the Notice shall include the names, addresses, and telephone numbers of all such unrepresented petitioners. See OAR 661-010-0075(7)(a);

(B) The governing body and the governing body's legal counsel;

(C) The applicant, if any (and if other than the petitioner). If an applicant was represented by an attorney before the governing body, then the name, address and telephone number of the applicant's attorney shall also be included;

(D) Any other person to whom written notice of the land use decision or limited land use decision was mailed, either through the United States Postal Service or by electronic mail, as shown on the governing body's records. The telephone number may be omitted for any such person.

(g) A statement advising all persons, other than the governing body, that in order to participate in the review proceeding a person must file a motion to intervene pursuant to OAR 661-010-0050.

(h) On the last page, a signature by each petitioner, or the attorney representing that petitioner, on whose behalf the Notice is filed.

(i) Proof of service upon all persons required to be named in the Notice. See Exhibit 1.

(4) Filing Fee and Deposit for Costs: The Notice shall be accompanied by a filing fee of \$200 and a deposit for costs in the amount of \$200 payable to the Land Use Board of Appeals. One check, State of Oregon purchase order or money order for \$400 may be submitted. If a check providing the filing fee or deposit for costs or both is returned for insufficient funds and the filing fee and deposit for costs are not paid within the time set by the Board, the Board shall dismiss the appeal. Cash shall not be accepted.

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

Stat. Auth.: ORS 197.820(4)

Stats. Implemented: ORS 197.620, 197.830(1) & (9)

Hist.: LUBA 1-1979(Temp), f. & ef. 11-1-79; LUBA 2-1980, f. & ef. 4-29-80; LUBA 1-1983, f. & ef. 10-3-83; LUBA 1-1987, f. & ef. 12-30-87; LUBA 1-1992, f. & cert. ef. 1-21-92; LUBA 2-1992, f. & cert. ef. 3-19-92; LUBA 1-1994, f. & cert. ef. 6-22-94; LUBA 1-1998, f. 2-12-98, cert. ef. 3-1-98; LUBA 1-2001, f. 10-15-01, cert. ef. 1-1-02; LUBA 1-2009(Temp), f. & cert. ef. 8-5-09 thru 12-31-09; LUBA 2-2009, f. 12-30-09, cert. ef. 1-1-10; LUBA 1-2010, f. 6-30-10, cert. ef. 7-1-10; LUBA 1-2016, f. 12-22-16, cert. ef. 1-1-17

661-010-0021

Withdrawal of Decision for Reconsideration

(1) If a local government or state agency, pursuant to ORS 197.830(13)(b), withdraws a decision for the purposes of reconsideration, it shall file a notice of withdrawal with the Board on or before the date the record is due or, on appeal of a decision under 197.610 to 197.625, the local

government shall file a notice of withdrawal prior to the filing of the respondent's brief. A copy of the decision on reconsideration shall be filed with the Board within 90 days after the filing of the notice of withdrawal or within such other time as the Board may allow.

(2) The filing of a notice of withdrawal under section (1) of this rule shall suspend proceedings on the appeal until a decision on reconsideration is filed with the Board, or the time designated therefor expires, unless otherwise ordered by the Board. If no decision on reconsideration is filed within the time designated therefor, the Board shall issue an order restarting the appeal.

(3) A copy of the decision on reconsideration under section (1) of this rule shall be filed with the Board within 7 days after the local government or state agency issues the decision on reconsideration and copies of the decision on reconsideration shall be served on all parties. The first page of the decision on reconsideration, or an accompanying transmittal letter, shall indicate the title and case number of the pending appeal before the Board.

(4) Petitioner(s) may seek review of the decision on reconsideration as provided in section (5) of this rule. Any other person may file a notice of intent to appeal the decision on reconsideration as provided in OAR 661-010-0015. If such an appeal is filed, and a petitioner files an amended notice of intent to appeal or refiles the original notice of intent to appeal as provided in section (5) of this rule, any party may move to consolidate the appeals challenging the decision on reconsideration as provided in OAR 661-010-0055.

(5) After the filing of a decision on reconsideration:

(a) If the petitioner wishes review by the Board of the decision on reconsideration:

(A) Except as provided in paragraph (B) of this subsection, the petitioner shall file an amended notice of intent to appeal together with two copies within 21 days after the decision on reconsideration is received by the Board.

(B) In the event the local government or state agency affirms its decision or modifies its decision with only minor revisions, the petitioner may refile the original notice of intent to appeal, with the date of the decision on reconsideration indicated thereon, together with two copies within 21 days after the decision on reconsideration is received by the Board.

(b) Refiling of the original notice of intent to appeal or filing of an amended notice of intent to appeal is accomplished by delivery of the Notice to the Board, or receipt of the Notice by the Board, on or before the due date. Filing or refiling may also be accomplished by mailing on or before the due date by first-class, certified or registered mail.

(c) An amended notice of intent to appeal or a refiled notice of intent to appeal under paragraphs (A) and (B) of subsection (5)(a) of this rule shall conform with the requirements of OAR 661-010-0015(3) and shall be served on the following:

(A) All parties to the appeal suspended pursuant to section (2) of this rule;

(B) The applicant, if any (and if other than the petitioner). If an applicant was represented by an attorney before the governing body, then the name, address and telephone number of the applicant's attorney shall also be included;

(C) Any other person to whom written notice of the original or reconsidered land use decision or limited land use decision was mailed, either through the United States Postal Service or by electronic mail, as shown on the governing body's records. The telephone number may be omitted for any such person.

(d) No additional filing fee or deposit for costs shall be required to refile the original notice of intent to appeal or file an amended notice of intent to appeal under subsection (5)(a) of this rule.

(e) If no amended notice of intent to appeal is filed or no original notice of intent to appeal is refiled, as provided in subsection (5)(a) and (b) of this rule, the appeal will be dismissed.

(f) Parties who have already intervened in the appeal need not file new motions to intervene when an amended notice of intent to appeal is filed or the original notice of intent to appeal is refiled.

(6) The local government or state agency shall, within 21 days after service of the amended notice of intent to appeal or refiled original notice of intent to appeal under subsection (5)(a) of this rule, transmit to the Board a certified copy of the record of the proceeding under review in accordance with OAR 661-010-0025. The record submitted by the local government or state agency in an appeal of a decision on reconsideration shall include the record of the original decision and the decision on reconsideration.

Stat. Auth.: ORS 197.820(4)

Stats. Implemented: ORS 197.830(13)(b)

Hist.: LUBA 1-1992, f. & cert. ef. 1-21-92; LUBA 2-1992, f. & cert. ef. 3-19-92; LUBA 1-1994, f. & cert. ef. 6-22-94; LUBA 1-1998, f. 2-12-98, cert. ef. 3-1-98; LUBA 1-2001, f. 10-

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15-01, cert. ef. 1-1-02; LUBA 1-2010, f. 6-30-10, cert. ef. 7-1-10; LUBA 3-2013, f. 12-12-13, cert. ef. 1-1-14; LUBA 1-2016, f. 12-22-16, cert. ef. 1-1-17

661-010-0025

Record

(1) Contents of Record: Unless the Board otherwise orders, or the parties otherwise agree in writing, the record shall include at least the following:

(a) The final decision including any findings of fact and conclusions of law.

(b) All written testimony and all exhibits, maps, documents or other materials specifically incorporated into the record or placed before, and not rejected by, the final decision maker, during the course of the proceedings before the final decision maker.

(c) Minutes and tape, CD, DVD or other media recordings of the meetings conducted by the final decision maker as required by law, or incorporated into the record by the final decision maker. A verbatim transcript of media recordings shall not be required, but if a transcript has been prepared by the governing body, it shall be included. If a verbatim transcript is included in the record, the media recordings from which that transcript was prepared need not be included in the record, unless the accuracy of the transcript is challenged.

(d) Notices of proposed action, public hearing and adoption of a final decision, if any, published, posted or mailed during the course of the land use proceeding, including affidavits of publication, posting or mailing. Such notices shall include any notices concerning amendments to acknowledged comprehensive plans or land use regulations given pursuant to ORS 197.610(1) or 197.615(1) and (2).

(2) Transmittal of Record:

(a) The governing body shall, within 21 days after service of the Notice on the governing body, transmit to the Board a certified paper copy of the record of the proceeding under review. The governing body may, however, retain any large maps, media recordings, or difficult-to-duplicate documents and items until the date of oral argument. Where documents are retained until the date of oral argument, those retained documents shall be identified in the table of contents, as provided in OAR 661-010-0025(4)(B). Transmittal of the record is accomplished by delivery of the record to the Board, or by receipt of the record by the Board, on or before the due date.

(b) As an alternative to transmitting a certified paper copy of the record, a local government may transmit the record to the Board in electronic format. Transmittal of an electronic copy is accomplished by delivery of two complete copies of the record on optical disks, with documents recorded in a PDF format. If the record exceeds 100 pages, the electronic copy shall be searchable. A local government may transmit the record in electronic form, and also retain items until oral argument as described in OAR 661-010-0025(2)(a).

(3) Service of Record:

(a) Contemporaneously with transmittal, the governing body shall serve a paper copy of the record, exclusive of large maps, media recordings, and difficult-to-duplicate documents and items, on the petitioner or the lead petitioner, if one is designated. The governing body shall also serve a paper copy of the record on any other party, including intervenors-petitioners, requesting a copy provided such other party reimburses the governing body for the reasonable expense incurred in copying the record. The governing body shall also serve a copy of any media recording included in the record, or any recording from which a transcript included in the record was prepared, on any party requesting such a copy, provided such party reimburses the governing body for the reasonable expense incurred in copying the recording.

(b) By prior agreement of the party to be served, service of the record as described in OAR 661-010-0025(3)(a) may be in an electronic format instead of a paper copy.

(4) Specifications of Record:

(a) The record, including any supplements or amendments, shall:

(A) Be filed in a suitable folder; the cover shall bear the title of the case as it appears in the Notice or in the Board's order consolidating multiple appeals, and the Board's numerical designation for the case, and shall indicate the numerical designation given the land use decision or limited land use decision by the governing body; if the record consists of multiple volumes, the cover shall indicate the page numbers contained in each volume;

(B) Begin with a table of contents, listing each item contained therein, and the page of the record where the item begins (see Exhibit 2).

(i) Where an item listed in the table of contents includes attached exhibits, the exhibits shall be separately listed as an exhibit to the item. Where the exhibit is also a document that is being retained under OAR 661-

010-0025(2), the exhibit shall also be listed at the end of the table of contents as provided in subsection (ii) below.

(ii) Where large maps, media recordings, or other items or documents are retained by the governing body under section (2) of this rule, those retained items shall be separately listed at the end of the table of contents;

(C) Be securely fastened on the left side;

(D) Have pages numbered consecutively, with the page number at the bottom outside corner of each page;

(E) Be arranged in inverse chronological order, with the most recent item first. Exhibits attached to a record item shall be included according to the numerical or alphabetical order in which they are attached, not the date of the exhibits. Upon motion of the governing body, the Board may allow the record to be organized differently.

(b) Where the record includes the record of a prior appeal to this Board, the table of contents shall specify the LUBA number of the prior appeal, and indicate that the record of the prior appeal is incorporated into the record of the current appeal.

(c) A record that does not substantially conform to the preceding requirements may be rejected by the Board.

(5) If no record objection is filed and the governing body transmits an amendment to the record, the date the amendment is received by the Board shall be considered the date the record is received for the purpose of computing time limits as required by these rules.

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

Stat. Auth.: ORS 197.820(4)

Stats. Implemented: ORS 197.830(10)(a), 197.830(14) & 197.835

Hist.: LUBA 1-1979(Temp), f. & ef. 11-1-79; LUBA 2-1980, f. & ef. 4-29-80; LUBA 1-1983, f. & ef. 10-3-83; LUBA 1-1987, f. & ef. 12-30-87; LUBA 1-1992, f. & cert. ef. 1-21-92; LUBA 2-1992, f. & cert. ef. 3-19-92; LUBA 1-1994, f. & cert. ef. 6-22-94; LUBA 1-1995, f. & cert. ef. 2-6-95; LUBA 1-1998, f. 2-12-98, cert. ef. 3-1-98; LUBA 1-2001, f. 10-15-01, cert. ef. 1-1-02; LUBA 1-2010, f. 6-30-10, cert. ef. 7-1-10; LUBA 3-2013, f. 12-12-13, cert. ef. 1-1-14; LUBA 1-2016, f. 12-22-16, cert. ef. 1-1-17

661-010-0030

Petition for Review

(1) Filing and Service of Petition: The petition for review together with four copies shall be filed with the Board within 21 days after the date the record is received or settled by the Board. See OAR 661-010-0025(2) and 661-010-0026(6). The petition shall also be served on the governing body and any party who has filed a motion to intervene. Failure to file a petition for review within the time required by this section, and any extensions of that time under OAR 661-010-0045(9) or 661-010-0067(2), shall result in dismissal of the appeal and forfeiture of the filing fee and deposit for costs to the governing body. See OAR 661-010-0075(1)(c). Co-petitioners who file a single Notice of Intent to Appeal shall be limited to a single, joint petition for review.

(2) Specifications of Petition: The petition for review shall:

(a) Begin with a table of contents and authorities;

(b) Not exceed 14,000 words, unless permission for a longer petition is given by the Board. Headings, footnotes, and quoted material count toward the word-count limitation. The front cover, table of contents, table of authorities, appendices, certificate of service, any other certificates, and the signature block do not count toward the word-count limitation. If a party does not have access to a word-processing system that provides a word count, a brief is acceptable if it does not exceed 50 pages, or 35 pages if typewritten in 12 point type;

(c) Have blue front and back covers of at least 65-pound weight paper. The front cover page shall state the full title of the proceeding, and the names, addresses and telephone numbers of all parties unrepresented by an attorney. If a party is represented by an attorney, the name, address and telephone number of the attorney shall be substituted for the party. If there is more than one petitioner, the cover page shall specify which petitioner(s) are filing the petition. An intervenor shall be designated as either petitioner or respondent in accordance with OAR 661-010-0050;

(d) Be typewritten or word-processed in proportionately spaced font such as Times New Roman no smaller than 14 point type both for text and for footnotes or if typewritten no smaller than 12 point type;

(e) Be double spaced, except that quotations and footnotes may be single-spaced with double space above and below each paragraph of quotation;

(f) Have text printed on only one side of the page; however, text may be printed on both sides of the page if the paper is sufficiently opaque to prevent material on one side from showing through, and the petition is bound along the left-hand margin so that the pages lie flat when open;

(g) Be printed on 8-1/2 by 11 inch paper, with numbers for each line of text;

(h) Have inside margins of 1-1/4 inches, outside margins of 1 inch, top and bottom margins of 3/4 inch; and

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(i) Be signed on the last page by the author. In cases where multiple unrepresented petitioners or intervenors-petitioners file a single petition for review, the petition for review shall be signed by all petitioners or intervenors-petitioners who wish to join the petition for review.

(j) A signed certificate of compliance with the above-listed specifications for the petition for review shall be appended after the final page of the petition. See Exhibit 7.

(3) If the Board determines that the petition for review fails to conform with the requirements of section (2) of this rule, it shall notify the author, and a brief conforming with the requirements of section (2) shall be filed within three (3) days of notification by the Board. The Board may refuse to consider a brief that does not substantially conform to the requirements of this rule.

(4) Contents of Petition: The petition for review shall:

(a) State the facts that establish petitioner's standing;

(b) Present a clear and concise statement of the case, in the following order, with separate section headings:

(A) The nature of the land use decision or limited land use decision and the relief sought by petitioner;

(B) A brief summary of the arguments appearing under the assignments of error in the body of the petition;

(C) A summary of the material facts. The summary shall be in narrative form with citations to the pages of the record where the facts alleged can be found. Where there is a map in the record that helps illustrate the material facts, the petitioner shall include a copy of that map in the summary of the material facts or attach it as an appendix to the petition.

(c) State why the challenged decision is a land use decision or a limited land use decision subject to the Board's jurisdiction;

(d) Set forth each assignment of error under a separate heading. Each assignment of error must demonstrate that the issue raised in the assignment of error was preserved during the proceedings below. Where an assignment raises an issue that is not identified as preserved during the proceedings below, the petition shall state why preservation is not required. Each assignment of error must state the applicable standard of review. Where several assignments of error present essentially the same legal questions, the argument in support of those assignments of error shall be combined;

(e) Contain a copy of the challenged decision, including any adopted findings of fact and conclusions of law; and

(f) Contain a copy of any comprehensive plan provision, ordinance or other provision of local law cited in the petition, unless the provision is quoted verbatim in the petition.

(5) The petition for review may include appendices containing verbatim transcripts of relevant portions of media recordings that are part of the record.

(6) Amended Petition: A petition for review which fails to comply with section (4) of this rule may, with permission of the Board, be amended. The Board shall determine whether to allow an amended petition for review to be filed in accordance with OAR 661-010-0005.

(7) Cross Petition: Any respondent or intervenor-respondent who seeks reversal or remand of an aspect of the decision on appeal regardless of the outcome under the petition for review may file a cross petition for review that includes one or more assignments of error. A respondent or intervenor-respondent who seeks reversal or remand of an aspect of the decision on appeal only if the decision on appeal is reversed or remanded under the petition for review may file a cross petition for review that includes contingent cross-assignments of error, clearly labeled as such. The cover page shall identify the petition as a cross petition and the party filing the cross petition. The cross petition shall be filed within the time required for filing the petition for review and must comply in all respects with the requirements of this rule governing the petition for review, except that a notice of intent to appeal need not have been filed by such party.

Stat. Auth.: ORS 197.820(4)

Stats. Implemented: ORS 197.830(11), (12) & (13)(a)

Hist.: LUBA 1-1979(Temp), f. & ef. 11-1-79; LUBA 2-1980, f. & ef. 4-29-80; LUBA 1-1983, f. & ef. 10-3-83; LUBA 1-1987, f. & ef. 12-30-87; LUBA 1-1992, f. & cert. ef. 1-21-92; LUBA 2-1992, f. & cert. ef. 3-19-92; LUBA 1-1994, f. & cert. ef. 6-22-94; LUBA 1-1998, f. 2-12-98, cert. ef. 3-1-98; LUBA 1-2001, f. 10-15-01, cert. ef. 1-1-02; LUBA 1-2010, f. 6-30-10, cert. ef. 7-1-10; LUBA 3-2013, f. 12-12-13, cert. ef. 1-1-14; LUBA 1-2016, f. 12-22-16, cert. ef. 1-1-17

661-010-0035

Respondent's Brief

(1) Filing and Service of Brief: Unless otherwise provided by the Board, respondent's brief together with four copies shall be filed within 42 days after the date the record is received or settled by the Board. See OAR 661-010-0025(2) and 661-010-0026(6). A copy of the respondent's brief

shall be served on the petitioner or the lead petitioner, if one is designated, and all intervenors or the lead intervenor, if one is designated.

(2) Specifications of Brief: Respondent's brief shall conform to the specifications of the petition for review at OAR 661-010-0030(2), except that the brief shall have red front and back covers. If there is more than one respondent, the front cover page shall specify which respondent is filing the brief. Respondent's brief shall be subject to OAR 661-010-0030(3).

(3) Contents of Brief:

(a) The respondent's brief shall follow the form prescribed for the petition for review, but need not contain the final decision. The respondent shall specifically accept the petitioner's statement of the case or shall cite any alleged omissions or inaccuracies therein, and may state additional relevant facts or other matters. The statement shall be in narrative form with citations to the pages of the record where the facts alleged can be found.

(b) Respondent shall accept or challenge petitioner's statement of the Board's jurisdiction and petitioner's statement of standing. The basis for any challenge shall be stated. If respondent contends that the facts alleged by petitioner in support of standing are not true, respondent shall specify which allegations are contested.

(c) A response brief shall not include an assignment of error or cross-assignment of error.

(4) The respondent's brief may include appendices containing verbatim transcripts of media recordings that are part of the record.

(5) Amended Brief: The Board may allow the filing of an amended brief in accordance with OAR 661-010-0005.

(6) Response briefs that respond to a cross petition for review shall be filed within the time limit required for filing the response brief under subsection (1) of this rule and must comply in all respects with the requirements governing response briefs.

Stat. Auth.: ORS 197.820(4)

Stats. Implemented: ORS 197.830(13)(a)

Hist.: LUBA 1-1979(Temp), f. & ef. 11-1-79; LUBA 2-1980, f. & ef. 4-29-80; LUBA 1-1983, f. & ef. 10-3-83; LUBA 1-1987, f. & ef. 12-30-87; LUBA 1-1994, f. & cert. ef. 6-22-94; LUBA 1-1998, f. 2-12-98, cert. ef. 3-1-98; LUBA 1-2001, f. 10-15-01, cert. ef. 1-1-02; LUBA 1-2010, f. 6-30-10, cert. ef. 7-1-10; LUBA 1-2016, f. 12-22-16, cert. ef. 1-1-17

661-010-0050

Intervention

(1) Standing to Intervene: The applicant and any person who appeared before the local government, special district or state agency may intervene in a review proceeding before the Board. Status as an intervenor is recognized when a motion to intervene is filed, but the Board may deny that status at any time.

(2) Motion to Intervene: A motion to intervene shall be filed within 21 days of the date the notice of intent to appeal is filed pursuant to OAR 661-010-0015, or the amended notice of intent to appeal is filed or original notice of intent to appeal is refiled pursuant to OAR 661-010-0021. When two or more intervenors join in a motion to intervene and are unrepresented by an attorney, a lead intervenor shall be designated as the contact person for the purpose of receiving documents from the Board and other parties. The motion to intervene (see Exhibit 3) shall:

(a) List the names, addresses, and telephone numbers of all persons moving to intervene. If an attorney represents the intervenor(s), the attorney's name, address and telephone number shall be substituted for that of the intervenor(s);

(b) State whether the party is intervening on the side of the petitioner or the respondent;

(c) State the facts which show the party is entitled to intervene, supporting the statement with affidavits or other proof;

(d) On the last page, be signed by each intervenor, or the attorney representing that intervenor, on whose behalf the motion to intervene is filed;

(e) Be served upon the Board and all parties.

(3) Filing Fee: A motion to intervene shall be accompanied by a filing fee of \$100 for each appeal in which intervention is sought, payable to the Land Use Board of Appeals. Where multiple parties file a single joint motion to intervene, only one fee per appeal is required. If a motion to intervene is received without payment of the filing fee or a check providing the filing fee is returned for insufficient funds, the intervenor will be given an opportunity to submit the required fee. If the filing fee is not paid within the time set by the Board, the Board shall deny the motion to intervene. Cash shall not be accepted.

(4) Intervention in an appeal that is consolidated with other appeals does not allow the intervenor to appear as a party with respect to those appeals in which the intervenor has not filed a timely motion to intervene.

(5) Parties who have already intervened in an appeal need not file new motions to intervene when an amended notice of intent to appeal is filed or

ADMINISTRATIVE RULES

the original notice of intent to appeal is refiled pursuant to OAR 661-010-0021.

(6) **Intervenor's Brief:**

(a) If intervention is sought as a petitioner, the brief shall be filed within the time limit for filing the petition for review, and shall satisfy the requirements for a petition for review in OAR 661-010-0030.

(b) If intervention is sought as a respondent, the brief shall be filed within the time for filing a respondent's brief and shall satisfy the requirements for a respondent's brief in OAR 661-010-0035.

(c) Co-intervenors who file a single motion to intervene shall be limited to a single joint petition for review or response brief, as appropriate, and a single joint cross-petition for review or response to a cross-petition for review, as appropriate.

[ED. NOTE: Exhibits referenced are available from the agency.]
Stat. Auth.: ORS 197.820(4)

Stats. Implemented: ORS 197.830(2) & (7)
Hist.: LUBA 1-1979(Temp), f. & ef. 11-1-79; LUBA 2-1980, f. & ef. 4-29-80; LUBA 4-1980, f. & ef. 9-8-80; LUBA 1-1983, f. & ef. 10-3-83; LUBA 1-1987, f. & ef. 12-30-87; LUBA 1-1992, f. & cert. ef. 1-21-92; LUBA 2-1992, f. & cert. ef. 3-19-92; LUBA 1-1994, f. & cert. ef. 6-22-94; LUBA 1-1998, f. 2-12-98, cert. ef. 3-1-98; LUBA 1-2001, f. 10-15-01, cert. ef. 1-1-02; LUBA 1-2009(Temp), f. & cert. ef. 8-5-09 thru 12-31-09; LUBA 2-2009, f. 12-30-09, cert. ef. 1-1-10; LUBA 1-2010, f. 6-30-10, cert. ef. 7-1-10; LUBA 3-2013, f. 12-12-13, cert. ef. 1-1-14; LUBA 1-2016, f. 12-22-16, cert. ef. 1-1-17

661-010-0068

Stays

(1) A motion for a stay of a land use decision or limited land use decision shall include:

(a) A statement setting forth movant's right to standing to appeal the decision;

(b) A statement explaining why the challenged decision is subject to the Board's jurisdiction;

(c) A statement of facts and reasons for issuing a stay, demonstrating a colorable claim of error in the decision and specifying how the movant will suffer irreparable injury if a stay is not granted;

(d) A suggested expedited briefing schedule;

(e) A copy of the decision under review and copies of all ordinances, resolutions, plans or other documents necessary to show the standards applicable to the decision under review.

(2) A copy of a motion for stay shall be served on the governing body and the applicant for the land use decision or limited land use decision, if any, on the same day the motion is filed with the Board.

(3) Unless otherwise ordered by the Board, a response to a motion for a stay of a land use decision or limited land use decision shall be filed within 14 days after the date of service of the motion and shall set forth all matters in opposition to the motion and any facts showing any adverse effect, including an estimate of any monetary damages that will accrue if a stay is granted.

(4) An order granting a stay of a quasi-judicial land use decision or limited land use decision involving a specific development of land shall be conditional upon filing an undertaking or a cashier's check or bank-certified check in the principal amount of \$5,000. In all other cases an undertaking, if ordered by the Board, shall be in the amount set forth in the order granting the stay. All undertakings shall be substantially in the form as set forth in Exhibit 4, and shall be accompanied by proof that the surety is qualified by law to issue surety insurance as defined in ORS 731.186. Any objections to the form of undertaking or the surety shall be filed within 14 days after the date of service of a copy of the undertaking on the objecting party.

(5) The Board shall base its decision on the stay, including the right to a stay, amount of undertaking, or conditions of any stay order, upon evidence presented. Evidence may be attached to the motion in the form of affidavits, documents or other materials, or presented by means of a motion to take evidence outside the record. See OAR 661-010-0045.

[ED. NOTE: Exhibits referenced are available from the agency.]
Stat. Auth.: ORS 197.820(4)

Stats. Implemented: ORS 197.845
Hist.: LUBA 1-1987, f. & ef. 12-30-87; LUBA 1-1992, f. & cert. ef. 1-21-92; LUBA 2-1992, f. & cert. ef. 3-19-92; LUBA 1-1994, f. & cert. ef. 6-22-94; LUBA 1-2001, f. 10-15-01, cert. ef. 1-1-02; LUBA 1-2016, f. 12-22-16, cert. ef. 1-1-17

661-010-0075

Miscellaneous Provisions

(1) **Cost Bill and Attorney Fees:**

(a) **Time for Filing:** The prevailing party may file a cost bill or a motion for attorney fees, or both, no later than 14 days after the final order is issued. The prevailing party shall serve a copy of any such cost bill or motion for attorney fees on all parties.

(b) **Recoverable Costs:** Costs may be recovered only for the items set forth in this subsection.

(A) If the petitioner is the prevailing party, the petitioner may be awarded the cost of the filing fee.

(B) If the governing body is the prevailing party, the governing body may be awarded copying costs for the required number of copies of the record, at 25 cents per page, whether or not the governing body actively participated in the review.

(C) Costs awarded to the governing body pursuant to this section shall be paid from the deposit required by OAR 661-010-0015(4) and shall not exceed the amount of that deposit.

(D) If an intervenor under OAR 661-010-0050 or a state agency under OAR 661-010-0038 is the prevailing party, the intervenor or state agency may be awarded the cost of the fee to intervene or to file a state agency brief.

(e) **Forfeit of Filing Fee and Deposit:** If a record has been filed and a petition for review is not filed within the time required by these rules, and the governing body files a cost bill pursuant to this section requesting forfeiture of the filing fee and deposit, the filing fee and deposit required by OAR 661-010-0015(4) shall be awarded to the governing body as cost of preparation of the record. See OAR 661-010-0030(1).

(d) **Return of Deposit:** After any award of costs under subsection (b) of this section is made, any amount of the deposit remaining shall be returned to petitioner.

(e) **Attorney Fees:**

(A) Attorney fees shall be awarded by the Board to the prevailing party as specified in ORS 197.830(15)(b); a motion for attorney fees shall include a signed and detailed statement of the amount of attorney fees sought.

(B) Attorney fees shall be awarded to the applicant, against the governing body, if the Board reverses a land use decision or limited land use decision and orders a local government to approve a development application pursuant to ORS 197.835(10).

(C) Attorney fees shall be awarded to the applicant, against the person who requested a stay pursuant to ORS 197.845, if the Board affirms a quasi-judicial land use decision or limited land use decision for which such a stay was granted. The amount of the award shall be limited to reasonable attorney's fees incurred due to the stay request, and together with any actual damages awarded, shall not exceed the amount of the undertaking required under 197.845(2).

(f) **Responses and Objections:** Any response to a motion for attorney fees, together with any objections to the detailed statement of the amount of attorney fees sought, shall be filed with the Board within 14 days after the date of service of the motion. Objections to the cost bill shall be filed with the Board within 14 days after the date of service of the cost bill.

(g) If a cost bill, a motion for attorney fees, or both are filed, and the Board's decision is appealed to the Court of Appeals, the Board shall act on the cost bill or motion for attorney fees after an appellate judgment is issued and any further Board proceedings necessitated by that judgment are concluded.

(2) **Filing and Service:**

(a) **Filing:**

(A) Documents may not be filed by facsimile. Documents filed with the Board may include facsimile signatures.

(B) Except as provided in OAR 661-010-0015(1)(b) with regard to the notice of intent to appeal, filing a document with the Board is accomplished by:

(i) Delivery to the Board on or before the date due; or

(ii) Mailing on or before the date due by first class mail with the United States Postal Service. If the date of mailing is relied upon as the date of filing, the date of the first class postmark on the envelope mailed to the Board is the date of filing.

(b) **Service:**

(A) Any document filed with the Board, other than the record as provided in OAR 661-010-0025(3), or the record after withdrawal for reconsideration as provided in OAR 661-010-0021(6), must also be served on all parties contemporaneously. Service on two or more petitioners unrepresented by an attorney is accomplished by serving the lead petitioner designated under OAR 661-010-0015(3)(f)(A). Service on two or more intervenors unrepresented by an attorney is accomplished by serving the lead intervenor designated under OAR 661-010-0050(2).

(B) Service may be in person, or by first-class mail. Mail service is complete on deposit in the mail.

ADMINISTRATIVE RULES

(C) Service copies of documents other than the Notice or the record shall include a certificate showing the date of filing with the Board (see Exhibit 5).

(D) Documents filed with the Board shall contain either an acknowledgment of service by the person served or proof of service by a statement certified by the person who made service of the date of personal delivery or deposit in the mail, and the names and addresses of the persons served (see Exhibit 6).

(c) Recycled Paper. Parties filing anything with the Board, including but not limited to notices of intent to appeal, records, motions, and briefs, are encouraged to use recycled paper if recycled paper is readily available at a reasonable price in the party's community. Further, parties are encouraged to use paper containing the highest available content of post-consumer waste, as defined in ORS 279.545, that is recyclable in the office paper recycling program in the party's community.

(3) Number of Copies Required: Unless these rules provide otherwise, all documents filed with the Board shall be filed with one copy. No copy of a record transmitted pursuant to OAR 661-010-0025(2), or a record after withdrawal for reconsideration transmitted pursuant to OAR 661-010-0021(6), is required.

(4) Copying Fee: The following fees shall be charged for certified copies or scans of Board nonexempt public records as defined in ORS 192.410, 192.501, 192.502, and 192.505:

(a) 25 cents per page for copies or scans of any Board transcript or document of public record.

(b) \$10 for a copy of a cassette tape, compact disc or similar media disc in the record.

(c) \$20 for a copy of a videocassette tape in the record.

(d) The Board shall also charge the actual cost of copying and mailing oversized exhibits, plans or maps.

(5) Conferences: On its own motion or at the request of any party, the Board may conduct one or more conferences. Conferences may be by telephone. The Board shall provide reasonable notice advising all parties of the time, place and purpose of any conference.

(6) Appearances Before the Board: An individual shall either appear on his or her own behalf or be represented by an attorney. A corporation or other organization shall be represented by an attorney. In no event may a party be represented by someone other than an active member of the Oregon State Bar. In the event someone other than an active member of the Oregon State Bar files a notice of intent to appeal on behalf of a corporation, other organization, or another individual, the individual filing the notice of intent to appeal will be given an opportunity to provide an amended notice of intent to appeal that conforms with this section. If an amended notice of intent to appeal is not filed within the time set by the Board, the Board will dismiss the appeal.

(7) Lead Petitioner or Intervenor:

(a) A lead petitioner is responsible for notifying the other petitioners of documents and communications received from the Board and other parties, but each petitioner remains responsible for his or her own representation.

(b) A lead intervenor is responsible for notifying the other intervenors of documents and communications received from the Board and other parties, but each intervenor remains responsible for his or her own representation. A lead intervenor's responsibilities under this subsection extend only to intervenors who joined in the lead intervenor's motion to intervene and does not extend to intervenors who filed separate motions to intervene.

(8) Computation of Time: Time deadlines in these rules shall be computed by excluding the first day and including the last day. If the last day is Saturday, Sunday or other state or federal legal holiday, the act must be performed on the next working day.

(9) Address and Hours of the Board: The Board's address is 775 Summer Street NE, Suite 330, Salem Oregon, 97301-1283. The telephone number is (503) 373-1265. The Board's office shall be open from 8:00 a.m. to 12:00 p.m., and 1:00 p.m. to 5:00 p.m. Monday through Friday.

(10) Citations to Board Decisions: Citations to Board decisions shall be in the following form:

(a) Reported Cases: John Doe v. XYZ County, 5 Or LUBA 654 (1981).

(b) Unreported Cases: John Doe v. XYZ County, ___ Or LUBA ___ (LUBA No. 80-123, February 15, 1981).

(11) Motion to Transfer to Circuit Court:

(a) Any party may request, pursuant to ORS 34.102, that an appeal be transferred to the circuit court of the county in which the appealed decision was made, in the event the Board determines the appealed decision is not

reviewable as a land use decision or limited land use decision as defined in 197.015(10) or (12).

(b) A request for a transfer pursuant to ORS 34.102 shall be initiated by filing a motion to transfer to circuit court not later than 14 days after the date a respondent's brief or motion that challenges the Board's jurisdiction is filed. If the Board raises a jurisdictional issue on its own motion, a motion to transfer to circuit court shall be filed not later than 14 days after the date the moving party learns the Board has raised a jurisdictional issue.

(c) If the Board determines the appealed decision is not reviewable as a land use decision or limited land use decision as defined in ORS 197.015(10) or (12), the Board shall dismiss the appeal unless a motion to transfer to circuit court is filed as provided in subsection (11)(b) of this rule, in which case the Board shall transfer the appeal to the circuit court of the county in which the appealed decision was made.

(12) Transfer from Circuit Court: When any appeal of a land use or limited land use decision is transferred to LUBA from circuit court, the petition for writ of review filed in the circuit court shall be treated as the notice of intent to appeal, and the case shall proceed as provided in LUBA's rules, subject to the following:

(a) No additional filing fee shall be required;

(b) After an appeal is transferred to LUBA, the Board, by letter, will establish a deadline for the petitioner to submit the deposit for costs and a deadline for the respondent to transmit the record.

(13) Transfer from the Oregon Department of Land Conservation and Development: Where the Director of the Oregon Department of Land Conservation and Development transfers a matter to LUBA pursuant to ORS 197.825(2)(c)(A), the case shall proceed as provided in LUBA's rules, subject to the following:

(a) The date of the notice from the Director making the transfer shall begin the running of a 21-day period within which one or more parties in the proceedings before the department may file a notice of intent to appeal with LUBA. A notice filed thereafter shall not be deemed timely filed, and the appeal shall be dismissed.

(b) Except as provided in this section, the notice of intent to appeal shall conform to the requirements of OAR 661-010-0015, including payment of the filing fee and deposit for costs. The notice of intent to appeal shall identify the local government as the respondent, rather than the Oregon Department of Land Conservation and Development or the Land Conservation and Development Commission.

(c) On receipt of a notice of intent to appeal, the Board shall, by letter, establish a deadline for the respondent to file the portion of the local record necessary to review the transferred matter. In all other respects, an appeal of a transferred matter shall proceed according to LUBA's rules.

(14) All briefs and motions filed with the Board shall comply with the rules in OAR 661-010-0030(2) with respect to type size, spacing, paper size and printing, numbering and margins.

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

Stat. Auth.: ORS 197.820(4)(a) & (b)

Stats. Implemented: ORS 34.102, 197.830(9), (13)(a) & (15), 197.835(10) & 197.845(3) Hist.: LUBA 1-1979(Temp), f. & ef. 11-1-79; LUBA 2-1980, f. & ef. 4-29-80; LUBA 2-1981(Temp), f. & ef. 8-20-81; LUBA 1-1982(Temp), f. & ef. 5-19-82; LUBA 1-1983, f. & ef. 10-3-83; LUBA 1-1987, f. & ef. 12-30-87; LUBA 1-1989, f. & cert. ef. 11-30-89; LUBA 1-1992, f. & cert. ef. 1-21-92; LUBA 2-1992, f. & cert. ef. 3-19-92; LUBA 1-1994, f. & cert. ef. 6-22-94; LUBA 1-1998, f. 2-12-98, cert. ef. 3-1-98; LUBA 2-1998(Temp), f. & cert. ef. 6-15-98 thru 12-12-98; LUBA 3-1998, f. 12-1-98, cert. ef. 12-13-98; LUBA 1-2001, f. 10-15-01, cert. ef. 1-1-02; LUBA 1-2010, f. 6-30-10, cert. ef. 7-1-10; LUBA 1-2013(Temp), f. 4-30-13, cert. ef. 5-1-13 thru 10-28-13; LUBA 2-2013(Temp), f. 10-28-13, cert. ef. 10-29-13 thru 4-27-14; LUBA 3-2013, f. 12-12-13, cert. ef. 1-1-14; LUBA 1-2016, f. 12-22-16, cert. ef. 1-1-17

Landscape Contractors Board Chapter 808

Rule Caption: Allows a refund of exam fees in certain circumstances.

Adm. Order No.: LCB 10-2016

Filed with Sec. of State: 12-19-2016

Certified to be Effective: 12-19-16

Notice Publication Date: 9-1-2016

Rules Amended: 808-003-0700

Rules Repealed: 808-003-0700(T)

Subject: Allows a refund of exam fees in certain circumstances.

Rules Coordinator: Kim Gladwill-Rowley—(503) 967-6291, ext. 223

ADMINISTRATIVE RULES

808-003-0700

Applications, Generally

(1) Applications for a landscape construction professional license must be submitted on a form provided by the agency and must be accompanied by the appropriate fee(s). The act of filing an application with the agency constitutes an agreement by the applicant to observe and comply with the procedures and policies of any exam provider, including, but not limited to deadlines, payment requirements, and review, appeal, or cheating policies.

(2) An application will not be reviewed by the agency until the appropriate fee(s) and all required supporting documents have been received.

(3) Applicants shall pay the application fee and, if required, the exam fee designated in OAR 808-003-0710 to the agency. All other fees associated with the exam are required to be paid to the exam provider. Application fees are non-refundable. If an applicant fails to appear for a scheduled test at an approved test center, all fees paid may be forfeited for the examinations scheduled on that day. Examination fees may be refunded or credit given for a future exam if the applicant can show good cause for canceling or rescheduling, including, but not limited to a serious illness or accident. Good cause will be determined by the agency on a case by case basis.

(4) Applicants shall specify on the application the type of exam they wish to take (written exam or the practical skills test).

(5) An applicant may change the type of exam they wish to take.

(a) If an applicant wishes to take the practical skills test after submitting an application for the written exam, the applicant needs to submit a registration form as required in OAR 808-003-0910.

(b) If an applicant wishes to take the written exam after submitting an application for the practical skills test, the applicant must schedule the written exam with the exam provider.

Stat. Auth.: ORS 671

Stats. Implemented: ORS 671.561 & 671.570

Hist.: LCB 2-2016, f. & cert. ef. 5-23-16; LCB 7-2016(Temp), f. & cert. ef. 7-21-16 thru 1-16-17; LCB 10-2016, f. & cert. ef. 12-19-16

Mortuary and Cemetery Board Chapter 830

Rule Caption: Relating to Temporary Operating Permit for a Cemetery that does not hold a valid license

Adm. Order No.: MCB 1-2017

Filed with Sec. of State: 1-12-2017

Certified to be Effective: 1-12-17

Notice Publication Date: 1-1-2017

Rules Amended: 830-011-0065

Subject: Permits State Mortuary and Cemetery Board to issue temporary permit to carry out existing prearrangement sales contracts to which cemetery is party and to effect rights of plot owners

Rules Coordinator: Chad Dresselhaus—(971) 673-1503

830-011-0065

Temporary Burial Permit

(1) The Oregon Mortuary and Cemetery Board (Board) may grant a temporary burial permit authorizing interment in a cemetery that does not hold a current, valid license or registration for the sole purpose of facilitating an at-need burial in accordance with ORS 692.025, Sec. 1, and only when the normal procedures for licensing or registration of a cemetery authority cannot be completed before burial must take place.

(2) The burial permit request must be made on the most current application form provided by the Board and must include copies of all pre-qualifying pre-arrangement documents as well as evidence of the verification of plot location to be considered. A permit will not be granted when pre-arrangements or plot location cannot be produced or verified or when such documents are disputed.

(a) Applicants must be directly associated with the cemetery authority, with a licensed party to the pre-arrangements, or with another qualifying person in accordance with ORS 692.025, Sec. 1, and

(b) Must be working on behalf of person(s) requesting burial.

(c) The application must also include the specific details of the planned burial and evidence that it will be performed by persons qualified to do so, and

(d) All paperwork will be kept with the permit that was issued for the burial and filed at the OMCB with the copy of the permit until a permanent place can be decided upon. If the cemetery authority is not a party to the interment, the Board will maintain the records and provide to the appropriate party identified by the Board on the permit.

(3) Permit holder shall only be responsible for any issues related to the permitted interment and not for any pre-existing conditions, contract terms or document errors made by the Cemetery Authority, nor for the condition of and continuing maintenance of the plot after closing.

(4) Sections (1) and (2) shall be repealed on January 1, 2018.

Stat. Auth.: ORS 692.025

Stats. Implemented: ORS 692.025

Hist.: MCB 2-2015, f. 12-31-15, cert. ef. 1-1-16; MCB 1-2016(Temp), f. & cert. ef. 7-6-16 thru 1-1-17; MCB 1-2017, f. & cert. ef. 1-12-17

Oregon Business Development Department Chapter 123

Rule Caption: These rules relate to the administration of the Regional Infrastructure Fund.

Adm. Order No.: OBDD 15-2016

Filed with Sec. of State: 12-22-2016

Certified to be Effective: 12-22-16

Notice Publication Date: 7-1-2016

Rules Adopted: 123-061-0031, 123-061-0032, 123-061-0033

Rules Amended: 123-061-0010, 123-061-0020, 123-061-0030, 123-061-0035

Rules Repealed: 123-061-0040

Subject: In 2013, the Oregon Legislature created the Regional Infrastructure Fund through SB 5533. The fund provides grants and loans to local governments for Regional Implementation Projects including long-range planning, research and design.

The purpose of the creation of the new rules and amendments is to establish a process and criteria for recommending projects to be funded by the Regional Infrastructure Fund.

The principles are:

Ensure statewide economic vitality.

Allocation of state funds will reach all corners of Oregon.

Strategic investments are best identified by regional leaders

Timely application of resources targeted to move the needle.

Unlocks funding from other sources.

Transparent and accountable decision-making.

Processes for recommending implementation projects will be inclusive, transparent and consistent across all regions.

Rules Coordinator: Mindee Sublette—(503) 986-0036

123-061-0010

Purpose

These rules establish the criteria and process for selecting projects to be funded by the Regional Infrastructure Fund. The 2013 Oregon Legislature created the Regional Infrastructure Fund for the purpose of providing grants and loans to local governments for Regional Solutions implementation projects including long-range planning, research, and design. As provided in 786 OL 2013§ 3, the Oregon Business Development Department shall administer the Regional Infrastructure Fund.

Stat. Auth.: ORS 285A.075, , OL 2013 c.786 §3

Stats. Implemented: ORS 285B.551, OL 2013 c.786 §3

Hist.: OBDD 7-2014, f. 4-30-14, cert. ef. 5-1-14; OBDD 15-2016, f. & cert. ef. 12-22-16

123-061-0020

Definitions

The following terms have the following definitions, unless the context clearly indicates otherwise:

(1) "Department" means the Oregon Business Development Department defined in ORS 285A.070.

(2) "Fund" means the Regional Infrastructure Fund.

(3) "Grant" means funds for an awarded project that are not required to be repaid, if contract conditions are met.

(4) "Grant and Loan Review Committee" means a committee designated by the Department, comprised of a geographically diverse, odd number of members from the Oregon Business Development Commission and the Oregon Infrastructure Finance Authority Board, to determine project awards. The Committee must include at least one member that is a representative from a city and at least one member that is a representative from a county.

(5) "Loan" means a non-revolving loan for an awarded project. Loan funds are required to be repaid after project completion.

(6) "Project" means a project funded by the Regional Infrastructure Fund that supports regional economic and community development.

ADMINISTRATIVE RULES

(7) "Local government" means a city, county, authority or entity organized under state statute or city or county charter, and includes any council of governments.

(8) "Region" means an economic development district in Oregon, created by the Economic Development Administration of the United States Department of Commerce, for which the Governor has appointed a Regional Solutions Advisory Committee.

(9) "Regional priorities" means the priorities for economic and community development established by a Regional Solutions Advisory Committee.

(10) "Regionally-based planning committees" means Regional Solutions Advisory Committees appointed by the Governor as described in Chapter 82 Oregon Laws 2014.

Stat. Auth.: ORS 285A.075, OL 2013 c.786 §3
Stats. Implemented: OL 2013 c.786 §3, OL 2014 c.82 §2, 3, 5
Hist.: OBDD 7-2014, f. 4-30-14, cert. ef. 5-1-14; OBDD 15-2016, f. & cert. ef. 12-22-16

123-061-0030

Project Applications

(1) Regional Solutions, in coordination with the Department, will develop an application to apply for project funding and develop procedures for review and award. Applications will be received by the Department.

(2) Regional Solutions, in coordination with the Department, will announce periods for local governments to submit applications for funding.

(3) The announcement will identify the types of funds available and the eligible uses.

(4) The applicant must be an Oregon local government. A project must have a local government sponsor but may provide either a public or private benefit.

(5) If a project or applicant is deemed ineligible, the applicant will be notified by the Department. The director of the Department, or a designate, will consider appeals of the eligibility determination. Only the applicant may appeal, and appeals must be submitted in writing to the director within 15 calendar date of the decision being appealed. The director's decision is final.

Stat. Auth.: OL 2013 c.786 §3
Stats. Implemented: OL 2013 c.786 §3, OL 2014 c.82 §2, 3, 5
Hist.: OBDD 7-2014, f. 4-30-14, cert. ef. 5-1-14; OBDD 15-2016, f. & cert. ef. 12-22-16

123-061-0031

Project Criteria

Projects shall be evaluated by the Department and the Regional Solutions Teams for whether the project will:

(1) Address one or more regional priorities.

(2) Support the retention or creation of jobs in the region directly impacted by the project.

(3) Not require or rely upon continuing subsidies from the Department for ongoing operations.

(4) Help meet the sustainable community objectives as noted in ORS 184.423(2).

(5) Be ready for implementation. The project has:

(a) Identified all applicable and required permits within the project schedule.

(b) Committed funding contributions from other public, private, or philanthropic resources.

(c) Demonstrated community support.

(6) For economic development projects, be consistent with Oregon Business Development Department strategic plan priorities.

Stat. Auth.: OL 2013 c.786 §3
Stats. Implemented: OL 2013 c.786 §3, OL 2014 c.82 §2, 3, 5
Hist.: OBDD 15-2016, f. & cert. ef. 12-22-16

123-061-0032

Public Involvement

Eligible projects will be forwarded to the applicable Regional Advisory Committee for review and recommendation of projects from that respective region. Regional Solutions Advisory Committees must provide at least 14 days for the public to review meeting agendas, projects materials and provide comment on proposed projects before such a Committee makes its final recommendation.

Stat. Auth.: OL 2013 c.786 §3
Stats. Implemented: OL 2013 c.786 §3, OL 2014 c.82 §2, 3, 5
Hist.: OBDD 15-2016, f. & cert. ef. 12-22-16

123-061-0033

Funding Allocation and Project Recommendation

(1) Each region will receive a base of five percent of the total amount available during any round of applications. If a region does not submit a

timely application or submits one for less than five percent, the five percent or remaining percent for that region may be awarded to other projects.

(2) Regional Solutions Advisory Committees will recommend projects from their region to the Grant and Loan Review Committee.

(3) The Department will establish a Grant and Loan Review Committee, which will review project recommendations, determine projects and amounts to award.

Stat. Auth.: OL 2013 c.786 §3
Stats. Implemented: OL 2013 c.786 §3, OL 2014 c.82 §2, 3, 5
Hist.: OBDD 15-2016, f. & cert. ef. 12-22-16

123-061-0035

Contracts

(1) Upon approval of an award from the Fund, the Department will enter into a binding contract with the local government.

(2) The contract for a grant and/or loan shall be in a form provided by the Department and will include but not be limited to:

(a) A provision that disbursements from the Fund will be according to the terms of the contract;

(b) The eligible use of funds;

(c) The performance standards expected of the local government;

(d) The repayment obligation of the local government for failure to perform the specified project activity.

(e) Other provisions that the Department considers necessary or appropriate to implement the award.

(3) In the event of a contract default, any recovered funds will be returned to the Fund and may be awarded to another project.

(4) A contract for a loan must be authorized by an ordinance, order or resolution adopted by the governing body of the local government in accordance with the local government's requirements for public notice and authorizing debt.

Stat. Auth.: ORS 285A.075, OL 2013 c.786 §3
Stats. Implemented: OL 2013 c.786 §3
Hist.: OBDD 7-2014, f. 4-30-14, cert. ef. 5-1-14; OBDD 15-2016, f. & cert. ef. 12-22-16

Oregon Criminal Justice Commission

Chapter 213

Rule Caption: Racial and Ethnic Impact Statement Rules

Adm. Order No.: CJC 2-2016

Filed with Sec. of State: 12-29-2016

Certified to be Effective: 12-29-16

Notice Publication Date: 7-1-2016

Rules Adopted: 213-071-0010, 213-071-0015, 213-071-0020

Subject: 2013 Or Laws ch 600 requires the Criminal Justice Commission to prepare racial and ethnic impact statements pertaining to proposed legislation under certain circumstances. The Commission is also required by that same law to adopt rules to carry out the provisions of the law. These are those rules. The rules are retroactive to January 1, 2014, the effective date of the legislation requiring the Commission to prepare the racial and ethnic impact statements.

Rules Coordinator: Julie Vaughn—(503) 378-4830

213-071-0010

Rule Applicability

These rules apply to racial and ethnic impact statements requested on or after January 1, 2014.

Stat. Auth.: 2013 OL ch 600 § 1
Stats. Implemented: ORS 137.656; 2013 OL ch 600 § 1
Hist.: CJC 2-2016, f. & cert. ef. 12-29-16

213-071-0015

Definitions

In OAR 213-071-0010 through -0020:

(1) "Criminal offender population" means all persons who are convicted of a crime or adjudicated for an act that, if committed by an adult, would constitute a crime.

(2) "Racial and ethnic impact statement" means a simple, impartial and understandable statement that describes the effects of proposed legislation on the racial and ethnic composition of the criminal offender population or recipients of human services.

(3) "Recipients of human services" means all persons who are found to be within the jurisdiction of the juvenile court under ORS 419B.100 or who receive child welfare services described in ORS 418.005.

Stat. Auth.: 2013 OL ch 600 § 1
Stats. Implemented: ORS 137.656; 2013 OL ch 600 § 1
Hist.: CJC 2-2016, f. & cert. ef. 12-29-16

ADMINISTRATIVE RULES

213-071-0020

Racial and Ethnic Impact Statements

(1) Upon receipt of a written request signed by one member of the Legislative Assembly from each major political party, the Commission shall prepare a racial and ethnic impact statement pertaining to proposed legislation.

(2) The racial and ethnic impact statement prepared by the Commission must include the following for racial and ethnic groups for which data are available:

(a) An estimate of how the proposed legislation would change the racial and ethnic composition of the criminal offender population or recipients of human services;

(b) A statement of the methodologies and assumptions used in preparing the estimate; and

(c) An estimate of the racial and ethnic composition of crime victims who may be affected by the proposed legislation, if the statement addresses the effect of the proposed legislation on the criminal offender population.

Stat. Auth.: 2013 OL ch 600 § 1

Stats. Implemented: ORS 137.656; 2013 OL ch 600 § 1

Hist.: CJC 2-2016, f. & cert. ef. 12-29-16

Rule Caption: Amends Oregon Sentencing Guidelines and rules to implement legislation and to update grid

Adm. Order No.: CJC 3-2016

Filed with Sec. of State: 12-29-2016

Certified to be Effective: 1-1-17

Notice Publication Date: 10-1-2016

Rules Amended: 213-003-0001, 213-004-0001, 213-017-0004, 213-017-0005, 213-017-0006, 213-017-0008, 213-017-0011, 213-018-0075, 213-019-0007, 213-019-0008, 213-019-0011, 213-019-0012, 213-019-0015

Subject: Under ORS 137.667(1), the Criminal Justice Commission (“Commission”) is required to review legislation creating new crimes and modifying existing crimes, and adopt any necessary changes to the sentencing guidelines. The Commission also may classify offenses as person crimes.

The 2016 Oregon Legislature enacted legislation creating new crimes and modifying existing crimes, including the felony crimes Promoting Prostitution and Extortion. The 2016 Oregon Legislature also created or modified misdemeanor crimes including Criminal Impersonation and Obstructing Governmental or Judicial Administration. Additionally, in both the 2015 and 2016 legislative sessions the legislature created new crimes and modified existing crimes with regard to controlled substances including marijuana.

With regard to these and other offenses, the Commission must decide whether to classify new and modified crimes as person crimes, and decide crime seriousness scale categorization (if any) for new and modified felony crimes for which it has not received an express legislative classification. These rule changes implement the Commission’s categorizations and classifications with regard to 2015 and 2016 legislation relating to controlled substances. The legislature has mandated the crime seriousness scale of many of the controlled substances offenses pertaining to marijuana, and the rules reflect those mandatory categorizations. The rule changes also implement the Commission’s categorizations and classifications with regard to 2016 legislation relating to other new and modified crimes.

The rule changes also include correcting and updating statutory citations, updating the sentencing guidelines grid to reflect current law, and deletion of a duplicative guidelines provision.

Rules Coordinator: Julie Vaughn—(503) 378-4830

213-003-0001

Definitions

As used in these rules:

(1) “Bench probation” means a probationary sentence, which directs the probationer to remain under the supervision and control of the sentencing judge.

(2) “Board” means the State Board of Parole and Post-Prison Supervision.

(3) “Correctional supervision status” means any form of incarcerative or non-incarcerative supervision which is served by an offender as part of a sentence for a criminal conviction.

(4) “Department” means the Department of Corrections.

(5) “Departure” means a sentence, except an optional probationary sentence, which is inconsistent with the presumptive sentence for an offender.

(6) “Dispositional departure” means a sentence which imposes probation when the presumptive sentence is prison or prison when the presumptive sentence is probation. An optional probationary sentence is not a dispositional departure.

(7) “Dispositional line” means the solid black line on the Sentencing Guidelines Grid (Appendix 1) which separates the grid blocks in which the presumptive sentence is a term of imprisonment and post-prison supervision from the grid blocks in which the presumptive sentence is probation which may include local custodial sanctions. [Appendix not included. See ED. NOTE.]

(8) “Durational departure” means a sentence which is inconsistent with the presumptive sentence as to term of incarceration, term of supervised probation or number of sanction units which may be imposed as a condition of probation.

(9) “Grid” means the Sentencing Guidelines Grid set forth as Appendix 1. [Appendix not included. See ED. NOTE.]

(10) “Grid block” means a box on the grid formed by the intersection of the crime seriousness ranking of a current crime of conviction and an offender’s criminal history classification.

(11) “Juvenile adjudication” means a formal adjudication or finding by a court that the juvenile has committed an act, which, if committed by an adult, would be punishable as a felony.

(12) “Non-person felonies” are any felonies not defined as a person felony in section (14) of this rule.

(13) “Optional probationary sentence” means any probationary sentence imposed pursuant to OAR 213-005-0006.

(14) “Person felonies” are in numerical statutory order: ORS 97.981 Purchase or Sale of a Body Part for Transplantation or Therapy; ORS 97.982 Alteration of a Document of Gift; ORS 162.165 Escape I; ORS 162.185 Supplying Contraband as defined in Crime Categories 6 and 7 (OAR 213-018-0070(1) and (2)); ORS 163.095 Aggravated Murder; ORS 163.115 Murder; ORS 163.115 Felony Murder; ORS 163.118 Manslaughter I; ORS 163.125 Manslaughter II; ORS 163.145 Negligent Homicide; ORS 163.149 Aggravated Vehicular Homicide; ORS 163.160(3) Felony Assault; ORS 163.165 Assault III; ORS 163.175 Assault II; ORS 163.185 Assault I; ORS 163.187(4) Felony Strangulation; ORS 163.192 Endangering Person Protected by FAPA Order; ORS 163.196 Aggravated Driving While Suspended or Revoked; ORS 163.205 Criminal Mistreatment I; ORS 163.207 Female Genital Mutilation; ORS 163.208 Assaulting a Public Safety Officer; ORS 163.213 Use of Stun Gun, Tear Gas, Mace I; ORS 163.225 Kidnapping II; ORS 163.235 Kidnapping I; ORS 163.263 Subjecting Another Person to Involuntary Servitude II; ORS 163.264 Subjecting Another Person to Involuntary Servitude I; ORS 163.266 Trafficking in Persons; ORS 163.275 Coercion as defined in Crime Category 7 (OAR 213-018-0035(1)); ORS 163.355 Rape III; ORS 163.365 Rape II; ORS 163.375 Rape I; ORS 163.385 Sodomy III; ORS 163.395 Sodomy II; ORS 163.405 Sodomy I; ORS 163.408 Sexual Penetration II; ORS 163.411 Sexual Penetration I; ORS 163.413 Purchasing Sex With a Minor; ORS 163.425 Sexual Abuse II; ORS 163.427 Sexual Abuse I; ORS 163.432 Online Sexual Corruption of a Child II; ORS 163.433 Online Sexual Corruption of a Child I; ORS 163.452 Custodial Sexual Misconduct in the First Degree; ORS 163.465 Felony Public Indecency; ORS 163.472 Unlawful Dissemination of Intimate Image; ORS 163.479 Unlawful Contact with a Child; ORS 163.525 Incest; ORS 163.535 Abandon Child; ORS 163.537 Buying/Selling Custody of a Minor; ORS 163.547 Child Neglect I; ORS 163.670 Using Child In Display of Sexual Conduct; ORS 163.684 Encouraging Child Sex Abuse I; ORS 163.686 Encouraging Child Sex Abuse II; ORS 163.688, Possession of Material Depicting Sexually Explicit Conduct of Child I; ORS 163.689, Possession of Material Depicting Sexually Explicit Conduct of Child II; ORS 163.701 Invasion of Personal Privacy I; ORS 163.732 Stalking; ORS 163.750 Violation of Court’s Stalking Order; ORS 164.075 Extortion as defined in Crime Category 7 (OAR 213-018-0075(1)); ORS 164.225 Burglary I as defined in Crime Categories 8 and 9 (OAR 213-018-0025(1) and (2)); ORS 164.325 Arson I; ORS 164.377(2)(c) Computer Crime—Theft of an Intimate Image; ORS 164.395 Robbery III; ORS 164.405 Robbery II; ORS 164.415 Robbery I; ORS 164.886(3) Tree Spiking (Injury); ORS 166.070 Aggravated Harassment; ORS 166.087 Abuse of Corpse I; ORS 166.165 Intimidation I; ORS 166.220 Unlawful Use of a Weapon; ORS 166.275 Inmate In Possession of Weapon; ORS 166.385(3) Felony Possession of a Hoax Destructive Device; ORS 166.643 Unlawful Possession of Soft Body

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Armor as defined in Crime Category 6 (OAR 213-018-0090(1)); ORS 167.012 Promoting Prostitution; ORS 167.017 Compelling Prostitution; ORS 167.057 Luring a Minor; ORS 167.320(4) Felony Animal Abuse I; ORS 167.322 Aggravated Animal Abuse I; ORS 468.951 Environmental Endangerment; ORS 475.752(6)(a) Manufacturing or Delivering a Schedule IV Controlled Substance Thereby Causing Death to a Person; ORS 475.908 Causing Another to Ingest a Controlled Substance as defined in Crime Categories 8 and 9 (OAR 213-019-0007 and 0008); ORS 475.910 Unlawful Administration of a Controlled Substance as defined in Crime Categories 5, 8, and 9 (OAR 213-019-0007, -0008, and -0011); ORS 609.990(3)(b) Maintaining Dangerous Dog; ORS 811.705 Hit and Run Vehicle (Injury); ORS 813.010(5) Felony Driving Under the Influence of Intoxicants (as provided in OAR 213-004-0009); ORS 830.475(2) Hit and Run Boat; and attempts or solicitations to commit any Class A or Class B person felonies as defined herein.

(15) "Person Class A misdemeanors" are in numerical statutory order: ORS 162.315 Resisting Arrest; ORS 163.160 Assault IV; ORS 163.187 Strangulation; ORS 163.190 Menacing; ORS 163.195 Recklessly Endanger Another; ORS 163.200 Criminal Mistreatment II; ORS 163.212 Use of Stun Gun, Tear Gas, Mace II; ORS 163.415 Sexual Abuse III; ORS 163.454 Custodial Sexual Misconduct in the Second Degree; ORS 163.465 Public Indecency; ORS 163.467 Private Indecency; ORS 163.472 Unlawful Dissemination of Intimate Image; ORS 163.476 Unlawfully Being in a Location Where Children Regularly Congregate; ORS 163.545 Child Neglect II; ORS 163.575 Endanger Welfare of Minor; ORS 163.687 Encouraging Child Sex Abuse III; ORS 163.700 Invasion of Personal Privacy II; ORS 163.709 Unlawfully Directing a Laser Pointer; ORS 163.732(1) Stalking; ORS 163.750(1) Violating Court's Stalking Order; ORS 165.572 Interfering with Making a Police Report; ORS 166.065(4) Harassment/Offensive Sexual Contact; ORS 166.155 Intimidation II; ORS 166.385(2) Misdemeanor Possession of a Hoax Destructive Device; ORS 167.054 Furnishing Sexually Explicit Material to a Child; ORS 475.910(1)(d) Unlawful Administration of a Controlled Substance; ORS 609.990(3)(a) Maintaining Dangerous Dog; ORS 813.010. Driving Under the Influence of Intoxicants (as provided in OAR 213-004-0009); SB 1567 (2016) Criminal Impersonation; and attempts or solicitations to commit any Class C person felonies as defined in section (14) of this rule.

(16) "Presumptive sentence" means the sentence provided in a grid block for an offender classified in that grid block by the combined effect of the crime seriousness ranking of the current crime of conviction and the offender's criminal history or a sentence designated as a presumptive sentence by statute.

(17) "Primary offense" means the offense of conviction with the highest crime seriousness ranking. If more than one offense of conviction is classified in the same crime category, the sentencing judge shall designate which offense is the primary offense.

(18) "Supervisory agent" means the local community corrections agency responsible for supervising the offender.

(19) "Supervisory authority" means the state and local corrections agency or official designated in each county by that county's Board of County Commissioners or county court to operate corrections supervision services, custodial facilities or both.

(20) "Straight jail" means a sentence of jail imposed instead of a presumptive probationary sentence that is not followed by a term of post-prison supervision defined in OAR 213-005-0002.

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

Stat. Auth.: ORS 137.667, 475.986, 475.998 & 2003 OL Ch. 453

Stats. Implemented: ORS 137.667 - 137.669, 2001 OL Ch. 387, 510, 635, 828, 857, 884 & 2003 OL Ch. 453, 577 & 2007 OL Ch. 681, 811, 867, 869, 876 & 2009 OL Ch. 774, 783, 876, 898; 2011 OL Ch. 3 §1; 2011 OL Ch. 598; 2011 OL Ch. 666; SB 6 (2013); SB 482 (2013); SB 673 (2013); HB 2334 (2013); HB 3194 (2013); SB 1567 (2016); HB 4082 (2016); HB 4128 (2016)

Hist.: SSGB 2-1988, f. 12-30-88, cert. ef. 9-1-89; SSGB 1-1989, f. 5-25-89, cert. ef. 9-1-89; SSGB 2-1993, f. 10-28-93, cert. ef. 11-1-93; CJC 2-1995, f. & cert. ef. 11-2-95; CJC 1-1996, f. 3-6-96, cert. ef. 3-8-96, Renumbered from 253-003-0001; CJC 3-1997, f. 10-29-97, cert. ef. 11-1-97; CJC 1-1999, f. & cert. ef. 11-1-99; CJC 2-2001, f. 12-26-01, cert. ef. 1-1-02; CJC 2-2003, f. 12-31-03, cert. ef. 1-1-04; CJC 1-2006, f. & cert. ef. 4-12-06; CJC 3-2007, f. 12-31-07 & cert. ef. 1-1-08; CJC 1-2009(Temp), f. 3-24-09, cert. ef. 1-1-10 thru 6-29-10; CJC 2-2009(Temp), f. 3-24-09, cert. ef. 1-1-10 thru 6-29-10; CJC 7-2009, f. 12-31-09, cert. ef. 1-1-10; CJC 1-2011(Temp), f. & cert. ef. 11-1-11 thru 4-27-12; CJC 2-2011(Temp), f. 12-30-11, cert. ef. 1-1-12 thru 4-27-12; CJC 2-2012, f. & cert. ef. 4-27-12; CJC 1-2014, f. 1-31-14, cert. ef. 2-3-14; CJC 1-2016, f. & cert. ef. 5-10-16; CJC 3-2016, f. 12-29-16, cert. ef. 1-1-17

213-004-0001

Sentencing Guidelines Grid

(1) The sentencing guidelines grid is a two-dimensional classification tool. The vertical axis is the Crime Seriousness Scale which classifies current crimes of conviction. The horizontal axis is the Criminal History Scale which classifies criminal histories.

(2) Each grid block states the presumptive sentence for an offender whose crime of conviction and criminal history place him or her in that grid block. The solid black line dividing the grid blocks is the dispositional line. The grid is set forth as Appendix 1.

[ED. NOTE: Appendix referenced is available from the agency.]

Stat. Auth.: ORS 137.667

Stats. Implemented: ORS 137.667 - 137.669

Hist.: SSGB 2-1988, f. 12-30-88, cert. ef. 9-1-89; SSGB 1-1989, f. 5-25-89, cert. ef. 9-1-89; SSGB 2-1993, f. 10-28-93, cert. ef. 11-1-93; CJC 1-1996, f. 3-6-96, cert. ef. 3-8-96, Renumbered from 253-004-0001; CJC 1-2007(Temp), f. & cert. ef. 4-25-07 thru 10-21-07; Administrative correction 12-8-08; CJC 2-2012, f. & cert. ef. 4-27-12; CJC 3-2016, f. 12-29-16, cert. ef. 1-1-17

213-017-0004

Crime Category 8

The following offenses are classified at crime category 8 on the Crime Seriousness Scale:

(1) AGGRAVATED DRUG OFFENSES (See division 19).

(2) ORS 163.125 — MANSLAUGHTER II — (B). (If not categorized at CC 9.)

(3) ORS 163.145 — NEGLIGENT HOMICIDE — (B). (If not categorized at CC 9.)

(4) ORS 163.165 — ASSAULT III — (B). If offense resulted from operation of a motor vehicle and defendant was the driver of the motor vehicle and was driving while under the influence of intoxicants; otherwise CC 6.

(5) ORS 163.207 — FEMALE GENITAL MUTILATION — (B).

(6) ORS 163.365 — RAPE II — (B).

(7) ORS 163.395 — SODOMY II — (B).

(8) ORS 163.408 — SEXUAL PENETRATION II — (B).

(9) ORS 163.425(1)(a) — SEXUAL ABUSE II — (C). If victim incapable of consent because under age 18, offender is age 21 or older, and offender was victim's coach prior to offense; otherwise CC 7.

(10) ORS 163.427 — SEXUAL ABUSE I — (B).

(11) ORS 163.433 — ONLINE SEXUAL CORRUPTION OF A CHILD I — (B).

(12) ORS 163.537 — BUYING/SELLING THE CUSTODY OF A MINOR — (B). If the conduct is likely to endanger the health or welfare of the child, otherwise CC 5.

(13) ORS 163.670 — USING CHILD IN DISPLAY OF SEXUAL CONDUCT — (A).

(14) ORS 163.684 — ENCOURAGING CHILD SEX ABUSE I — (B).

(15) ORS 163.732 — STALKING — (C).

(16) ORS 163.750 — VIOLATE COURT STALKING ORDER — (C).

(17) ORS 164.225 — BURGLARY I — (A). If offender did not cause, threaten or attempt physical injury and was not armed with a deadly weapon (CC 9) but the offense was committed while the dwelling was occupied; otherwise CC 7.

(18) ORS 164.325 — ARSON I — (A). If the offense did not represent a threat of serious physical injury (CC 10) and economic loss is \$25,000 or more but less than \$50,000; otherwise CC 9 or CC 7.

(19) ORS 164.877(3) — TREE SPIKING-INJURY — (B).

(20) ORS 166.275 — INMATE POSSESSION OF WEAPON — (A). If firearm, otherwise CC 7.

(21) ORS 167.012 — PROMOTING PROSTITUTION — (C).

(22) ORS 167.017 — COMPELLING PROSTITUTION — (B).

(23) ORS 167.262 — USING A MINOR IN CONTROLLED SUBSTANCE OFFENSE — (A). CC 4 if minor less than 3 yrs. younger than offender.

(24) ORS 811.705 — HIT & RUN VEHICLE (DEATH/SERIOUS INJURY) — (B).

Stat. Auth.: ORS 137.667, 811.707, & 2003 OL Ch. 453, & 2009 OL Ch. 660

Stats. Implemented: ORS 137.667 - 137.669, 811.707 & 2003 OL Ch. 453, 815, & 2007 OL Ch. 876, & 2009 OL Ch. 660; HB 2334 (2013); HB 3400 (2015); HB 4014 (2016); HB 4082 (2016)

Hist.: CJC 1-1999, f. & cert. ef. 11-1-99; CJC 2-2001, f. 12-26-01, cert. ef. 1-1-02; CJC 2-2003, f. 12-31-03, cert. ef. 1-1-04; CJC 3-2007, f. 12-31-07 & cert. ef. 1-1-08; CJC 2-2009(Temp), f. 3-24-09, cert. ef. 1-1-10 thru 6-29-10; CJC 3-2009(Temp), f. & cert. ef. 6-17-09 thru 12-13-09; CJC 4-2009(Temp), f. & cert. ef. 9-16-09 thru 3-14-10; CJC 5-2009, f. 12-11-09, cert. ef. 12-13-09; CJC 7-2009, f. 12-31-09, cert. ef. 1-1-10; CJC 1-2014, f. 1-31-14, cert. ef. 2-3-14; CJC 3-2016, f. 12-29-16, cert. ef. 1-1-17

213-017-0005

Crime Category 7

The following offenses are classified at crime category 7 on the Crime Seriousness Scale:

(1) ORS 162.165 — ESCAPE I — (B).

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(2) ORS 162.185 — SUPPLYING CONTRABAND — (C). (If the contraband includes one or more firearms; otherwise CC 4, 5 or 6.)

(3) ORS 163.196 — AGGRAVATED DRIVING WHILE SUSPENDED OR REVOKED — (C).

(4) ORS 163.205 — CRIMINAL MISTREATMENT I — (C).

(5) ORS 163.275 — COERCION — (C). (If threat of physical injury; otherwise CC 6.)

(6) ORS 163.425 — SEXUAL ABUSE II — (C). (If not CC 8.)

(7) ORS 163.452 — CUSTODIAL SEXUAL MISCONDUCT I — (C).

(8) ORS 163.479 — UNLAWFUL CONTACT WITH A CHILD — (C).

(9) ORS 163.535 — ABANDON CHILD — (C). (If child is placed in immediate physical danger; otherwise CC 3.)

(10) ORS 164.075 — EXTORTION — (B). (If threat of physical injury; otherwise CC 2, 3, 4, 5 or 6.)

(11) ORS 164.225 — BURGLARY I — (A). (If the offense cannot be ranked at CC 8 or 9.)

(12) ORS 164.325 — ARSON I — (A). (If the offense cannot be ranked at CC 8, 9 or 10.)

(13) ORS 166.275 — INMATE IN POSSESSION OF WEAPON — (A). (If firearm CC 8)

(14) ORS 166.429 — FURNISHING FIREARM IN FURTHERANCE OF FELONY — (B).

(15) ORS 167.325 — ANIMAL NEGLECT II (FELONY) — (C). (If more than 40 animals were the subject of the neglect or if the offense is a felony because of circumstances described in ORS 167.325(3)(a) or (3)(c).)

(16) ORS 167.330 — ANIMAL NEGLECT I (FELONY) — (C). (If more than 40 animals were the subject of the neglect or if the offense is a felony because of circumstances described in ORS 167.330(3)(a) or (3)(c).)

(17) ORS 323.482 — UNLAWFUL DISTRIB. CIGARETTES — (B) < 120,000.

(18) ORS 323.632 — UNLAWFUL DISTRIB. TOBACCO PRODUCTS — (B) < \$10,000.

Stat. Auth.: ORS 137.667, 2003 OL Ch. 453 & 804, Sec. 30 & 58

Stats. Implemented: ORS 137.667 - 137.669, 2003 OL Ch. 453 & 804, 2009 OL Ch. 783, 876; SB 6 (2013); HB 4128 (2016)

Hist.: CJC 1-1999, f. & cert. ef. 11-1-99; CJC 2-2003, f. 12-31-03, cert. ef. 1-1-04; CJC 1-2006, f. & cert. ef. 4-12-06; CJC 7-2009, f. 12-31-09, cert. ef. 1-1-10; CJC 1-2013(Temp), f. & cert. ef. 8-7-13 thru 2-2-14; CJC 1-2014, f. 1-31-14, cert. ef. 2-3-14; CJC 1-2016, f. & cert. ef. 5-10-16; CJC 3-2016, f. 12-29-16, cert. ef. 1-1-17

213-017-0006

Crime Category 6

The following offenses are classified at crime category 6 on the Crime Seriousness Scale:

(1) Chapter 59 — BLUE SKY LAWS & SECURITIES LAWS* — (C).

(2) MAJOR DRUG OFFENSES (See division 19.)

(3) ORS 162.015 — BRIBERY — (B).

(4) ORS 162.025 — BRIBE RECEIVING — (B).

(5) ORS 162.065 — PERJURY — (C).

(6) ORS 162.117 — PUBLIC INVESTMENT FRAUD — (B).

(7) ORS 162.155 — ESCAPE II — (C).

(8) ORS 162.185 — SUPPLYING CONTRABAND — (C). (The contraband involves a dangerous weapon not a firearm CC 7; Otherwise CC 4 or 5.)

(9) ORS 162.265 — BRIBING A WITNESS — (C).

(10) ORS 162.275 — BRIBE RECEIVING BY WITNESS — (C).

(11) ORS 162.285 — TAMPERING W/ WITNESS — (C).

(12) ORS 162.325 — HINDERING PROSECUTION — (C).

(13) ORS 163.160(3) — ASSAULT IV (FELONY) — (C).

(14) ORS 163.165 — ASSAULT III — (C). (If the offense cannot be ranked at CC 8).

(15) ORS 163.187(4) — STRANGULATION (FELONY) — (C).

(16) ORS 163.208 — ASSAULT OF A PUBLIC SAFETY OFFICER — (C).

(17) ORS 163.213 — USE OF A STUN GUN, TEAR GAS, MACE I — (C).

(18) ORS 163.257 — CUSTODIAL INTERFERENCE I — (C).

(19) ORS 163.264 — SUBJECTING ANOTHER PERSON TO INVOLUNTARY SERVITUDE I — (B). (If offender physically restrained or threatened to physically restrain a person; otherwise CC 9.)

(20) ORS 163.275 — COERCION — (C). (No threat of physical injury; otherwise CC 7.)

(21) ORS 163.355 — RAPE III — (C).

(22) ORS 163.385 — SODOMY III — (C).

(23) ORS 163.432 — ONLINE SEXUAL CORRUPTION OF A CHILD II — (C).

(24) ORS 163.465 — PUBLIC INDECENCY (FELONY) — (C).

(25) ORS 163.472 — UNLAWFUL DISSEMINATION OF INTIMATE IMAGE — (C).

(26) ORS 163.525 — INCEST — (C). (If one of the participants is under the age of 18; otherwise CC 1.)

(27) ORS 163.547 — CHILD NEGLECT IN THE FIRST DEGREE — (B).

(28) ORS 163.688 — POSSESSION OF MATERIAL DEPICTING SEX. EXPLICIT CONDUCT OF A CHILD I — (B).

(29) ORS 163.701 — INVASION OF PERSONAL PRIVACY I — (C).

(30) ORS 164.055 — THEFT I* — (C).

(31) ORS 164.057 — AGGRAVATED THEFT — (B). (Economic loss was greater than \$50,000; otherwise CC 5.)

(32) ORS 164.065 — THEFT OF LOST/MISLAID PROPERTY* — (C).

(33) ORS 164.075 — EXTORTION* — (B). (If not CC 7 and if not threat to report immigration status or suspected immigration status to law enforcement under ORS 164.075(1)(e).)

(34) ORS 164.075(1)(e) — EXTORTION — (B). (If threat to report immigration status or suspected status to law enforcement.)

(35) ORS 164.085 — THEFT BY DECEPTION* — (C).

(36) ORS 164.125 — THEFT OF SERVICES* — (C).

(37) ORS 164.135 — UNAUTHORIZED USE OF VEHICLE* — (C).

(38) ORS 164.138 — CRIMINAL POSSESSION OF A RENTED OR LEASED MOTOR VEHICLE* — (C).

(39) ORS 164.140(4) — POSSESSION OF RENTED PROPERTY* — (C).

(40) ORS 164.162 — MAIL THEFT OR RECEIPT OF STOLEN MAIL — (C). (For sentences imposed prior to February 15, 2010, and for sentences imposed for crimes committed on or after January 1, 2012; otherwise a Class A misdemeanor.)

(41) ORS 164.215 — BURGLARY II* — (C).

(42) ORS 164.315 — ARSON II* — (C).

(43) ORS 164.365 — CRIMINAL MISCHIEF I* — (C).

(44) ORS 164.377 — COMPUTER FRAUD (LOTTERY)* — (C).

(45) ORS 164.377(3) — COMPUTER CRIME* — (C).

(46) ORS 164.868 — UNLAWFUL LABEL SOUND RECORDING* — (C).

(47) ORS 164.869 — UNLAWFUL RECORD LIVE PERFORMANCE* — (C).

(48) ORS 164.872 — UNLAWFUL LABEL VIDEOTAPE* — (C).

(49) ORS 164.877(1) — TREE-SPIKING — (C).

(50) ORS 164.889 — INTERFERE W/ AGRICULTURAL RESEARCH* — (C).

(51) ORS 165.013 — FORGERY I* — (C).

(52) ORS 165.022 — CRIMINAL POSSESSION OF FORGED INSTRUMENT I* — (C).

(53) ORS 165.055(3)(A) — CREDIT CARD FRAUD* — (C).

(54) ORS 165.065 — NEGOTIATING BAD CHECKS* — (C).

(55) ORS 165.074 — UNLAWFUL FACTORING PAYMENT CARD* v (C).

(56) ORS 165.692 — FILING A FALSE CLAIM FOR HEALTH CARE PAYMENT — (C).

(57) ORS 165.800 — IDENTITY THEFT* — (C).

(58) ORS 166.015 — RIOT — (C).

(59) ORS 166.070 — AGGRAVATED HARRASSMENT — (C).

(60) ORS 166.165 — INTIMIDATION I — (C).

(61) ORS 166.220 — UNLAWFUL USE OF WEAPON — (C).

(62) ORS 166.270 — EX-CON IN POSSESSION OF FIREARM — (C).

(63) ORS 166.272 — UNLAWFUL POSSESSION OF FIREARM — (B).

(64) ORS 166.370(1) — INTENT POSS. FIREARM OR DANG. WEAP. IN PUBLIC BUILDING; (2)(a)(C) — INTENT POSS. FIREARM IN LOCAL COURT FACILITY CONTRARY TO ORDER; and (5)(a) — DISCHARGE FIREARM IN SCHOOL — (C).

(65) ORS 166.382 — POSSESSION OF DESTRUCTIVE DEVICE — (C).

(66) ORS 166.384 — UNLAWFUL MANUFACTURE OF DESTRUCTIVE DEVICE — (C).

(67) ORS 166.410 — ILLEGAL MANUFACTURE, IMPORTATION OR TRANSFER OF FIREARMS — (B).

ADMINISTRATIVE RULES

(68) ORS 166.643 — UNLAWFUL POSSESS SOFT BODY ARMOR — (B). (If offender committed or was attempting to commit a person felony or misdemeanor involving violence, otherwise CC 4.)

(69) ORS 167.057 — LURING A MINOR — (C).

(70) ORS 167.320 — ANIMAL ABUSE I (FELONY) — (C).

(71) ORS 167.322 — AGGRAVATED ANIMAL ABUSE I — (C).

(72) ORS 167.325 — ANIMAL NEGLECT II (FELONY) — (C). (If 11 to 40 animals were the subject of the neglect).

(73) ORS 167.330 — ANIMAL NEGLECT I (FELONY) — (C). (If 10 to 40 animals were the subject of the neglect).

(74) ORS 167.333 — SEXUAL ASSAULT OF AN ANIMAL — (C).

(75) ORS 167.339 — ASSAULT OF A LAW ENFORCEMENT ANIMAL — (C).

(76) ORS 167.388 — INTERFERE LIVESTOCK PRODUCTION* — (C).

(77) ORS 647.145 — TRADEMARK COUNTERFEITING II* — (C).

(78) ORS 647.150 — TRADEMARK COUNTERFEITING I* — (B).

(79) ORS 811.182 — DRIVING WHILE SUSPENDED/REVOKED (FELONY) — (C). (If the suspension or revocation resulted from (a) any degree of murder, manslaughter, criminally negligent homicide, or an assault that caused serious physical injury, resulting from the operation of a motor vehicle, or (b) aggravated vehicular homicide or aggravated driving while suspended or revoked).

(80) ORS 811.705 — HIT & RUN VEHICLE (INJURY) — (C).

(81) ORS 813.010(5) — DRIVING UNDER THE INFLUENCE (FELONY) — (C).

(82) ORS 819.300 — POSSESSION OF STOLEN VEHICLE* — (C).

(83) ORS 819.310 — TRAFFICKING IN STOLEN VEHICLES — (C). (If part of an organized operation or if value of property taken from one or more victims was greater than \$50,000; otherwise CC 5.)

(84) ORS 830.475 — HIT AND RUN BOAT — (C). * Property offenses marked with an asterisk shall be ranked at Crime Category 6 if the value of the property stolen or destroyed was \$50,000 or more, excluding the theft of a motor vehicle used primarily for personal rather than commercial transportation.

Stat. Auth.: ORS 137.667, 2003 OL Ch. 453, & 2009 OL Ch. 660

Stats. Implemented: ORS 137.667 - 137.669, 2001 OL Ch. 147, 635, 828 2003 2001 OL Ch. 383, 453, 543, 2005 OL Ch. 708, 2007 OL Ch. 684, 811, 869, 876, SB 1087 (2008), Ballot Measure 57 (2008), & 2009 OL Ch. 660 & HB 3508 (2009) & 2009 OL Ch. 783; 2011 OL Ch. 3 Sec. 1; 2011 OL Ch. 598; 2011 OL Ch. 666; SB 6 (2013); HB 3194 (2013); HB 4128 (2016)

Hist.: CJC 1-1999, f. & cert. ef. 11-1-99; CJC 2-2001, f. 12-26-01, cert. ef. 1-1-02; CJC 2-2003, f. 12-31-03, cert. ef. 1-1-04; CJC 1-2005(Temp), f. & cert. ef. 10-14-05 thru 4-12-06; CJC 1-2006, f. & cert. ef. 4-12-06; CJC 3-2007, f. 12-31-07 & cert. ef. 1-1-08; CJC 2-2008(Temp), f. 12-31-08, cert. ef. 1-1-09 thru 6-29-09; CJC 2-2009(Temp), f. 3-24-09, cert. ef. 1-1-10 thru 6-29-10; CJC 3-2009(Temp), f. & cert. ef. 6-17-09 thru 12-13-09; CJC 4-2009(Temp), f. & cert. ef. 9-16-09 thru 3-14-10; CJC 5-2009, f. 12-11-09, cert. ef. 12-13-09; CJC 7-2009, f. 12-31-09, cert. ef. 1-1-10; CJC 3-2010(Temp), f. & cert. ef. 6-30-10 thru 12-26-10; CJC 5-2010, f. 12-13-10, cert. ef. 12-26-10; CJC 1-2011(Temp), f. & cert. ef. 11-1-11 thru 4-27-12; CJC 2-2011(Temp), f. 12-30-11, cert. ef. 1-1-12 thru 4-27-12; CJC 2-2012, f. & cert. ef. 4-27-12; CJC 1-2013(Temp), f. & cert. ef. 8-7-13 thru 2-2-14; CJC 1-2014, f. 1-31-14, cert. ef. 2-3-14; CJC 1-2016, f. & cert. ef. 5-10-16; CJC 3-2016, f. 12-29-16, cert. ef. 1-1-17

213-017-0008

Crime Category 4

The following offenses are classified at crime category 4 on the Crime Seriousness Scale:

(1) Chapter 59 — BLUE SKY LAWS & SECURITIES LAWS* — (C).

(2) DRUG OFFENSES (See division 19).

(3) ORS 97.982 — ALTERATION OF A DOCUMENT OF GIFT — (C).

(4) ORS 162.185 — SUPPLYING CONTRABAND — (C). (If offense cannot be ranked at CC 5, 6 or 7.)

(5) ORS 162.205 — FAILURE TO APPEAR I — (C).

(6) ORS 163.192 — ENDANGERING PERSON PROTECTED BY FAPA RESTRAINING ORDER — (C).

(7) ORS 163.245 — CUSTODIAL INTERFERENCE II — (C).

(8) ORS 163.689 — POSSESSION OF MATERIAL DEPICTING SEX. EXPLICIT CONDUCT OF CHILD II — (C).

(9) ORS 164.055 — THEFT I* — (C).

(10) ORS 164.065 — THEFT OF LOST/MISLAID PROPERTY* — (C).

(11) ORS 164.075 — THEFT BY EXTORTION* — (B).

(12) ORS 164.085 — THEFT BY DECEPTION* — (C).

(13) ORS 164.098 — ORGANIZED RETAIL THEFT — (B).

(14) ORS 164.125 — THEFT OF SERVICES* — (C).

(15) ORS 164.135 — UNAUTHORIZED USE OF VEHICLE* — (C).

(16) ORS 164.138 — CRIMINAL POSSESSION OF A RENTED OR LEASED MOTOR VEHICLE* — (C).

(17) ORS 164.140(4) — POSSESSION OF RENTED PROPERTY* — (C).

(18) ORS 164.215 — BURGLARY II* — (C).

(19) ORS 164.315 — ARSON II* — (C).

(20) ORS 164.365 — CRIMINAL MISCHIEF I* — (C). (Except ORS 164.365(1)(e).)

(21) ORS 164.377(5) — COMPUTER FRAUD (LOTTERY)* — (C).

(22) ORS 164.377(5) — COMPUTER CRIME* — (C).

(23) ORS 164.868 — UNLAWFUL LABEL SOUND RECORDING* — (C).

(24) ORS 164.869 — UNLAWFUL RECORD LIVE PERFORMANCE* — (C).

(25) ORS 164.872 — UNLAWFUL LABEL VIDEOTAPE* — (C).

(26) ORS 165.013 — FORGERY I* — (C).

(27) ORS 165.022 — CRIMINAL POSSESSION OF FORGED INSTRUMENT I* — (C).

(28) ORS 165.032 — CRIMINAL POSSESSION OF FORGERY DEVICE — (C).

(29) ORS 165.055(3)(A) — CREDIT CARD FRAUD* — (C).

(30) ORS 165.065 — NEGOTIATING BAD CHECKS* — (C).

(31) ORS 165.074 — UNLAWFUL FACTORING PAYMENT CARD* — (C).

(32) ORS 165.581 — CELLULAR COUNTERFEITING I — (B).

(33) ORS 165.800 — IDENTITY THEFT* — (C).

(34) ORS 165.810 — UNLAWFUL POSSESSION PERSONAL ID DEVICE. — (C).

(35) ORS 166.023 — DISORDERLY CONDUCT I — (C).

(36) ORS 166.643 — UNLAWFUL POSSESS SOFT BODY ARMOR — (B). (If not categorized at CC 6)

(37) ORS 167.262 — USING A MINOR IN CONTROLLED SUBSTANCE OFFENSE — (A).

(CC 8 if minor 3 or more yrs. Younger than offender.)

(38) ORS 167.388 — INTERFERE LIVESTOCK PRODUCTION* — (C).

(39) ORS 181.599 — FAIL/REPORT SEX OFFENDER — (C).

(40) ORS 647.145 — TRADEMARK COUNTERFEITING II* — (C).

(41) ORS 647.150 — TRADEMARK COUNTERFEITING I* — (B).

(42) ORS 811.182 — DRIVING WHILE SUSPENDED/REVOKED (FELONY) — (C).

(If the offense cannot be ranked at CC 6.)

(43) ORS 813.011 — DRIVING UNDER THE INFLUENCE (FELONY) — (C).

(44) ORS 819.300 — POSSESSION OF STOLEN VEHICLE* — (C). *Property offenses marked with an asterisk shall be ranked at Crime Category 4 if either of the following factors was included in the commission of the offense:

(a) The value of the property stolen or destroyed was \$5,000 or more but less than \$10,000; or

(b) The property stolen was a vehicle valued at \$10,000 or more and used primarily for personal rather than commercial transportation.

Stat. Auth.: ORS 137.667 & 2003 OL Ch. 453

Stats. Implemented: ORS 137.667 - 137.669, 164.889, 166.643 & 2003 OL Ch. 383, 453, 543, 632, 2005 OL Ch. 708, 2007 OL Ch. 498, 681 & 684; 2011 OL Ch. 311; 2011 OL Ch. 598; HB 3194 (2013); HB 3400 (2015); HB 4014 (2016)

Hist.: CJC 1-1999, f. & cert. ef. 11-1-99; CJC 2-2001, f. 12-26-01, cert. ef. 1-1-02; CJC 2-2003, f. 12-31-03, cert. ef. 1-1-04; CJC 1-2005(Temp), f. & cert. ef. 10-14-05 thru 4-12-06; CJC 1-2006, f. & cert. ef. 4-12-06; CJC 3-2007, f. 12-31-07 & cert. ef. 1-1-08; CJC 1-2011(Temp), f. & cert. ef. 11-1-11 thru 4-27-12; CJC 2-2012, f. & cert. ef. 4-27-12; CJC 1-2013(Temp), f. & cert. ef. 8-7-13 thru 2-2-14; CJC 1-2014, f. 1-31-14, cert. ef. 2-3-14; CJC 1-2016, f. & cert. ef. 5-10-16; CJC 3-2016, f. 12-29-16, cert. ef. 1-1-17

213-017-0011

Crime Category 1

The following offenses are classified at crime category 1 on the Crime Seriousness Scale:

(1) DRUG POSSESSION/PERSONAL USE (See division 19.)

(2) ORS 163.515 — BIGAMY — (C).

(3) ORS 163.525 — INCEST — (C). (If the incestuous relationship is between adults; otherwise CC 6.)

(4) ORS 166.450 — ALTERING FIREARM ID. — (C).

ADMINISTRATIVE RULES

- (5) ORS 166.651 — THROW OBJECT OFF OVERPASS — (C).
(6) ORS 166.660 — UNLAWFUL PARAMILITARY ACTIVITY — (C).
(7) ORS 167.212 — TAMPERING W/ DRUG RECORDS — (C).
(8) ORS 332.480(2) — DISTRIBUTE CIGARETTES W/OUT LICENSE — (C).
(9) ORS 332.480(3) — FALSE REPORT/CIGARETTE TAX — (C).
(10) ORS 332.480(4) — UNLAWFUL TRANSPORT UNTAXED CIGARETTES — (C).
(11) ORS 432.993 — UNLAWFUL USE OF A VITAL RECORD OR REPORT — (C).
(12) ORS 468.953 — SUPPLY FALSE INFO TO AGENCY (ENVIRONMENTAL) — (C).
(13) ORS 475.993(2)(a) — FAILURE TO MAINTAIN RECORDS OF CONTROLLED SUBSTANCES — (C).
(14) ORS 702.032 — INDUCING AN ATHLETE/CONTRACT — (C).
(15) ORS 702.042 — ATHLETIC AGENT NOTICE REQUIREMENT — (C).
(16) ORS 717.905(2) — FALSE STATEMENT MONEY TRANSMISSION — (C).
(17) ORS 717.905(3) — ENGAGE MONEY TRANSMISSION W/OUT LICENSE — (C).
(18) ORS 803.080 — UNLAWFULLY PUBLISHING CERTIFICATE OF TITLE — (C).
(19) ORS 803.230 — FORGE/ALTER VEHICLE TITLE/REG. — (C).
(20) ORS 822.605 — FALSE SWEARING VEHICLE BUSINESS — (C).
(21) 2003 Oregon Laws Ch 484 — FORCIBLE RECOVERY OF FIGHTING BIRD — (C).
(22) 2003 Oregon Laws Ch 804 — FALSE RECEIPT/INVOICE CIGARETTE SALES — (C).
(23) 2003 Oregon Laws Ch 804 — DISTRIBUTE TOBACCO PRODUCTS W/OUT — (C).
(24) 2003 Oregon Laws Ch 804 — LICENSE FALSE REPORT/TOBACCO PRODUCTS TAX — (C).
(25) 2003 Oregon Laws Ch 804 — UNLAWFUL TRANSPORT UNTAXED — (C).
(26) 2003 Oregon Laws Ch 804 — TOBACCO PRODUCTS FALSE RECEIPT/INVOICE TOBACCO — (C).
(27) 2003 Oregon Laws Ch 804 — PRODUCTS SALES UNLAWFUL TOBACCO DELIVERY SALES — (U).
Stat. Auth.: ORS 137.667 & 2003 OL Ch. 453
Stats. Implemented: : ORS 137.667 - 137.669, 332.480 & 2003 OL Ch. 453, 484, 804; HB 3400 (2015); HB 4014 (2016)
Hist.: CJC 1-1999, f. & cert. ef. 11-1-99; CJC 2-2001, f. 12-26-01, cert. ef. 1-1-02; CJC 2-2003, f. 12-31-03, cert. ef. 1-1-04; CJC 3-2016, f. 12-29-16, cert. ef. 1-1-17

213-018-0075

Extortion (ORS 164.075)

- (1) CRIME CATEGORY 7: Extortion shall be ranked at Crime Category 7 if the offender threatened to cause physical injury to some person (ORS 164.075(1)(a)).
(2) CRIME CATEGORY 6: Extortion shall be ranked at Crime Category 6 if the offender threatened to report immigration status or suspected immigration status to law enforcement (ORS 164.075(1)(e)).
(3) OTHERWISE RATE AS A PROPERTY OFFENSE: Extortion shall be ranked as a Property Offense in Crime Categories 2, 3, 4, 5 or 6 as may be appropriate if it cannot be ranked at Crime Category 7 or 6 as described above.

Stat. Auth.: ORS 137.667
Stats. Implemented: ORS 137.667 - 137.669; HB 4128 (2016)
Hist.: CJC 1-1999, f. & cert. ef. 11-1-99; CJC 3-2016, f. 12-29-16, cert. ef. 1-1-17

213-019-0007

Crime Category 9 — Aggravated Drug Offenses

- (1) ORS 475.908(2) CAUSING ANOTHER TO INGEST A CONTROLLED SUBSTANCE: Causing Another to Ingest a Controlled Substance shall be ranked at Crime Category 9 if the act is done with the intent to commit or facilitate a crime of violence.
(2) ORS 475.910(1)(a) UNLAWFUL ADMINISTRATION OF A CONTROLLED SUBSTANCE (A): Unlawful Administration of a Controlled Substance shall be ranked at Crime Category 9 when the substance is a Schedule I or II controlled substance.

Stat. Auth.: ORS 137.667, 475.986, 475.998 & 2003 OL Ch. 453
Stats. Implemented: ORS 137.667 - 137.669, 475.986, 475.998 & 2003 OL Ch. 453

Hist.: CJC 2-2001, f. 12-26-01, cert. ef. 1-1-02; CJC 2-2003, f. 12-31-03, cert. ef. 1-1-04; CJC 3-2016, f. 12-29-16, cert. ef. 1-1-17

213-019-0008

Crime Category 8 — Aggravated Drug Offenses

- (1) MANUFACTURE OR DELIVERY OF CONTROLLED SUBSTANCE WITHIN 1000 FEET OF SCHOOL — As specified in ORS 475.900(1)(c).
(2) DELIVERY TO MINORS — ORS 475.906(1) or (2) — As specified in ORS 475.900(1)(e).
(3) ORS 167.262 USING A MINOR IN A CONTROLLED SUBSTANCE OFFENSE: Using a minor in a drug offense shall be ranked in Crime Category 8 unless the minor is less than three (3) years younger than the offender, in which case the offense will be ranked in Crime Category 4.
(4) MANUFACTURE AND DELIVERY OF A CONTROLLED SUBSTANCE — SUBSTANTIAL QUANTITIES: As specified in ORS 475.900(1)(a).
(5) COMMERCIAL DRUG OFFENSE: As specified in ORS 475.900(1)(b).
(6) CAUSING ANOTHER TO INGEST A CONTROLLED SUBSTANCE: ORS 475.902(1) is incorporated herein by reference.
(7) UNLAWFUL ADMINISTRATION OF A CONTROLLED SUBSTANCE: ORS 475.910(1)(b) is incorporated herein by reference.
(8) MANUFACTURE OF METHAMPHETAMINE: ORS 475.900(1)(d) is incorporated herein by reference.
(9) DISTRIBUTION OF EQUIPMENT, SOLVENT, REAGENT, OR PRECURSOR SUBSTANCE WITH THE INTENT TO FACILITATE THE MANUFACTURE OF A CONTROLLED SUBSTANCE: Violation of ORS 475.962 shall be classified at Crime Category 8.

Stat. Auth.: ORS 137.667, 475.986, 475.998 & 2003 OL, Ch. 453, HB 3194 (2013)
Stats. Implemented: ORS 137.667 - 137.669, 475.986, 475.998, 2003 OL, Ch. 453, 2005 OL, Ch. 706 (HB 2485), 2005 OL, Ch. 708 (SB 907); HB 3194 (2013); HB 3400 (2015); HB 4014 (2016)
Hist.: CJC 1-1999, f. & cert. ef. 11-1-99; CJC 2-2001, f. 12-26-01, cert. ef. 1-1-02, Renumbered from 213-019-0001; CJC 2-2003, f. 12-31-03, cert. ef. 1-1-04; CJC 1-2005(Temp), f. & cert. ef. 10-14-05 thru 4-12-06; CJC 1-2006, f. & cert. ef. 4-12-06; CJC 1-2013(Temp), f. & cert. ef. 8-7-13 thru 2-2-14; CJC 1-2014, f. 1-31-14, cert. ef. 2-3-14; CJC 3-2016, f. 12-29-16, cert. ef. 1-1-17

213-019-0011

Crime Category 5 — Drug Offenses

- ORS 475.910(1)(c) Unlawful Administration of a Controlled Substance. Unlawful Administration of a Controlled Substance shall be ranked at Crime Category 5 when the substance is a Schedule IV controlled substance.

Stat. Auth.: ORS 137.667 & 2003 OL Ch. 453
Stats. Implemented: ORS 137.667 - 137.669, 475.986 & 2003 OL Ch. 453
Hist.: CJC 2-2001, f. 12-26-01, cert. ef. 1-1-02; CJC 2-2003, f. 12-31-03, cert. ef. 1-1-04; CJC 3-2016, f. 12-29-16, cert. ef. 1-1-17

213-019-0012

Crime Category 4 — Drug Offenses

- (1) DELIVERY OR MANUFACTURE OF CONTROLLED SUBSTANCE: As specified in ORS 475.900(3)(a).
(2) ORS 167.262 USING A MINOR IN A DRUG OFFENSE: Using a minor in a drug offense shall be ranked at Crime Category 4 if the minor is less than three (3) years younger than the offender. In all other cases this offense shall be ranked in Crime Category 8.
(3) POSSESSION OR DISPOSAL OF METHAMPHETAMINE MANUFACTURING WASTE: Violation of ORS 475.977 shall be ranked at Crime Category 4.
(4) ORS 475B.185(3)(a)(A) UNLAWFUL IMPORT OR EXPORT OF MARIJUANA ITEMS FOR CONSIDERATION BY LICENSEE: Violation of ORS 475B.185(3)(a)(A) shall be ranked at Crime Category 4.

Stat. Auth.: ORS 137.667 & 475.900, HB 3194 (2013)
Stats. Implemented: ORS 137.667 - 137.669, 475.967, 475.996 & 2005 OL Ch. 706, 2005 OL Ch. 708; HB 3194 (2013); HB 3400 (2015); HB 4014 (2016)
Hist.: CJC 1-1999, f. & cert. ef. 11-1-99; CJC 2-2001, f. 12-26-01, cert. ef. 1-1-02, Renumbered from 213-019-0003; CJC 1-2005(Temp), f. & cert. ef. 10-14-05 thru 4-12-06; CJC 1-2006, f. & cert. ef. 4-12-06; CJC 1-2014, f. 1-31-14, cert. ef. 2-3-14; CJC 3-2016, f. 12-29-16, cert. ef. 1-1-17

213-019-0015

Crime Category 1 — Drug Offenses

- POSSESSION OF CONTROLLED SUBSTANCE: As specified in ORS 475.900(3)(b).

Stat. Auth.: ORS 137.667, 2005 OL, Ch. 708 (SB 907) & ORS 475.900, HB 3194 (2013)
Stats. Implemented: ORS 137.667 - 137.669; HB 3194 (2013); HB 3400 (2015); HB 4014 (2016)
Hist.: CJC 1-1999, f. & cert. ef. 11-1-99; CJC 2-2001, f. 12-26-01, cert. ef. 1-1-02, Renumbered from 213-019-0004; CJC 1-2005(Temp), f. & cert. ef. 10-14-05 thru 4-12-06;

ADMINISTRATIVE RULES

CJC 1-2006, f. & cert. ef. 4-12-06; CJC 1-2014, f. 1-31-14, cert. ef. 2-3-14; CJC 3-2016, f. 12-29-16, cert. ef. 1-1-17

Oregon Department of Education
Chapter 581

Rule Caption: Establishes English Language Learner District and School Improvement Program

Adm. Order No.: ODE 51-2016

Filed with Sec. of State: 12-20-2016

Certified to be Effective: 12-20-16

Notice Publication Date: 11-1-2016

Rules Adopted: 581-020-0613, 581-020-0621, 581-020-0624

Rules Amended: 581-020-0600, 581-020-0603, 581-020-0606, 581-020-0609, 581-020-0612, 581-020-0615

Subject: The rules amend and add to the previously adopted rules for identification of school districts for improvement. In addition to some technical amendments, three new rules were added to the previous rules: First, HB 3499 directed the Department to provide technical assistance individually to transformational districts. The new rule establishes the phases and a framework for this technical assistance. Secondly, HB 3499 directed that if after four years a transformation or target district has not met the expected improvement in student progress indicators or the expected benchmarks, the Department must direct how districts will expend monies received from the State School Fund for ELL students. The rules include a framework that the Department must follow when directing a district on the expenditure of these funds. Finally, HB 3499 directed that the State Board adopt rules relating to certain best practices for ELL students. The rules include a direction that the Department create an online resource bank for sharing national, state and local best practices in serving ELL students and engaging parents of ELL students. The rules also specify that these best practices be evidence based.

Rules Coordinator: Cindy Hunt—(503) 947-5651

581-020-0600

ELL District and School Improvement: Definitions

The following definitions apply to OAR 581-020-0600 to 581-020-0624:

(1) Current ELL student” means a student who is enrolled in an English language learner program in Oregon during the school year.

(2) “ELL Target District” means a district selected for technical assistance under OAR 581-020-0609.

(3) “ELL Transformation District” means a district selected for technical assistance and progressive interventions under OAR 581-020-0609.

(4) “English language learner” or “ELL” means a student who has limited English language proficiency because English is not the native language of the student or the student comes from an environment where a language other than English has had a significant impact on the student’s level of English language proficiency.

(5) “Former ELL student” means a student who was previously enrolled in an English language learner program in Oregon.

(6) “Percentage of students in poverty” means the percentage of students in poverty using the number of students in poverty as calculated under OAR 581-023-0102 for purposes of calculation of the State School Fund distribution.

(7) “School district” means a common or union high school district.
Stat. Auth.: Sec. 3, ch. 604, OL 2015 (Enrolled HB 3499)
Stats. Implemented: ORS 339.079 & Sec. 3, ch. 604, OL 2015 (Enrolled HB 3499)
Hist.: ODE 7-2016, f. & cert. ef. 2-5-16; ODE 51-2016, f. & cert. ef. 12-20-16

581-020-0603

ELL District and School Improvement: Program

(1) The Department of Education through the ELL District and School Improvement program shall:

(a) Improve ELL student progress indicators including high school graduation rates and English language proficiency.

(b) Identify school districts that are not meeting objectives and the needs of ELL students, taking into account the specific learning challenges and demographics of the students.

(c) Collaborate with selected districts to better meet objectives and the needs of ELL students.

(d) Partner with identified ELL transformation and target districts, to ensure that those districts achieve expected growth in student progress indi-

cators, and the expected benchmarks for student progress indicators that an identified district is expected to meet within four years of identification.

(e) In consultation with ELL transformation and target districts design and implement an accountability system of progressive interventions for the school districts.

(f) Direct transformation and target school districts on how to expend moneys received under ORS 327.013(1)(c)(A)(ii) (ELL weight) for up to three years, for identified districts that have not met the expected growth in student progress indicators, and the expected benchmarks for student progress indicators.

(2) The Department of Education shall identify school districts that are:

(a) ELL transformation districts that are in need of progressive interventions and technical assistance; and

(b) ELL target districts that are in need of technical assistance.

(3) If a school district is identified as an ELL transformation or target district the district shall remain as such for four years.

Stat. Auth.: Sec. 3, ch. 604, OL 2015 (Enrolled HB 3499)

Stats. Implemented: ORS 339.079 & Sec. 3, ch. 604, OL 2015 (Enrolled HB 3499)

Hist.: ODE 7-2016, f. & cert. ef. 2-5-16; ODE 51-2016, f. & cert. ef. 12-20-16

581-020-0606

ELL District and School Improvement: District Eligibility and Selection

(1) To be eligible for selection as an ELL transformation or target district, a district must have enrolled 20 or more English Language Learners on a date specified by the Department. School districts with fewer than 20 English Language Learners will be eligible for other regionally based services and supports provided by the Department.

(2) A public charter school is not eligible for selection as an ELL transformation or target district. However, a public charter school may be selected by the Department as a school within an identified ELL transformation or target district for interventions and technical assistance.

Stat. Auth.: Sec. 3, ch. 604, OL 2015 (Enrolled HB 3499)

Stats. Implemented: ORS 339.079 & Sec. 3, ch. 604, OL 2015 (Enrolled HB 3499)

Hist.: ODE 7-2016, f. & cert. ef. 2-5-16; ODE 51-2016, f. & cert. ef. 12-20-16

581-020-0609

ELL District and School Improvement: District Selection

(1) The Department shall identify school districts that are not meeting objectives and needs of ELL students, taking into consideration the specific learning challenges and demographics of the students. The Department shall consider whether the district has demonstrated a history of not meeting objectives and needs of ELL students as compared to other districts relating to ELL students.

(2) To identify school districts that are not meeting objectives and needs of ELL students, the Department shall consider the following student progress indicators in identifying the school districts in need of improvement:

(a) The cohort 5 year graduation rate for current and former ELL students;

(b) The academic growth of current and former ELL students in grades 6, 7 and 8 as measured by statewide standardized assessments;

(c) The growth in language acquisition of current ELL students in grades 1 through 8 as measured by the English Language Proficiency Assessment (ELPA);

(d) The growth in language acquisition of current ELL students in grades 10 through 12, combined as measured by the English Language Proficiency Assessment (ELPA); and

(e) Percentage of former ELL students who enroll in a post-secondary institution after graduation from the district.

(3) The Department shall also consider the needs of the district by considering learning challenges and demographic information of students enrolled in the district including but not limited to:

(a) The percentage of current and former ELL students as a percent of all students in the district;

(b) The percentage of all students in poverty as calculated using the district small area income and poverty estimate (SAIPE);

(c) The percentage of current and former ELL students who are economically disadvantaged;

(d) The percentage of current and former ELL students who are mobile;

(e) The percentage of current and former ELL students who are homeless;

(f) The percentage of current and former ELL students who are migrant students;

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(g) The percentage of current and former ELL students who are recent arrivers to Oregon; and

(h) The number of unique home languages of current and former ELL students.

(4) After identifying potential districts based on student progress indicators that are not meeting objectives and needs of ELL students, the Department may adjust the list of districts:

(a) To achieve geographic diversity of school districts;

(b) Based on the percentage of current ELL students identified as needing special education;

(c) Based on data trends identified by the Department related to a school district;

(d) Based on programs for ELL students within the district which have been shown to either improve high school graduation rates or English language proficiency; and

(e) Based on available funding.

(5) After identifying the districts that are not meeting objectives and needs of ELL students, the Department shall further identify the districts as:

(a) ELL transformation districts; or

(b) ELL target districts.

(6) The Department may use the demonstrated commitment level of a district's superintendent and board as a factor in determining whether the district is an ELL transformation or ELL target district.

(7) Data used by the Department to identify school districts may be from different school years but must be the best data available as identified by the Department.

Stat. Auth.: Sec. 3, ch. 604, OL 2015 (Enrolled HB 3499)

Stats. Implemented: ORS 339.079 & Sec. 3, ch. 604, OL 2015 (Enrolled HB 3499)

Hist.: ODE 7-2016, f. & cert. ef. 2-5-16; ODE 51-2016, f. & cert. ef. 12-20-16

581-020-0612

ELL District and School Improvement: Transformation Districts

(1) The Department, in consultation with an ELL transformation district, shall:

(a) Select specific schools within the district for interventions and targeted assistance.

(b) Identify the specific interventions and technical assistance to be provided to ELL transformation districts which may include grant funds.

(c) Establish the expected growth in student progress indicators, and the expected benchmarks for student progress indicators, for all English language learners of the district.

(d) Design and implement an accountability system of progressive interventions for the school district which will be provided for four years after the district has been identified as an ELL transformation district.

(2) ELL Transformation Districts shall engage with the Department in an evaluation of the district's programs for ELL students. The evaluation must be as described in OAR 581-020-0613.

Stat. Auth.: Sec. 3, ch. 604, OL 2015 (Enrolled HB 3499)

Stats. Implemented: ORS 339.079 & Sec. 3, ch. 604, OL 2015 (Enrolled HB 3499)

Hist.: ODE 7-2016, f. & cert. ef. 2-5-16; ODE 51-2016, f. & cert. ef. 12-20-16

581-020-0613

Transformation District Technical Assistance

(1) The Department of Education shall provide technical assistance to ELL Transformation Districts. The technical assistance must include an evaluation of the district's programs for ELL students using an approved and evidence-based needs assessment. The needs assessment will examine the root causes impacting student's performance and program quality and effectiveness. The evaluation must include, but not be limited to program design, program model, instructional delivery strategies, curriculum, assessment, staff qualifications, staff training on culturally responsive instructional pedagogy and practices, and the level of engagement with ELL families and community.

(2) The technical assistance shall have the following phases which may be repeated as necessary:

(a) Phase 1: Identify and evaluate local district needs.

(b) Phase 2: Identify interventions and assistance.

(c) Phase 3: Plan for implementation and monitoring.

(d) Phase 4: Implement and monitor.

(e) Phase 5: Review, reflect and adjust.

(3) The technical assistance must be within the following framework:

(a) Include the application of an Equity Lens identified by the Department;

(b) Be in collaboration with the school district;

(c) Be based on a district needs assessment;

(d) Be based upon district and state data;

(e) Be individualized based on district needs and areas identified for improvement;

(f) Include culturally responsive evidence-based practices;

(g) Include culturally responsive promising practices;

(h) Consider the ELL students' specific learning challenges, backgrounds and demographics of the district;

(i) Include an examination of school district expenditures of federal and state funds for ELL students;

(j) Identify district improvement goals including expected growth in student progress indicators and the expected benchmarks to meet those goals; and

(k) Be consistent with other state and federal laws.

(4) The technical assistance process must include engagement with:

(a) District administrators, teachers, ELL directors and other school district staff;

(b) Improvement and instructional coaches;

(c) Families of ELL students; and

(d) Community stakeholders which may include culturally specific community based organizations and federally recognized tribes.

(5) The Department shall ensure that staff contracted to provide technical assistance to districts have the appropriate ELL program knowledge, experience and background to effectively support the implementation of the district's programs for ELL students including culturally responsive pedagogy and practices.

Stat. Auth.: Sec. 3, ch. 604, OL 2015 (Enrolled HB 3499)

Stats. Implemented: ORS 339.079 & Sec. 3, ch. 604, OL 2015 (Enrolled HB 3499)

Hist.: ODE 51-2016, f. & cert. ef. 12-20-16

581-020-0615

ELL District and School Improvement: Target Districts

(1) ELL Target Districts must perform an evaluation of the district's programs for ELL students using an approved and evidence-based needs assessment. The needs assessment will examine the root causes impacting student's performance and program quality and effectiveness. The evaluation must include, but not be limited to, program design, program model, instructional delivery strategies, curriculum, assessment, staff qualifications, staff training on culturally responsive instructional pedagogy and practices, and the level of engagement with ELL families and community.

(2) The Department shall identify the technical assistance to be provided to ELL target districts. The technical assistance shall include but not be limited to assistance with conducting the evaluation of the district's programs.

(3) If resources are available after providing technical assistance to ELL Transformation District, the Department may provide individualized technical assistance to the ELL Target Districts. The individual technical assistance must be consistent with OAR 581-020-0613.

(4) The Department shall establish the expected growth in student progress indicators, and the expected benchmarks for student progress indicators, for all English language learners of the district.

(5) If resources are available after providing grant funds to ELL Transformation Districts, the Department may provide grant funds to ELL Target Districts.

Stat. Auth.: Sec. 3, ch. 604, OL 2015 (Enrolled HB 3499)

Stats. Implemented: ORS 339.079 & Sec. 3, ch. 604, OL 2015 (Enrolled HB 3499)

Hist.: ODE 7-2016, f. & cert. ef. 2-5-16; ODE 51-2016, f. & cert. ef. 12-20-16

581-020-0621

ELL District and School Improvement: District Expenditure of Moneys

(1) The Department shall direct transformation and target school districts on how to expend all moneys received under ORS 327.013(1)(c)(A)(ii) (ELL weight) for up to three years, for identified districts that have not met the expected growth in student progress indicators, and the expected benchmarks for student progress indicators that were identified for the school district.

(2) If a school district meets or exceeds the expected growth in student progress indicators and the expected benchmarks for student progress indicators, then the Department may no longer direct the expenditure to State School Fund moneys under this section for that school district.

(3) The Department shall utilize the following framework to direct the expenditure of moneys under this section. The expenditure direction must be:

(a) Individualized for each district based on state and district data and the district improvement work from the previous four years;

(b) Aligned with evidence-based practices;

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(c) Focused on supporting the district in meeting expected growth in student progress indicators and the expected benchmarks for student progress indicators identified for the school district;

(d) Communicated to the district in writing and communicate to the district the specific direction of expenditures and the rationale for that direction;

(e) Sent to the district prior to March 1 before the fiscal year to which it applies; and

(f) Be reviewed at least annually.

(4) The Department may utilize the district and community engagement process established as part of the technical assistance process to receive feedback on the expenditure direction.

(5) The school district shall communicate to stakeholders about the expenditure direction as follows:

(a) In at least one community forum;

(b) In a letter to parents of ELL students who are enrolled in the district; and

(c) By posting information about the expenditure direction on the district's website.

(6) The direction on expenditure of moneys for school districts identified as ELL transformation or target districts in 2016 will first apply to moneys received by those school districts from the ELL weight on or after July 1, 2020.

Stat. Auth.: Sec. 3, ch. 604, OL 2015 (Enrolled HB 3499)

Stats. Implemented: ORS 339.079 & Sec. 3, ch. 604, OL 2015 (Enrolled HB 3499)

Hist.: ODE 51-2016, f. & cert. ef. 12-20-16

581-020-0624

ELL District and School Improvement: Best Practices and Promising

(1) The Department shall create an online resource bank for sharing national, state and local best practices and promising practices in serving ELL students and engaging families of ELL students. The best practices and promising practices must be culturally responsive.

(2) The online resource bank shall include resources for best practices and promising practices and should address at a minimum:

(a) The provision of support for students who are in grades 6 to 12 and have been identified as ELL students for six or more years;

(b) The provision of support for students who are former ELL students;

(c) Engagement of families and delivering essential notifications relating to ELL programs; and

(d) Identification of students who are eligible to be enrolled as ELL students.

(3) The statewide plan to support ELL students shall be included with the online resource bank.

Stat. Auth.: Sec. 3, ch. 604, OL 2015 (Enrolled HB 3499)

Stats. Implemented: ORS 339.079 & Sec. 3, ch. 604, OL 2015 (Enrolled HB 3499)

Hist.: ODE 51-2016, f. & cert. ef. 12-20-16

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Oregon Department of Education, Early Learning Division Chapter 414

Rule Caption: Revisions to Central Background Registry rules meeting federal requirements and clarify authority under Oregon law.

Adm. Order No.: ELD 7-2016

Filed with Sec. of State: 12-19-2016

Certified to be Effective: 12-19-16

Notice Publication Date: 11-1-2016

Rules Amended: 414-061-0020, 414-061-0040, 414-061-0050, 414-061-0100, 414-061-0110, 414-061-0120

Subject: The Early Learning Division, Office of Child Care (OCC) administers the Central Background Registry (CBR) pursuant to ORS 329A.030. OCC conducts background checks on individuals associated with child care facilities. Subject individuals (defined below) may submit an application for enrollment in the CBR to OCC. OCC then conducts a criminal and child welfare (child abuse and neglect) background check on the applicant and determines whether the applicant is suitable for enrollment in the CBR. The enrollment period is two years at which time the individual must apply for renewal of their enrollment. OCC conducts a quarterly LEDS (Law Enforcement Data System) check of all enrollees in the CBR. Revisions to rules will allow the Office of Child Care (OCC) to conduct FBI fingerprint checks in circumstances as required by

Federal law as a condition for receiving federal Child Care and Development Block Grant (CCDBG) funds. Rule revisions also bring the OCC suitability factors for background checks in line with the Oregon State Police (OSP) suitability factors found in ORS 181A.195 since they were revised as a result of HB 3168 and to ensure OCC is meeting statutory requirements.

Rules Coordinator: Lisa Pinheiro—(503) 910-8135

414-061-0020

Definitions

(1) "Agency Agreement" means the written agreement between the Oregon State Police and the Oregon Office of Child Care.

(2) "Child Protective Services Records" means information on child abuse and neglect cases.

(3) "Child Protective Services Records Check" means obtaining and reviewing child protective services reports and records as required or permitted by these rules.

(4) "Computerized Criminal History (CCH) System" means the on-line computer files of significant criminal offender information maintained by the Oregon State Police (OSP).

(5) "Conditional Enrollment" means temporary approval to be enrolled in the Central Background Registry following an OSP criminal records check and child protective services records check but prior to receipt by OCC of the results of a required FBI criminal records check.

(6) "Criminal Records" means information, including fingerprints and photographs, received, compiled, and disseminated by the Oregon State Police for purposes of identifying criminal offenders and alleged offenders and maintained as to such persons' records of arrest, the nature and disposition of criminal charges, sentencing, confinement, and release and includes the OSP Computerized Criminal History System.

(7) "Criminal Records Check" means obtaining and reviewing criminal records as required or permitted by these rules and includes any or all of the following:

(a) A check of Oregon criminal offender information and driving records conducted through use of the Law Enforcement Data System (LEDS) maintained by OSP, in accordance with the rules adopted and procedures established by OSP;

(b) A check of Oregon criminal offender information, including through fingerprint identification or other means, conducted by OSP at the authorized agency or district's request; or

(c) A nationwide check of federal criminal offender information, including through fingerprint identification, conducted by OSP through the Federal Bureau of Investigation (FBI).

(8) "Early Childhood Care and Education Program" means a regulated child care facility, federally-funded Head Start program, Oregon Department of Education funded pre-kindergarten program, parent-teacher program, or early childhood special education/early intervention program.

(9) "Employee" means any individual caring for, overseeing, or who has or may have access to children, who holds a paid position in a requesting agency.

(10) "Employee of the Early Learning Division" means any individual employed by the Early Learning Division.

(11) "Enrollment" means approval for a two-year period to be enrolled in the Central Background Registry following an OSP criminal records check, child protective services records check and, if required, an FBI records check.

(12) "Fee" means the charges assessed by the subject individual for processing each criminal records check and/or fingerprint-based criminal records check.

(13) "FBI" means the Federal Bureau of Investigation.

(14) "Fingerprint-Based Criminal Records" means criminal offender information compiled and maintained by the Federal Bureau of Investigation.

(15) "Incident" means the commission of a Category I or Category II crime or a child protective services case.

(15) "OCC" means the Office of Child Care of the Early Learning Division of the Department of Education.

(16) "OSP" means the Oregon State Police.

(17) "Reciprocal Agreement Program" includes:

(a) A metropolitan service district organized under ORS chapter 268; and

(b) A private agency or organization facilitating the provision of respite services, as defined in ORS 418.205, for parents pursuant to a properly executed power of attorney under ORS 109.056.

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(18) "Requesting Agency" means a childhood care and education program or individual providing care to children that is:

- (a) Regulated by OCC under ORS 329A.280 or 329A.330; or
- (b) An early childhood care and education program.

(19) "Unsupervised Contact with Children" means contact with children that provides the person opportunity for personal communication or touch when not under the direct supervision of a child care provider or staff with supervisory authority.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 657A.030(7)

Stats. Implemented: ORS 657A.030

Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03; CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 1-2010, f. 6-29-10, cert. ef. 7-1-10; ELD 3-2015, f. & cert. ef. 2-3-15; ELD 7-2016, f. & cert. ef. 12-19-16

414-061-0040

Limitations of Inquiries

(1) Only OCC employees who have been fingerprinted and cleared by the Oregon State Police shall access or have access to criminal records information pursuant to a valid agency agreement, as defined in OAR 414-061-0020(1). All such information shall be handled in compliance with the agency agreement and rules and procedures of the Oregon State Police relating to the criminal records information (OAR 257-015-0000 to 257-015-0100). It is the responsibility of OCC to assure strict compliance with federal and state laws, rules, and procedures regarding, access, dissemination, maintenance, and destruction of criminal records information.

(2) Criminal records information obtained from OSP and/or the FBI will not be used for any purpose other than that for which it was obtained nor given to unauthorized persons or agencies.

(3) Criminal records information, including fingerprint-based criminal records information, and child protective services information shall be obtained by OCC to determine whether a subject individual has criminal history or has child protective services history which is related to enrollment in the Central Background Registry.

(4) If a subject individual has been convicted of a crime which is related to enrollment in the Central Background Registry, the subject individual will be notified by OCC that he or she:

(a) Has a right to inspect and challenge the accuracy of his/her Oregon criminal records by contacting the Oregon State Police;

(b) May challenge the accuracy or completeness of any entry on the subject individual's criminal records provided by the FBI by filing a challenge with the FBI's CJIS Division.

Stat. Auth.: ORS 657A.030(7)

Stats. Implemented: ORS 657A.030

Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03; CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 1-2010, f. 6-29-10, cert. ef. 7-1-10; CCD 1-2010, f. 6-29-10, cert. ef. 7-1-10; ELD 3-2015, f. & cert. ef. 2-3-15; ELD 7-2016, f. & cert. ef. 12-19-16

414-061-0050

History to be Considered

(1) OCC has determined that serious felonies and misdemeanors involving violence or unauthorized sexual conduct, especially with children or otherwise vulnerable persons, is fundamentally inconsistent with any responsibility for care of children. Conviction of crimes listed in Category I of this rule shall disqualify a subject individual from being enrolled in the Central Background Registry, unless the subject individual provides sufficient evidence of suitability as described in section (10) of this rule.

(a) OCC will consider conviction of the following crimes for 15 years or less prior to the date the subject individual signed the Application for Enrollment in OCC's Central Background Registry. The 15 years will run from the date of arrest, citation, charge, or conviction whichever is later.

- (A) 163.165 Assault in the third degree.
- (B) 163.515 Bigamy.
- (C) 164.225 Burglary in the first degree.
- (D) 163.275 Coercion.
- (E) 163.200 Criminal mistreatment in the second degree.
- (F) 163.555 Criminal nonsupport.
- (G) 163.225 Kidnapping in the second degree.
- (H) 166.270 Possession of weapons by certain felons.
- (I) 166.720 Racketeering activity unlawful; penalties.
- (J) 164.405 Robbery in the second degree.
- (K) 164.395 Robbery in the third degree.
- (L) 163.445 Sexual misconduct.
- (M) 163.732 Stalking.
- (N) 162.185 Supplying contraband.
- (O) 166.220 Unlawful use of weapon.
- (P) 163.257 Custodial interference in the first degree.

(b) OCC will consider conviction of the following crimes for 20 years or less prior to the date the subject individual signed the Application for Enrollment in OCC's Central Background Registry. The 20 years will run from the date of arrest, citation, charge, or conviction whichever is later.

- (A) 166.087 Abuse of corpse in the first degree.
- (B) 166.085 Abuse of corpse in the second degree.
- (C) 167.262 Use of minor in controlled substance offense.
- (D) 164.325 Arson in the first degree.
- (E) 163.185 Assault in the first degree.
- (F) 163.175 Assault in the second degree.
- (G) 475.908 Causing another person to ingest a controlled substance.
- (H) 167.017 Compelling prostitution.
- (I) 163.205 Criminal mistreatment in the first degree.
- (J) 163.145 Criminally negligent homicide.
- (K) 162.165 Escape in the first degree.
- (L) 163.693 Failure to report child pornography.
- (M) 181.812 Failure to report as sex offender; defense.
- (N) 166.429 Firearms used in felony.
- (O) 163.525 Incest.
- (P) 166.165 Intimidation in the first degree.
- (Q) 166.155 Intimidation in the second degree.
- (R) 163.235 Kidnapping in the first degree.
- (S) 163.118 Manslaughter in the first degree.
- (T) 163.125 Manslaughter in the second degree.
- (U) 166.382 Possession of destructive device prohibited; exceptions.
- (V) 166.275 Possession of weapons by inmates of institutions.
- (W) 167.012 Promoting prostitution.
- (X) 167.090 Publicly displaying nudity or sex for advertising purposes.
- (Y) 163.355 Rape in the third degree.
- (Z) 164.415 Robbery in the first degree.
- (AA) 167.062 Sodomasochistic abuse or sexual conduct in live show.
- (BB) 167.212 Tampering with drug records.
- (CC) 164.075 Theft by extortion.
- (DD) 163.479 Unlawful contact with a child.
- (EE) 166.384 Unlawful manufacture of destructive device.
- (FF) 166.660 Unlawful paramilitary activity.
- (GG) 166.272 Unlawful possession of machine guns, certain short-barreled firearms and firearms silencers.
- (HH) 163.212 Unlawful use of an electrical stun gun, tear gas or mace in the second degree.
- (II) 163.476 Unlawfully being in a location where children regularly congregate.
- (c) OCC will consider the following crimes regardless of the length of time since the conviction.
- (A) 163.535 Abandonment of a child.
- (B) 163.095 "Aggravated murder" defined.
- (C) 163.149 Aggravated vehicular homicide.
- (D) 163.537 Buying or selling a person under 18 years of age.
- (E) 163.547 Child neglect in the first degree.
- (F) 163.545 Child neglect in the second degree.
- (G) 167.820 Concealing the birth of an infant.
- (H) 163.435 Contributing to the sexual delinquency of a minor.
- (I) 163.005 Criminal homicide.
- (J) 163.452 Custodial sexual misconduct in the first degree.
- (K) 163.454 Custodial sexual misconduct in the second degree.
- (L) 167.080 Displaying obscene materials to minors.
- (M) 163.684 Encouraging child sexual abuse in the first degree.
- (N) 163.686 Encouraging child sexual abuse in the second degree.
- (O) 163.687 Encouraging child sexual abuse in the third degree.
- (P) 163.575 Endangering the welfare of a minor.
- (Q) 167.075 Exhibiting an obscene performance to a minor.
- (R) 163.207 Female genital mutilation.
- (S) 167.057 Luring a minor.
- (T) 163.115 Murder; affirmative defense to certain felony murders; sentence of life imprisonment required; minimum term.
- (U) 163.433 Online sexual corruption of a child in the first degree.
- (V) 163.432 Online sexual corruption of a child in the second degree.
- (W) 166.370 Possession of firearm or dangerous weapon in public building or court facility exception; discharging a firearm in a school.
- (X) 163.688 Possession of materials depicting sexually explicit conduct of a child in the first degree.
- (Y) 163.689 Possession of materials depicting sexually explicit conduct of a child in the second degree.
- (Z) 163.375 Rape in the first degree.

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(AA) 163.365 Rape in the second degree.
(BB) 163.427 Sexual abuse in the first degree.
(CC) 163.425 Sexual abuse in the second degree.
(DD) 163.415 Sexual abuse in the third degree.
(EE) 167.333 Sexual assault of an animal.
(FF) 163.405 Sodomy in the first degree.
(GG) 163.395 Sodomy in the second degree.
(HH) 163.385 Sodomy in the third degree.
(II) 433.010 Spreading disease prohibited; health certificates to be issued by physicians; rules.
(JJ) 163.187 Strangulation.
(KK) 163.264 Subjecting another person to involuntary servitude in the first degree.
(LL) 163.263 Subjecting another person to involuntary servitude in the second degree.
(MM) 163.266 Trafficking in persons.
(NN) 163.670 Using child in display of sexually explicit conduct.
(OO) 163.411 Unlawful sexual penetration in the first degree.
(PP) 163.408 Unlawful sexual penetration in the second degree.
(QQ) 163.213 Unlawful use of an electrical stun gun, tear gas or mace in the first degree.

(2) OCC has further determined that felonies and misdemeanors involving theft, fraud, or deception, crimes against the state and public justice, and major traffic violations may substantially jeopardize the safety of children and are inconsistent with any position of unsupervised contact with children or otherwise vulnerable persons. If any subject individual was convicted of a crime listed in Category II of this rule, OCC will seek to obtain and review information on all intervening circumstances and other background information related to criminal activity, subject to section (10) of this rule. OCC will make a determination whether an individual is suitable for enrollment in the Central Background Registry based on all information available.

(a) OCC will consider conviction of the following crimes for 5 years or less prior to the date the subject individual signed the Application for Enrollment in OCC's Central Background Registry. The 5 years will run from the date of arrest, citation, charge, or conviction whichever is later.

(A) 162.015 Bribe giving.
(B) 162.025 Bribe receiving.
(C) 162.275 Bribe receiving by a witness.
(D) 162.265 Bribing a witness.
(E) 162.335 Compounding.
(F) 811.182 Criminal driving while suspended or revoked; penalties.
(G) 164.354 Criminal mischief in the second degree.
(H) 192.865 Criminal penalty (192.852 Prohibition on obtaining actual address or telephone number; prohibition on disclosure by employee of public body).
(I) 165.022 Criminal possession of a forged instrument in the first degree.
(J) 165.017 Criminal possession of a forged instrument in the second degree.
(K) 165.032 Criminal possession of a forgery device.
(L) 164.245 Criminal trespass in the second degree.
(M) 166.025 Disorderly conduct in the second degree.
(N) 830.475 Duties of operators and witnesses at accidents (failure to perform the duties of an operator of a boat).
(O) 162.145 Escape in the third degree.
(P) 162.205 Failure to appear in the first degree.
(Q) 162.195 Failure to appear in the second degree.
(R) 811.705 Failure to perform duties of driver to injured persons; penalty (hit and run, injury).
(S) 811.700 Failure to perform duties of driver when property is damaged; penalty (hit and run, property).
(T) 165.007 Forgery in the second degree.
(U) 418.630 Foster home must be certified as approved.
(V) 165.570 Improper use of emergency reporting system.
(W) 162.375 Initiating a false report.
(X) 165.572 Interference with making a report.
(Y) 162.257 Interfering with a firefighter or emergency medical services provider.

(Z) 162.247 Interfering with a peace officer or parole and probation officer.
(AA) 166.116 Interfering with public transportation.
(BB) 418.327 Licensing of certain schools and organizations offering residential programs; fees; rules.
(CC) 166.095 Misconduct with emergency telephone calls.

(DD) 162.425 Misuse of confidential information.
(EE) 166.450 Obliteration or change of identification number on firearms.
(FF) 162.235 Obstructing governmental or judicial administration.
(GG) 162.415 Official misconduct in the first degree.
(HH) 162.405 Official misconduct in the second degree.
(II) 830.325 Operating boat while under the influence of intoxicating liquor or controlled substance.
(JJ) 167.431 Participation in cockfighting.
(KK) 167.370 Participation in dogfighting.
(LL) 162.065 Perjury.
(MM) 165.070 Possessing fraudulent communications device.
(NN) 164.235 Possession of a burglary tool or theft device.
(OO) 164.335 Reckless burning.
(PP) 811.140 Reckless driving; penalty.
(QQ) 811.231 Reckless endangerment of highway workers; penalties.
(RR) 830.315 Reckless operation; speed (boat).
(SS) 162.315 Resisting arrest.
(TT) 165.090 Sports bribe receiving.
(UU) 165.085 Sports bribery.
(VV) 411.675 Submitting wrongful claim for payment of public assistance or medical assistance.
(WW) 162.295 Tampering with physical evidence.
(XX) 162.305 Tampering with public records.
(YY) 164.045 Theft in the second degree.
(ZZ) 166.649 Throwing an object off an overpass in the second degree.

(AAA) 033.045 Types of sanctions (Contempt of Court).
(BBB) 162.175 Unauthorized departure.
(CCC) 165.074 Unlawful factoring of payment card transaction.
(DDD) 165.810 Unlawful possession of a personal identification device.

(EEE) 165.813 Unlawful possession of fictitious identification.
(FFF) 411.840 Unlawfully obtaining or disposing of supplemental nutrition assistance.
(GGG) 411.630 Unlawfully obtaining public assistance or medical assistance.

(HHH) 811.060 Vehicular assault of bicyclist or pedestrian; penalty.
(III) 163.750 Violating a court's stalking protective order.

(b) OCC will consider conviction of the following crimes for 7 years or less prior to the date the subject individual signed the Application for Enrollment in OCC's Central Background Registry. The 7 years will run from the date of arrest, citation, charge, or conviction whichever is later.

(A) 163.196 Aggravate driving while suspended or revoked.
(B) 167.340 Animal abandonment.
(C) 167.330 Animal neglect in the first degree.
(D) 167.325 Animal neglect in the second degree.
(E) 166.240 Carrying of concealed weapons.
(F) 164.365 Criminal mischief in the first degree.
(G) 166.023 Disorderly conduct in the first degree.
(H) 813.010 Driving under the influence of intoxicants; penalty.
(I) 314.075 Evading requirements of law prohibited (tax evasion).
(J) 475.918 Falsifying drug test results.
(K) 811.540 Fleeing or attempting to elude police officer; penalty.
(L) 166.065 Harassment.
(M) 609.098 Maintaining dangerous dog.
(N) 830.325 Operating boat while under influence of intoxicating liquor or controlled substance.
(O) 163.195 Recklessly endangering another person.
(P) 162.285 Tampering with a witness.
(Q) 166.090 Telephonic harassment.
(R) 166.651 Throwing an object off an overpass in the first degree.
(S) 164.135 Unauthorized use of a vehicle.
(T) 166.250 Unlawful possession of firearms.
(U) 167.808 Unlawful possession of inhalants.
(V) 133.310 Authority of peace officer to arrest without warrant (Violation of restraining order).

(c) OCC will consider conviction of the following crimes for 10 years or less prior to the date the subject individual signed the Application for Enrollment in OCC's Central Background Registry. The 10 years will run from the date of arrest, citation, charge, or conviction whichever is later.

(A) 165.803 Aggravated identity theft.
(B) 167.315 Animal abuse in the second degree.
(C) 164.215 Burglary in the second degree.
(D) 165.581 Cellular counterfeiting in the first degree.

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- (E) 167.428 Cockfighting.
- (F) 164.377 Computer crime.
- (G) 162.365 Criminal impersonation.
- (H) 162.367 Criminal impersonation of peace officer.
- (I) 164.138 Criminal possession of a rented or leased motor vehicle.
- (J) 164.255 Criminal trespass in the first degree.
- (K) 164.265 Criminal trespass while in possession of a firearm.
- (L) 163.245 Custodial interference in the second degree.
- (M) 167.365 Dogfighting.
- (N) 165.013 Forgery in the first degree.
- (O) 165.055 Fraudulent use of a credit card.
- (P) 165.800 Identity theft.
- (Q) 167.355 Involvement in animal fighting.
- (R) 166.470 Limitations and conditions for sales of firearms.
- (S) 164.162 Mail theft or receipt of stolen mail.
- (T) 163.190 Menacing.
- (U) 164.098 Organized retail theft.
- (V) 166.190 Pointing firearm at another; courts having jurisdiction over offense.
- (W) 819.300 Possession of a stolen vehicle; penalty.
- (X) 162.369 Possession of false law enforcement identification card.
- (Y) 163.467 Private indecency.
- (Z) 685.990 Penalties (pertaining to naturopathic medicine).
- (AA) 677.080 Prohibited acts (regarding the practice of medicine).
- (BB) 471.410 Providing liquor to person under 21 or to intoxicated person; allowing consumption by minor on property; mandatory minimum penalties.
- (CC) 689.527 Prohibited practices; rules (pertaining to pharmacy technicians and practitioners).
- (DD) 166.480 Sale or gift of explosives to children.
- (EE) 164.085 Theft by deception.
- (FF) 164.095 Theft by receiving.
- (GG) 164.055 Theft in the first degree.
- (HH) 164.125 Theft of services.
- (II) 164.272 Unlawful entry into a motor vehicle.
- (d) OCC will consider conviction of the following crimes for 15 years or less prior to the date the subject individual signed the Application for Enrollment in OCC's Central Background Registry. The 15 years will run from the date of arrest, citation, charge, or conviction whichever is later.
- (A) 167.322 Aggravated animal abuse in the first degree.
- (B) 166.070 Aggravated harassment.
- (C) 164.057 Aggravated theft in the first degree.
- (D) 167.320 Animal abuse in the first degree.
- (E) 164.315 Arson in the second degree.
- (F) 163.160 Assault in the fourth degree.
- (G) 163.208 Assaulting a public safety officer.
- (H) 167.339 Assaulting a law enforcement animal.
- (I) 475.900 Crime category classification; proof of commercial drug offense.
- (J) 475.962 Distribution of equipment, solvent, reagent, or precursor substance with intent to facilitate manufacture of controlled substance.
- (K) 164.172 Engaging in a financial transaction in property derived from unlawful activity.
- (L) 162.155 Escape in the second degree.
- (M) 475.955 Failure to report missing precursor substances.
- (N) 475.950 Failure to report precursor substance transaction.
- (O) 167.222 Frequenting a place where controlled substances are used.
- (P) 162.325 Hindering prosecution.
- (Q) 475.960 Illegally selling drug equipment.
- (R) 167.352 Interfering with an assistance, a search and rescue or a therapy animal.
- (S) 167.337 Interfering with law enforcement animal.
- (T) 163.700 Invasion of personal privacy.
- (U) 164.170 Laundering a monetary instrument.
- (V) 165.117 Metal property transaction records; prohibited conduct; commercial sellers; penalties.
- (W) 166.180 Negligently wounding another.
- (X) 475.967 Possession of precursor substance with intent to manufacture controlled substance.
- (Y) 475.977 Possession or disposing of methamphetamine manufacturing waste.
- (Z) 475.914 Prohibited acts for registrants; penalties.
- (AA) 475.752 Prohibited acts generally; penalties; affirmative defense for certain peyote uses; causing death by Schedule IV substance.
- (BB) 475.916 Prohibited acts involving records and fraud; penalties.
- (CC) 167.007 Prostitution.
- (DD) 475.965 Providing false information on precursor substance report or record.
- (EE) 163.465 Public indecency.
- (FF) 166.015 Riot.
- (GG) 475.525 Sale of drug paraphernalia prohibited; definition of drug paraphernalia; exceptions.
- (HH) 166.005 Treason.
- (II) 475.870 Unlawful delivery of 3,4-methylenedioxyamphetamine.
- (JJ) 475.880 Unlawful delivery of cocaine.
- (KK) 475.850 Unlawful delivery of heroin.
- (LL) 475.810 Unlawful delivery of hydrocodone.
- (MM) 475.912 Unlawful delivery of imitation controlled substance.
- (NN) 475.860 Unlawful delivery of marijuana.
- (OO) 475.820 Unlawful delivery of methadone.
- (PP) 475.890 Unlawful delivery of methamphetamine.
- (QQ) 475.830 Unlawful delivery of oxycodone.
- (RR) 475.866 Unlawful manufacture of 3,4-methylenedioxyamphetamine.
- (SS) 475.876 Unlawful manufacture of cocaine.
- (TT) 475.846 Unlawful manufacture of heroin.
- (UU) 475.806 Unlawful manufacture of hydrocodone.
- (VV) 475.856 Unlawful manufacture of marijuana.
- (WW) 475.816 Unlawful manufacture of methadone.
- (XX) 475.886 Unlawful manufacture of methamphetamine.
- (YY) 475.826 Unlawful manufacture of oxycodone.
- (ZZ) 475.814 Unlawful possession of hydrocodone.
- (AAA) 475.824 Unlawful possession of methadone.
- (BBB) 475.834 Unlawful possession of oxycodone.
- (CCC) 475.874 Unlawful possession of 3,4-methylenedioxyamphetamine.
- (DDD) 475.971 Unlawful possession of anhydrous ammonia.
- (EEE) 475.884 Unlawful possession of cocaine.
- (FFF) 475.854 Unlawful possession of heroin.
- (GGG) 475.975 Unlawful possession of iodine in its elemental form; recording transfers; unlawful distribution of iodine in its elemental form.
- (HHH) 475.976 Unlawful possession of iodine matrix; recording transfers; unlawful distribution of iodine matrix.
- (III) 475.979 Unlawful possession of lithium metal or sodium metal.
- (JJJ) 475.864 Unlawful possession of marijuana or marijuana product.
- (KKK) 475.894 Unlawful possession of methamphetamine.
- (LLL) 475.969 Unlawful possession of phosphorus.
- (e) OCC will consider conviction of the following crimes for 20 years or less prior to the date the subject individual signed the Application for Enrollment in OCC's Central Background Registry. The 20 years will run from the date of arrest, citation, or conviction whichever is later.
- (A) 475.910 Application of controlled substance to the body of another person; prohibition.
- (B) 475.906 Penalties for unlawful delivery to minors.
- (C) 475.744 Providing hypodermic device to minor prohibited; exception.
- (D) 463.263 Subjecting another person to involuntary servitude in the second degree.
- (E) 475.872 Unlawful delivery of 3,4-methylenedioxyamphetamine within 1,000 feet of school.
- (F) 475.882 Unlawful delivery of cocaine within 1,000 feet of school.
- (G) 475.852 Unlawful delivery of heroin within 1,000 feet of school.
- (H) 475.812 Unlawful delivery of hydrocodone within 1,000 feet of school.
- (I) 475.862 Unlawful delivery of marijuana within 1,000 feet of school.
- (J) 475.822 Unlawful delivery of methadone within 1,000 feet of school.
- (K) 475.892 Unlawful delivery of methamphetamine within 1,000 feet of school.
- (L) 475.832 Unlawful delivery of oxycodone within 1,000 feet of school.
- (M) 475.868 Unlawful manufacture of 3,4-methylenedioxyamphetamine within 1,000 feet of school.
- (N) 475.878 Unlawful manufacture of cocaine within 1,000 feet of school.

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(O) 475.848 Unlawful manufacture of heroin within 1,000 feet of school.

(P) 475.808 Unlawful manufacture of hydrocodone within 1,000 feet of school.

(Q) 475.858 Unlawful manufacture of marijuana within 1,000 feet of school.

(R) 475.818 Unlawful manufacture of methadone within 1,000 feet of school.

(S) 475.888 Unlawful manufacture of methamphetamine within 1,000 feet of school.

(T) 475.828 Unlawful manufacture of oxycodone within 1,000 feet of school.

(U) 475.904 Unlawful manufacture or delivery of controlled substance within 1,000 feet of school.

(3) These rules also apply to:

(a) A conviction of a crime in another jurisdiction which is the substantial equivalent of a crime listed in Category I and II;

(b) An adjudication of guilt by reason of insanity, of an act that is the substantial equivalent of a crime listed in Category I and II;

(c) An adjudication by a juvenile court that a youth has committed an act that is the substantial equivalent of a crime listed in Category I and II;

(d) Any attempts, conspiracies or solicitations to commit any Felony or Misdemeanor crime listed in Category I and II;

(e) A new crime, adopted by the legislature following the most recent amendment of these rules, which is the substantial equivalent of any crimes listed in Category I and II;

(f) Any crime that is no longer codified in Oregon, but which is the substantial equivalent of any of the crimes listed in Category I and II;

(g) Any felony in Oregon Revised Statutes not listed in Category I and II that is serious and indicates behavior that poses a threat or jeopardizes the safety of vulnerable persons, as determined by OCC;

(h) Any misdemeanor in Oregon Revised Statutes not listed in Category I and II that is serious and indicates behavior that poses a threat or jeopardizes the safety of vulnerable persons, as determined by OCC; and

(i) Evaluations of crimes shall be based on Oregon laws in effect at the time of conviction, regardless of the jurisdiction in which the conviction occurred.

(4) OCC has determined that child protective services history may substantially jeopardize the safety of children and is inconsistent with any position of unsupervised contact with children or otherwise vulnerable persons. If any subject individual has a child protective services history, OCC will seek to obtain and review information related to the history, including information from the subject individual, subject to section (10) of this rule. Based on this information, OCC will make a decision whether or not to enroll, suspend or remove the subject individual in or from the Central Background Registry.

(5) If OCC determines a subject individual is a registered sex offender in Oregon or any other jurisdiction, OCC will make a decision whether or not to enroll, suspend, or remove the subject individual in or from the Central Background Registry.

(6) If a subject individual is in a diversion program or similar agreement for any Category I or Category II crime, the subject individual must provide written documentation of compliance with the terms of diversion or similar agreement. Based on all information obtained, OCC will make a decision whether or not to enroll, suspend or remove the subject individual in or from the Central Background Registry.

(7) If OCC determines that additional information is needed to assess a person's suitability to be enrolled or remain enrolled in the Central Background Registry, the subject individual shall provide the requested information within the required timeframes. The additional information may include, but is not limited to, an evaluation or assessment by a physician, counselor or other qualified person, documents to determine positive identification of the subject individual, and court documents.

(8) Factors to be considered in determining suitability, based on information available to OCC and information provided by the subject individual, include:

(a) The nature of the child protective services or criminal history;

(b) The facts that support the child protective services or criminal history or that indicate the making of a false statement;

(c) The relevancy of the child protective services history, criminal history, or false statement to the individual's enrollment in the Central Background Registry; and

(d) Intervening circumstances relevant to the individual's enrollment in the Central Background Registry, including but not limited to:

(i) The passage of time since the child protective services or criminal history;

(ii) The age of the individual at the time of the child protective services or criminal history;

(iii) The likelihood of repetition of the incident or the commission of another crime;

(iv) The existence of subsequent child protective services or criminal history;

(v) The recommendation of an employer, if provided;

(vi) For criminal history, whether the conviction was set aside or overturned and the legal effect of that setting aside or overturning; and

(vii) For child protective services history, whether the subject individual has had an opportunity to contest the abuse finding through the Department of Human Services and, if so, the status of any such challenge.

(9) OCC will not bar from enrollment in the Central Background Registry any subject individual because of the existence or contents of a juvenile record that has been expunged by the court.

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

Stat. Auth.: ORS 657A.030

Stats. Implemented: ORS 657A.030

Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03; CCD 3-2004, f. 7-30-04 cert. ef. 8-1-04; CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 1-2010, f. 6-29-10, cert. ef. 7-1-10; ELD 7-2014(Temp), f. & cert. ef. 8-7-14 thru 2-3-15; ELD 3-2015, f. & cert. ef. 2-3-15; ELD 7-2016, f. & cert. ef. 12-19-16

414-061-0100

Office of Child Care Denial Procedures

(1) A subject individual shall be denied enrollment in the Central Background Registry if the individual:

(a) Has been determined not suitable;

(b) Has misrepresented information or failed to submit requested information or documentation;

(c) Has been charged with, arrested for, or a warrant for a Category I or Category II crime with final disposition not yet reached;

(d) Has an open protective services or law enforcement case with final disposition not yet reached; or

(e) Is in a diversion program or similar agreement and has failed to provide written documentation of compliance with the terms of diversion or the agreement.

(2) A subject individual may appeal OCC's determination not to enroll the subject individual in the Central Background Registry, pursuant to OAR 414-061-0120.

(3) A subject individual who has been denied enrollment in the Central Background Registry due to a determination of unsuitability shall not be eligible for enrollment in the Registry for 3 years from the date of denial.

Stat. Auth.: ORS 657A.030(7)

Stats. Implemented: ORS 657A.030

Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03; CCD 5-2004, f. & cert. ef. 11-16-04; CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 1-2010, f. 6-29-10, cert. ef. 7-1-10; ELD 3-2015, f. & cert. ef. 2-3-15; ELD 7-2016, f. & cert. ef. 12-19-16

414-061-0110

OCC Removal Procedures

(1) An individual enrolled in the Central Background Registry shall be removed or suspended from the Registry by OCC if, during the period of enrollment, the individual:

(a) Has been determined not suitable for enrollment in the Registry;

(b) Has misrepresented information or failed to submit requested information or documentation;

(c) Is in a diversion program or similar agreement and has failed to provide written documentation of compliance with the terms of diversion or the agreement.

(2) OCC may immediately, and without prior hearing, remove or suspend a subject individual from the Central Background Registry when, in the opinion of OCC, such action is necessary to protect children from physical or mental abuse or a substantial threat to health and safety. Such action may be taken before an investigation is completed.

(3) OCC may reinstate a subject individual in the Central Background Registry if the condition(s) that resulted in the suspension is corrected.

(4) When a subject individual is removed or suspended from the Central Background Registry, OCC will notify the subject individual and the requesting agencies which have inquired about the subject individual's enrollment of the removal or suspension.

(5) A subject individual who has been removed from the Central Background Registry and has not subsequently been re-enrolled shall not be eligible for enrollment in the Registry for 3 years from the date of removal.

ADMINISTRATIVE RULES

Stat. Auth.: ORS 657A.030(7)
Stats. Implemented: ORS 657A.030
Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03;
CCD 5-2004, f. & cert. ef. 11-16-04; CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru
6-30-10; CCD 1-2010, f. 6-29-10, cert. ef. 7-1-10; ELD 3-2015, f. & cert. ef. 2-3-15; ELD 7-
2016, f. & cert. ef. 12-19-16

414-061-0120

Rights for Review and Contested Case Hearings

(1) OCC shall afford subject individuals the right to appeal a decision made by OCC that the subject individual is denied, suspended, or removed from enrollment from the Central Background Registry through a contested case hearing pursuant to ORS 183.413 through 183.470. Subject individuals must submit a request for a contested case hearing in writing.

(2) OCC does not have authority to change decisions, records, or information from other agencies.

(3) OCC is entitled to rely on the criminal records information or the child protective services information until notified that the information has been changed or corrected in a manner that would alter the OCC decision.

(4) To preserve the confidentiality of the records and the privacy of the subject individual, any contested case hearing will not be open to the public unless requested by the subject individual.

(5) A subject individual who is also an employee of the licensing unit of OCC and who is determined unsuitable for enrollment in the Central Background Registry may appeal the determination through either the contested case process or applicable personnel rules, policies and collective bargaining provisions. A subject individual's decision to appeal a determination through personnel rules, policies and collective bargaining provisions shall constitute an election of remedies as to the rights of the subject individual with respect to the disqualification determination and shall constitute waiver of the contested case process.

Stat. Auth.: ORS 657A.030(7)
Stats. Implemented: ORS 657A.030
Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03;
CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 1-2010, f. 6-29-10, cert.
ef. 7-1-10; ELD 3-2015, f. & cert. ef. 2-3-15; ELD 7-2016, f. & cert. ef. 12-19-16

Oregon Health Authority, Health Licensing Office Chapter 331

Rule Caption: Align electrology and tattoo rules with current industry and statewide rulemaking standards.

Adm. Order No.: HLO 1-2017

Filed with Sec. of State: 1-6-2017

Certified to be Effective: 1-6-17

Notice Publication Date: 10-1-2016

Rules Adopted: 331-915-0007

Rules Amended: 331-910-0000, 331-910-0005, 331-910-0010, 331-910-0015, 331-910-0025, 331-910-0030, 331-910-0035, 331-910-0040, 331-910-0045, 331-910-0050, 331-910-0055, 331-910-0060, 331-910-0070, 331-910-0075, 331-910-0080, 331-910-0085, 331-915-0000, 331-915-0005, 331-915-0015, 331-915-0020, 331-915-0025, 331-915-0030, 331-915-0035, 331-915-0040, 331-915-0050, 331-915-0055, 331-915-0060, 331-915-0065, 331-915-0070, 331-915-0075, 331-915-0080, 331-915-0085

Rules Repealed: 331-915-0045

Subject: General Changes:

Change Oregon Health Licensing Agency to Health Licensing Office under the Oregon Health Authority to align with statutory changes made in 2013.

Streamline prohibitions regarding examinations and redundant language.

Allow a temporary license in electrology and tattooing for 30 days with 2 renewals, which must be received at least 20 days prior to beginning tattooing on a temporary basis.

Require for both electrology and tattoo first (set up service) and the last (break down of service) hand washing be done with soap and water not antibacterial hand sanitizer.

Clean up various rule with new provisions.

Electrology Changes:

Add specific qualified organizations who are approved to provide continuing education if the subject matter relates to electrology

including the American Medical Association and American Electrology Association.

Add antiseptic to acceptable skin cleaner and clarify the order of sterilization.

If a facility becomes licensed after July 1, 2017 they must have hot and cold running water available outside of the bathroom. Any facility licensed prior to July 1, 2017 are allowed to have hot and cold running water located in the bathroom.

Tattoo Changes:

Amend education requirement to allow the first 30 out of 50 procedures with direct supervision and the last 20 out of 50 be indirect supervision which means the teacher be onsite of the premises (begins July 1, 2017). Allow registered teachers to provide indirect supervision on a two-to-one student teacher ratio.

Allow tattoo artists coming from states that are not licensed to count 3 out of the last five years experience or five out of the last 10 years experience. Documentation may include tax records or a letter from employer.

Require tattoo artists bag rinse bottles and clip cords to ensure no cross contamination of blood or other potentially infectious material. Ensure tattoos are rinsed and inks diluted with either distilled or sterilized water. Require a clean nonporous barrier or certain distance for specific situations where tattoos are performed. Amended storage, tattoo covering, dilution of ink and sterilization requirement to meet current industry standards.

Rules Coordinator: Samantha Patnode—(503) 373-1917

331-910-0000

Definitions

The following definitions apply to OAR chapter 331, division 910:

(1) "Affidavit of Licensure" has the meaning set forth in OAR 331-030-0040.

(2) "Direct supervision" means the supervisor or instructor is present in the facility and actively involved in direct oversight and training of students.

(3) "EPA" means United States Environmental Protection Agency.

(4) "FDA" means Food and Drug Administration.

(5) "Field of practice" has the definition set forth in ORS 690.350.

(6) "High-level disinfectant" means a chemical agent, registered with the EPA, which has demonstrated tuberculocidal activity.

(7) "Instruments" means equipment used during electrology services. Types of instruments include but are not limited to needles (filaments) and tweezers.

(8) "Office" means Health Licensing Office

(9) "Official transcript" means: An original document authorized by the appropriate office in the Higher Education Coordinating Commission (HECC) and certified by a career school licensed under ORS 345 indicating applicant identity information, field of practice(s) enrolled under, specific hour requirements for each field of practice if applicable, enrollment information and a signature by an authorized representative on file with the Office. Original documents must be submitted directly to the Office from the educational institution by United States Postal Service mail or other recognized mail service providers in a sealed envelope or by other means approved by the Office.

(10) "Practitioner" means a person licensed to perform services included within a field of practice.

Stat. Auth.: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 10-2012, f. & cert. ef. 6-25-12; HLO 1-2017, f. & cert. ef. 1-6-17

331-910-0005

Approved Course of Study for Electrology

To be approved by the Office, a course of study must include, at least 600 hours of training instruction. The course must include at least 235 hours of theory and at least 365 hours of practical experience in the following areas:

(1) Oregon Laws and rules: 15 hours of training in theory.

(2) Bacteriology: 20 hours of training in theory.

(3) Infection control, safety and sterilization: 20 hours of training in theory and 15 hours of practical training.

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- (4) Anatomy and physiology: 20 hours of training in theory.
- (5) Endocrinology: 20 hours of training in theory.
- (6) Structure, dynamics and diseases of skin and hair: 30 hours of training in theory.
- (7) Circulatory and nervous system: 20 hours of training in theory.
- (8) Electricity: 15 hours of training in theory.
- (9) Electrolysis (galvanic): 20 hours of training in theory and 115 hours of practical training.
- (10) Thermolysis: 20 hours of training in theory and 115 hours of practical training.
- (11) Combinations of electrolysis and thermolysis (blend): 20 hours of training in theory and 110 hours of practical training.
- (12) Draping and positioning: 5 hours of training in theory and 5 hours of practical training.
- (13) Professional ethics and business practices: 10 hours of training in theory and 5 hours of practical training.
- (14) As part of the approved course of study, all hours of theory must be completed prior to practical work being performed on the general public.
- (15) Training must be conducted by an Oregon licensed electrologist registered as a teacher by the Higher Education Coordinating Commission.
- (16) A registered teacher must provide direct supervision of practical training on a one-to-one student/teacher ratio for students performing practical training while the student is working on the general public.
- (17) For the purpose of this rule direct supervision means the teacher is present and actively involved in rule oversight and training of students.
Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415
Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35
Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 15-2013, f. 12-30-13, cert. ef. 1-1-14; HLO 1-2017, f. & cert. ef. 1-6-17

331-910-0010

Electrology Temporary License

- (1) An electrology temporary license pursuant to ORS 690.365 is a temporary license to perform electrology services on a limited basis, not to exceed 30 consecutive calendar days. An electrology temporary license holder:
 - (a) May renew the license up to two times in a 12 month period from the date the Office receives the initial application. License renewals can be done consecutively with no lapse in active license dates;
 - (b) Must submit all requests to renew a license on a form prescribed by the Office and received 20 days before electrology services are provided;
 - (c) Must submit notification of a change in work location at least 24 hours before services are performed on a form prescribed by the Office; and
 - (d) Must work in a licensed facility.
- (2) An electrology temporary license holder must adhere to standards within OAR 331-910-0065, 331-910-0070, 331-910-0075, 331-910-0080, 331-910-0085 and all applicable rules listed in OAR 331 division 925.
Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415
Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35
Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 2-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12; HLA 15-2012(Temp), f. & cert. ef. 10-15-12 thru 4-12-13; HLA 1-2013, f. & cert. ef. 1-16-13; HLA 15-2013, f. 12-30-13, cert. ef. 1-1-14; HLO 1-2017, f. & cert. ef. 1-6-17

331-910-0015

Application Requirements for Electrology Temporary License

- An individual applying for a Electrology Temporary License must:
- (1) Meet the requirements of OAR 331 division 30;
 - (a) Submit a completed application form prescribed by the Office, which must contain the information listed in OAR 331-030-0000, including one form of government issued identification which must be photographic and show proof of being 18 years of age. The completed application must be accompanied by payment of the required application and license fees and must be received at least 20 days before electrology services are provided to clients;
 - (b) Submit proof of current training in blood-borne pathogens; and
 - (c) Attest to six months of training or experience, within the last two years, performing electrology on a form prescribed by the Office; or
 - (2) For the purpose of this rule training or experience includes attendance or participation at an instructional program presented, recognized, or

under the sponsorship of any permanently organized institution, agency, or professional organization or association recognized by the Office.

(3) All applications received after the required 20th day deadline will not be accepted by the Office.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 2-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12; HLO 1-2017, f. & cert. ef. 1-6-17

331-910-0025

Application Requirements for Electrology License

- (1) An individual applying for licensure to practice electrology must:
 - (a) Meet the requirements of OAR 331 division 30;
 - (b) Submit a completed application form prescribed by the Office, which must contain the information listed in OAR 331-030-0000 and be accompanied by payment of the required application fees;
 - (c) Submit documentation showing proof of being 18 years of age documentation which may include identification listed under OAR 331-030-0000;
 - (d) Submit proof of having a high school diploma or equivalent; and
 - (e) Provide documentation of completing a qualifying pathway.
- (2) License Pathway 1 — Graduate from an Oregon Licensed Career School for Electrology must:

(a) Submit official transcript from a licensed electrology school under ORS 345 showing proof of completion of required electrology curriculum as determined by the Office under OAR 331-910-0005;

- (b) Pay examination fees;
- (c) Submit passing score of an Office approved written examination in accordance with OAR 331-910-0030(1)(a) within two years from the date of application;
- (d) Submit passing score of an Office approved practical examination in accordance with OAR 331-910-0030(1)(b) within two years from the date of application; and
- (e) Upon passage of all required examinations and before issuance of license, applicant must pay all license fees.

(f) An applicant is not required to provide proof of official transcripts in a field of practice if the applicant was previously licensed as an electrologist in Oregon.

(3) License Pathway 2 — Individual Qualifying for Licensure Through Reciprocity must:

- (a) Submit an affidavit of licensure pursuant to OAR 331-030-0040 demonstrating proof of holding a current electrology license, which is active with no current or pending disciplinary. The licensing requirements must be substantially equivalent to Oregon licensing requirements pursuant to ORS 690.365 or if not substantially equivalent the applicant must demonstrate to the satisfaction of the Office that the applicant has been employed or working as an electrologist full time for three of the last five years;
- (b) Pay examination fees;
- (c) Submit passing score of an Office approved written examination in accordance with OAR 331-910-0030(1)(a) within two years from the date of application;
- (d) Submit passing score of an Office approved practical examination in accordance with OAR 331-910-0030(1)(b) within two years from the date of application; and
- (e) Upon passage of all required examinations and before issuance of license, applicant must pay all license fees.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 2-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12; HLA 1-2013, f. & cert. ef. 1-16-13; HLO 1-2017, f. & cert. ef. 1-6-17

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 2-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12; HLA 1-2013, f. & cert. ef. 1-16-13; HLO 1-2017, f. & cert. ef. 1-6-17

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLO 1-2017, f. & cert. ef. 1-6-17

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLO 1-2017, f. & cert. ef. 1-6-17

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLO 1-2017, f. & cert. ef. 1-6-17

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLO 1-2017, f. & cert. ef. 1-6-17

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLO 1-2017, f. & cert. ef. 1-6-17

331-910-0030

Approved Examination for Electrology

The Office has selected the following examinations for electrology:

- (1) Written examination for electrology; and
- (2) Oregon electrology practical examination.
Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415
Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35
Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLO 1-2017, f. & cert. ef. 1-6-17

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331-910-0035

General Examination Information

(1) To be eligible for examination, an applicant must meet identification requirements listed under OAR 331-030-0000.

(2) The examination is administered in English only, unless an Office approved testing contractor or vendor provides the examination in languages other than English.

(3) Examination candidates may be electronically monitored during the course of testing.

(4) Examination candidates must adhere to the maximum time allowance for each section of the examination, as established by the Office.

(5) Examination candidates are prohibited from taking items and devices into examination areas which include but are not limited to notes, textbooks, notebooks, electronic equipment communication devices or any other items or devices the Office deems inappropriate.

(6) Candidate conduct that interferes with the examination may result in the candidate's disqualification during or after the examination, the candidate's examination being deemed invalid, and forfeiture of the candidate's examination fees. Such conduct includes but is not limited to:

(a) Directly or indirectly giving, receiving, soliciting, and attempting to give, receive or solicit aid during the examination process;

(b) Violations of subsections (5) of this rule;

(c) Removing or attempting to remove any examination-related information, notes or materials from the examination site;

(d) Failing to follow directions relative to the conduct of the examination; and

(e) Exhibiting behavior that impedes the normal progress of the examination.

(7) If the candidate is disqualified from taking the examination or the candidate's examination is deemed invalid for reasons under subsection (6) of this rule, the candidate may be required to reapply, submit additional examination fees, and request in writing to schedule a new examination date, before being considered for another examination opportunity.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 1-2013, f. & cert. ef. 1-16-13; HLO 1-2017, f. & cert. ef. 1-6-17

331-910-0040

Written Examination Retake Requirements

(1) Failed sections of a written or examination may be retaken as follows:

(a) After first failed attempt — applicant may not retake for seven calendar days;

(b) After second failed attempt — applicant may not retake for seven calendar days;

(c) After third failed attempt — applicant may not retake for 30 calendar days, must pay all additional fees and must submit an official transcript certifying completion of an additional 100 hours of instruction in theory, focused on the approved curriculum outlined in OAR 331-910-0005 from a career school licensed under ORS 345 on a form prescribed by the Office;

(d) After fourth failed attempt — applicant may not retake for seven calendar days;

(e) After fifth failed attempt — applicant may not retake for seven calendar days;

(f) After sixth failed attempt — applicant may not retake for 30 calendar days, must pay all additional fees and must submit an official transcript certifying completion of an additional 100 hours of instruction in theory, focused on the approved curriculum outlined in OAR 331-910-0005 from a career school licensed under ORS 345 on a form prescribed by the Office;

(g) After seventh failed attempt — ability to retake, requirements for retake, or both will be determined by the Office on a case-by-case basis.

(2) Applicants retaking the examination must meet the requirements under OAR 331-030-0000.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 2-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12; HLO 1-2017, f. & cert. ef. 1-6-17

331-910-0045

Practical Examination Retake Requirements

(1) Failed practical examinations may be retaken at a date and time determined by the Office. Applicants retaking a failed practical must notify the Office within 30 days before the next scheduled examination date and pay all examination fees.

(2) Applicants who fail to pass the practical examination for electrology after three attempts (initial examination plus two retakes):

(a) Must wait 30 calendar days to retake the practical examination;

(b) Must pay all additional fees;

(c) Must submit an official transcript certifying completion of an additional 100 hours of instruction in theory, focused on the approved curriculum outlined in OAR 331-910-0005 from a career school licensed under ORS 345 on a form prescribed by the Office;

(3) After third failed attempt — ability to retake, requirements for retake, or both will be determined by the Office on a case-by-case basis.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 2-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12; HLO 1-2017, f. & cert. ef. 1-6-17

331-910-0050

Renewal of Electrology License

(1) A licensee is subject to the provisions of OAR chapter 331, division 30 regarding the renewal of a license and provisions regarding authorization to practice, identification, and requirements for issuance of a duplicate license.

(2) Electrology renewal under this rule is valid for one year.

(3) LICENSE RENEWAL: To avoid delinquency penalties, an electrology license renewal must be made prior to the license entering inactive status. The licensee must submit the following:

(a) Renewal application form;

(b) Payment of required renewal fee pursuant to 331-940-0000; and

(c) Attestation of having obtained required annual continuing education under OAR 331-910-0055, on a form prescribed by the Office. Continuing education is required whether the license is current or inactive;

(4) INACTIVE LICENSE RENEWAL: An electrology license may be inactive for up to three years. A licensee who is inactive is not authorized to practice. When renewing after entering inactive status, the license holder must submit the following:

(a) Renewal application form;

(b) Payment of delinquency and license fees pursuant to OAR 331-940-0000; and

(c) Attestation of having obtained required annual continuing education under OAR 331-910-0055, on a form prescribed by the Office. Continuing education is required whether the license is current or inactive;

(5) EXPIRED LICENSE: An electrology license that has been inactive for more than three years is expired and the license holder must reapply and meet the requirements listed in OAR 331-910-0025.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 1-2013, f. & cert. ef. 1-16-13; HLO 1-2017, f. & cert. ef. 1-6-17

331-910-0055

Continuing Education for Electrology License

(1) To maintain licensure, a licensed electrologist must complete a minimum of eight hours of satisfactory continuing education every year.

(2) A licensee must document compliance with the continuing education requirement through attestation on the license renewal application. Licensees will be subject to the provisions of OAR 331-910-0060 pertaining to periodic audit of continuing education.

(3) Satisfactory continuing education must be obtained as follows and meet the subject matter requirements listed in (4) of this rule:

(a) Four hours must be obtained by participation in or attendance at a course provided by:

(A) Institutions or programs accredited by a federally recognized accrediting agency;

(B) Institutions or programs approved by an agency within the Oregon Higher Education Coordinating Commission;

(C) An organization offering continuing medical education opportunities, including Accreditation Council for Continuing Medical Education,

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American Medical Association, Oregon Association of Licensed Electrologists and American Electrology Association

(D) Any additional board approved professional organization, or association, hospital, or health care clinic offering continuing education.

(b) Four hours may be self-study including online courses, where subject matter meets the requirements under subsection (4) of this rule, which may include the following:

(A) Correspondence courses including online courses through completion and certification by an approved national home study organization;

(B) Review of publications, textbooks, printed material, or audio cassette(s);

(C) Viewing of films, videos, or slides;

(4) The subject matter of the continuing education must be related to electrology and as outlined in the approved course of study under OAR 331-910-0005 (1) through (13). Continuing education may include the laws and rules regulating licensed electrologists, infection control and sterilization, and professional ethics and business practices.

(5) In order to renew, continuing education requirements must be met every year, even if the license is inactive or suspended.

(6) Obtaining and maintaining proof of participation in required continuing education is the responsibility of the licensee. The licensee must ensure that adequate proof of attainment of required continuing education is available for audit or investigation or when otherwise requested by the Office. Adequate proof of participation is listed under OAR 331-910-0060(3).

(7) Documentation of participation in continuing education requirements must be maintained for a period of five years following renewal, and must be available to the Office upon request.

(8) A licensee may carry up to 8 hours of excess continuing education hours forward to the next renewal cycle.

(9) For the purpose of this rule continuing education hours mean actual academic, classroom, or course work time, including but not limited to workshops, symposiums, or seminars. Continuing education hours do not include travel time to or from the training site, registration or check-in periods, breaks or lunch periods.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 2-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12; HLA 15-2013, f. 12-30-13, cert. ef. 1-1-14; HLO 1-2017, f. & cert. ef. 1-6-17

331-910-0060

Continuing Education: Audit, Required Documentation and Sanctions

(1) The Office will audit a select percentage of licenses to verify compliance with continuing education requirements.

(2) Licensees notified of selection for audit of continuing education attestation must submit to the Office, within 30 calendar days from the date of the issuance of the notification, satisfactory evidence of participation in required continuing education in accordance with OAR 331-910-0055.

(3) Evidence of successful completion of the required continuing education must include the following:

(a) Name of continuing education sponsor/provider;

(b) Course agenda — including the date of the training and breakdown of hours for each agenda item, lunch and breaks;

(c) Course outline — including a detailed summary of each topic discussed and the learning objective or training goal of each agenda item; The content of the course must have a direct relationship between the course training and subject matter related to electrology as set forth in OAR 331-910-0055(4);

(d) Background resume of speakers or instructors; and

(e) Documentation of attendance or successful course completion. Examples include a certificate, transcript, sponsor statement or affidavit attesting to attendance, diploma.

(4) Documentation substantiating completion of continuing education through self-study, must show a direct relation to electrology as set forth in OAR 331-910-0055(4), be submitted on forms provided by the Office and include the following:

(a) Name of sponsor or source, type of study, description of content, date of completion and duration in clock hours;

(b) Name of approved correspondence courses or national home study issues;

(c) Name of publications, textbooks, printed material or audio-recorded material, including date of publication, publisher, and ISBN Identifier; and

(d) Name of films, videos, or slides, including date of production, name of sponsor or producer and catalog number.

(5) If documentation of continuing education is invalid or incomplete, the licensee has 30 calendar days from the date of the deficiency notice to correct the deficiency and submit further documentation of completion of the required continuing education.

(6) Misrepresentations of continuing education or failure to complete continuing education requirements may result in disciplinary action, which may include, but is not limited to assessment of a civil penalty and suspension or revocation of the license.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 1-2013, f. & cert. ef. 1-16-13; HLA 15-2013, f. 12-30-13, cert. ef. 1-1-14; HLO 1-2017, f. & cert. ef. 1-6-17

331-910-0070

Standards for Client Services for Electrology

(1) An electrologist must observe and adhere to the following hand washing and disposable glove standards when servicing clients:

(a) **HAND WASHING:** Hands must be washed before and after treatment of each client, and before putting on disposable gloves and immediately after disposable gloves are removed. Antibacterial hand sanitizer may be used between the first and last hand washing; and

(b) Hand washing must include thoroughly washing the hands in warm, running water with liquid soap using friction on all surfaces of the hands and wrists for at least 20 seconds, then rinsing hands and drying hands with a clean, disposable paper towel, or by using an antibacterial hand sanitizer by using friction on all surfaces of the hands and wrists. Use of bar soap is prohibited.

(2) An electrologist must observe and adhere to the following protective disposable glove standards when servicing clients:

(a) **PROTECTIVE DISPOSABLE GLOVES:** A new pair of disposable gloves must be worn during the treatment of each client;

(b) Hands must be washed in accordance with hand washing instructions listed in Subsection (1) of this rule before putting on disposable gloves and immediately after disposable gloves are removed;

(c) When a licensee leaves the electrology procedure area in the middle of an electrology procedure, gloves must be removed before leaving the procedure area, hand washing instructions listed in Subsection (1) of this rule must be followed and a new pair of gloves put on when returning to the procedure area;

(d) Disposable gloves must be removed before leaving the area where electrology services are performed;

(e) Torn or perforated gloves must be removed immediately, and hand washing instructions listed in Subsection (1) of this rule must be followed and gloves changed following hand washing; and

(f) The use of disposable gloves does not preclude or substitute for hand washing instructions listed in subsection (1) of this rule.

(3) Disposable gloves must be worn during pre-cleaning, cleaning, rinsing, sterilizing and drying of equipment and instruments and disinfecting of surfaces;

(4) A client's skin must be thoroughly cleaned with an antiseptic or astringent.

(5) A licensee is prohibited from wearing jewelry under gloves.

Stat. Auth: ORS 676.607 & 676.615

Stats. Implemented: ORS 676.606, 676.607, 690.350, 690.365, 690.390 & 690.405

Hist.: HLA 2-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12; HLA 15-2012(Temp), f. & cert. ef. 10-15-12 thru 4-12-13; HLA 1-2013, f. & cert. ef. 1-16-13; HLO 1-2017, f. & cert. ef. 1-6-17

331-910-0075

Sterilization Standards for Electrology

(1) Needles (filaments) must be single use, used on one client, then properly disposed of in an approved sharps container defined under OAR 331-910-0000.

(2) All non-sterilized instruments or reusable instruments that come in blood or potentially infectious materials must be cleaned, disinfected and sterilized before use on a client or re-use on another client.

(3) New gloves must be worn during any sterilization procedure.

(4) The cleaning, disinfection and sterilization process listed in Subsection (5) of this rule is not required if single-use prepackaged sterilized instruments, obtained from suppliers or manufacturers are used.

(5) Approved cleaning, disinfection and sterilization process for non-sterilized instruments or reusable instruments includes the following ordered method after each use:

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(a) Clean non-sterilized instruments or reusable instruments by manually brushing or swabbing visible foreign matter and rinsing the instruments with warm water and an appropriate detergent solution to remove blood or potentially infectious materials.

(b) Clean non-sterilized instruments or reusable instruments must be rinsed and placed in either:

(A) An ultrasonic unit that operates at 40 to 60 hertz which is filled with an appropriate ultrasonic solution including but not limited to an enzymatic cleaner. The ultrasonic cleaner must remain covered when in use; Self-contained equipment used to decontaminate instruments prior to sterilization may be used in place of an ultrasonic cleaner and used according to manufacturer instructions. OR

(B) Rinsed, patted dry and submerged and soaked in a protein dissolving detergent or enzyme cleaner, followed by a thorough rinse.

(c) Disinfect non-sterilized instruments or reusable instruments by immersing instruments in a high level disinfectant. Instruments must be fully submerged to ensure contact with all surfaces for an amount of time specified in the manufacturer's instructions. If the electrologist is using an autoclave listed in subsection (e) of this rule the electrologist is not required to immerse instruments in a high level disinfectant.

(d) Remove non-sterilized instruments or reusable instruments from the ultrasonic unit or self-contained instrument washer or high level disinfectant. All instruments must be rinsed, air dried, and individually packaged in sterilization pouches that include use of a chemical indicator strip to assure sufficient temperature during each sterilization cycle or other method is used to determine sterilization has been reached. The date the sterilization was performed must be applied to the sterilization pouch;

(e) Individually packaged non-sterilized instruments or reusable instruments must be sterilized by using autoclave sterilizer (steam or chemical), or dry heat sterilizer registered and listed with the FDA;

(f) After sterilization, the sterilized instruments must be stored in a dry, disinfected, closed cabinet or other tightly-covered container reserved for the storage of such instruments.

(6) Use of a biological monitoring system ("spore tests") must be done at least once a month, verified through an independent laboratory, to assure all microorganisms have been destroyed and sterilization achieved.

(7) All sterilization pouches listed in Subsection (5)(d) of this rule must contain a color indicator strip which measures temperature control and general functioning of the equipment.

(8) The ultrasonic unit or other self-contained equipment listed in subsection (5)(c) of this rule must be used, cleaned, and maintained in accordance with manufacturer's instructions and a copy of the manufacturer's recommended procedures for the operation of the ultrasonic unit must be kept on file at the body art facility.

(9) The autoclave sterilizer (steam or chemical), or dry heat sterilizer listed in Subsection (5)(e) of this rule must be used, cleaned, and maintained in accordance with manufacturer's instructions and a copy of the manufacturer's recommended procedures for the operation of the autoclave sterilizer (steam or chemical), or dry heat sterilizer must be kept on file at the facility.

(10) Biological spore test results listed in subsection (6) of this rule must be immediately available at all times for inspection by the Office and kept at facility premises for a minimum of two years. Biological spore test results must be on laboratory letterhead and must contain the test date, and the name, model and serial number (if applicable) of the sterilizer tested.

(11) The expiration date for sterilized instruments is one year from the date of sterilization unless the integrity of the package is compromised.

(12) Sterilized instruments may not be used if the package integrity has been breached is wet or stained, or the expiration date has exceeded without first meeting the requirements listed in Subsection (5) of this rule.

(13) All sterilized instruments used during electrology services must remain stored in sterile packages and in a dry, disinfected, closed cabinet or other tightly covered container reserved for the storage of such instruments until just prior to the performance of an electrology procedure.

(14) If a biological spore test listed in subsection (6) of this rule, result is positive, a licensee must discontinue the use of that autoclave sterilizer (steam or chemical), or dry heat sterilizer until it has been serviced and a negative spore test has been recorded before putting that sterilizer back into service. Until a negative spore test has been received, the licensee must:

(a) Use an alternative autoclave sterilizer (steam or chemical), or dry heat sterilizer;

(b) Use only sterilized instruments that have a sterilization date before the date the last negative spore test was recorded; or

(c) Use only single use instruments.

(15) Following a positive biological spore test reusable instruments which were sterilized following the receipt of the positive spore test must be repackaged and sterilized pursuant to Subsection (5) of this rule, before use.

(17) Following a positive spore test the licensee or facility must contact all clients in writing who may have received services prior to receiving the negative spore test results.

Stat. Auth.: ORS 676.607 & 676.615

Stats. Implemented: ORS 676.606, 676.607, 690.350, 690.365, 690.390 & 690.405

Hist.: HLA 2-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12; HLO 1-2017, f. & cert. ef. 1-6-17

331-910-0080

General Standards

(1) The cleanliness of any common in a facility is the responsibility of each license holder. All license holders may be cited for violations found in the common area.

(2) An electrologist licensed to perform services or a licensed facility owner must:

(a) Use and maintain appropriate equipment and instruments for providing services in a field of practice at the place of business;

(b) Use equipment and instruments in a manner described in the manufacturer's instructions which is consistent with the manufacturer's intended use of the device by the FDA;

(c) Use equipment and instruments that are not prohibited for use in a field of practice by the Office or the FDA;

(d) Ensure a high-level disinfectant is used in accordance with manufacturer's instructions to disinfect surfaces where services are performed;

(e) Ensure chemicals are stored in labeled, closed containers;

(f) Ensure that single-use disposable paper products, single-use needles (filaments) and protective gloves are used for each client;

(g) Ensure lavatories located within the facility are kept clean and in good working order at all times. Air blowers within lavatories can be substituted for disposable hand towels;

(h) Ensure all waste material related to a service in a field of practice be deposited in a covered container following service for each client;

(i) Ensure pets or other animals not be permitted in the business facility. This prohibition does not apply to service animals recognized by the American with Disabilities Act or to fish in aquariums or nonpoisonous reptiles in terrariums;

(j) Ensure all disinfecting solutions or agents be kept at adequate strengths to maintain effectiveness, be free of foreign material and be available for immediate use at all times the facility is open for business;

(k) Ensure all waste or garbage is disposed of in a covered container with a garbage liner;

(l) Ensure all waste which contains blood or other potentially infectious materials be enclosed and secured in a glove or bag then disposed of in a covered container with a garbage liner immediately following the service;

(m) Ensure disposable sharp objects that come in contact with blood or other potentially infectious materials must be disposed of in a sharps container;

(n) Ensure biohazard labels or red biohazard bags are available on the facility premises;

(o) Adhere to all Centers for Disease Control and Prevention Standards;

(p) Have unrestricted access or availability to a sink with hot and cold running water, as part of surrounding premises or adjacent to the facility. If the sink is located within a restroom the licensee must ensure that the sink is disinfected with a high level disinfectant upon completion of an electrology procedure or following the sterilization of equipment; All body art facilities licensed after June 1, 2017 must have unrestricted access or availability to a sink with hot and cold running water, as part of the surrounding premises or adjacent to the facility but separate from a restroom. Body art facilities licensed as of May 31, 2017 are allowed to have sinks located within a restrooms if electrology is the only practice being performed; and

(q) Ensure that all instruments that come in direct contact with client's skin are handled using gloves.

(3) An electrologist licensee must wear eye goggles, shields or a mask if spattering is possible while providing services.

(4) Cross contaminating from touch or air particulates in any procedure area which comes in direct contact with client is prohibited.

Stat. Auth.: ORS 676.607 & 676.615

Stats. Implemented: ORS 676.606, 676.607, 690.350, 690.365, 690.390 & 690.405

Hist.: HLA 2-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12; HLA 1-2013, f. & cert. ef. 1-16-13; HLO 1-2017, f. & cert. ef. 1-6-17

ADMINISTRATIVE RULES

331-910-0085

Client Records

(1) A licensee is responsible for maintaining and keeping copies of all client records. If client records are maintained by the facility the facility owner must provide the licensee with copies of those client records upon request. The record must include the following for each client:

- (a) Name, address, telephone number and date of birth of client;
- (b) Date of each service, procedure location on the body;
- (c) Name and license number of the licensee providing service. If more than one licensee is providing services on one client the licensee must initial the date of each service performed;
- (d) Special instructions or notations relating to the client's medical or skin conditions including but not limited to diabetes, cold sores and fever blisters, psoriasis or eczema, pregnancy or breast-feeding/nursing;
- (e) Complete list of the client's sensitivities to medicines or topical solutions;
- (f) History of the client's bleeding disorders;
- (g) Description of complications during procedure(s); and
- (h) Signature from the client that they have received the following information in writing and verbally:

(A) All information related to the electrology service including possible reactions, side effects and potential complications of the service and consent to obtaining the electrology service; and

(B) After care instructions including care following service, possible side effects and complications and restrictions.

(2) A licensee may obtain advice from a physician regarding medical information needed to safeguard client and licensee. Advice from the physician must be documented in the client record.

(3) For the purpose of (1) and (2) of this rule records must be maintained at facility premises for a minimum of three years and must be made immediately available to the Office upon request.

(4) Client records must be typed or printed in a legible format or be electronically stored. Client records, which are not legible to the Office, will be treated as incomplete.

Stat. Auth: ORS 676.607 & 676.615

Stats. Implemented: ORS 676.606, 676.607, 690.350, 690.365, 690.390 & 690.405

Hist.: HLA 2-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12; HLA 1-2013, f. & cert. ef. 1-16-13; HLO 1-2017, f. & cert. ef. 1-6-17

331-915-0000

Tattoo Definitions

The following definitions apply to OAR chapter 331, division 915:

(1) "Affidavit of Licensure" has the meaning set forth in OAR 331-030-0040.

(2) "EPA" means United States Environmental Protection Agency.

(3) "FDA" means Food and Drug Administration.

(4) "Field of practice" has the definition set forth in ORS 690.350.

(5) "High-level disinfectant" means a chemical agent, registered with the EPA, which has demonstrated tuberculocidal activity.

(6) "Instruments" means equipment used during tattooing services. Types of instruments include but are not limited to needles and tubes.

(7) "Office" means Health Licensing Office.

(8) "Official transcript" means: An original document authorized by the appropriate office in the Higher Education Coordinating Commission and certified by a career school licensed under ORS 345 indicating applicant identity information, field of practice(s) enrolled under, specific hour requirements for each field of practice if applicable, enrollment information and a signature by an authorized representative on file with the Office. Original documents must be submitted directly to the Office from the educational institution by United States Postal Service mail or other recognized mail service provider in a sealed envelope or by other means approved by the Office.

(9) "Sharps container" means a puncture-resistant, leak-proof container that can be closed for handling, storage, transportation, and disposal. The container must be labeled with the "Biohazard" symbol.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 10-2012, f. & cert. ef. 6-25-12; HLA 1-2013, f. & cert. ef. 1-16-13; HLO 1-2017, f. & cert. ef. 1-6-17

331-915-0005

Approved Course of Study for Tattooing

(1) To be approved by the Office, a course of study must include at least 360 hours of instruction. The course must include at least 210 hours of theory and at least 150 hours of practical tattooing experience.

(2) For the purposes of determining qualification for licensure, practical tattooing must include a minimum of 50 completed procedures. "Completed procedure" means a tattoo which has been finished on a live human being, including any touchups or additional work following initial healing, and the client is released from service.

(3) All practical tattooing procedures performed during training in the subject areas listed in subsection (4) of this rule are counted toward meeting the minimum 150 hours of practical tattooing experience.

(4) Until June 30, 2017 a course of study must include 210 hours of theory in the following areas:

- (a) Needles and needle bars: 20 hours;
- (b) Tattoo machines: 20 hours;
- (c) Equipment and Supplies: 20 hours;
- (d) Safety, and Infection Control: 40 hours;
- (e) Color theory and pigments: 10 hours;
- (f) Design, art and placement: 10 hours;
- (g) Skin: 20 hours;
- (h) Client services: 20 hours;
- (i) Business operations: 40 hours;
- (j) Oregon Laws and Rules: 10 hours; and
- (k) Discretionary: 10 hours.

(5) As part of the approved course of study, all hours of theory must be completed prior to practical tattooing being performed on the general public.

(6) Training must be conducted by an Oregon licensed tattoo artist registered as a teacher by the Higher Education Coordinating Commission.

(7) A registered teacher must provide direct supervision of practical tattooing on a one-to-one student/teacher ratio for students performing practical tattooing while the student is working on the general public.

(8) For the purpose of this rule direct supervision means the teacher is present and actively involved in direct oversight and training of students.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLO 1-2017, f. & cert. ef. 1-6-17

331-915-0007

Approved Course of Study for Tattooing

(1) To be approved by the Office, a course of study must include at least 360 hours of instruction. The course must include at least 210 hours of theory and at least 150 hours of practical tattooing experience.

(2) For the purposes of determining qualification for licensure, practical tattooing must include a minimum of 50 completed procedures. "Completed procedure" means a tattoo which has been finished on a live human being, including any touchups or additional work following initial healing, and the client is released from service.

(3) All practical tattooing procedures performed during training in the subject areas listed in subsection (4) of this rule are counted toward meeting the minimum 150 hours of practical tattooing experience.

(4) After July 1, 2017 a course of study must include 210 hours of theory in the following areas:

- (a) Needles and needle bars: 20 hours;
- (b) Tattoo machines: 20 hours;
- (c) Equipment/and Supplies: 20 hours;
- (d) Safety, and Infection Control: 40 hours;
- (e) Color theory and pigments: 10 hours;
- (f) Design, art and placement: 10 hours;
- (g) Skin: 20 hours;
- (h) Client services: 20 hours;
- (i) Business operations: 20 hours;
- (j) Oregon Laws and Rules: 20 hours; and
- (k) Discretionary: 10 hours.

(5) As part of the approved course of study, all hours of theory must be completed prior to practical tattooing being performed on the general public.

(6) Training must be conducted by an Oregon licensed tattoo artist registered as a teacher by the Higher Education Coordinating Commission.

(7) The 50 completed procedures require the following supervision as of July 1, 2017:

(a) The first 30 completed procedures must be directly supervised by a registered teacher, which means the teacher must be in the procedure area with the student;

(b) The final 20 completed procedures may be indirectly supervised by a registered teacher, which means the teacher must be on the premises of the facility but not in the procedure area with student.

ADMINISTRATIVE RULES

(8) A registered teacher must provide direct supervision defined in subsection (7)(a) of the rule, of practical tattooing on a one-to-one student/teacher ratio during the first 30 completed procedures.

(9) A registered teacher may provide indirect supervision defined in subsection (7)(b) of the rule, of practical tattooing on a two-to-one student/teacher ratio during the final 20 completed procedures.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLO 1-2017, f. & cert. ef. 1-6-17

331-915-0015

Application Requirements for Tattoo License

(1) An individual applying for licensure to practice tattooing must:

(a) Meet the requirements of OAR 331 division 30;

(b) Submit a completed application form prescribed by the Office, which must contain the information listed in OAR 331-030-0000 and be accompanied by payment of the required application fee;

(c) Submit documentation having completed blood borne pathogens training from an Office approved provider;

(d) Submit documentation having completed cardiopulmonary resuscitation and basic first aid training from an Office approved provider;

(e) Submit documentation showing proof of being 18 years of age documentation may include identification listed under OAR 331-030-0000;

(f) Submit proof of having a high school diploma or equivalent; and

(g) Provide documentation of completing a qualifying pathway.

(2) License Pathway 1 — Graduate from an Oregon Licensed Career School for Tattooing:

(a) Submit official transcript from a tattooing career school under ORS 345, and approved by the Office showing proof of completion of required tattooing curriculum as determined by the Office under OAR 331-915-0005;

(b) Pay an examination fee;

(c) Submit passing score of an Office approved written examination in accordance with OAR 331-915-0030(1)(a) within two years from the date of application;

(e) Upon passage of the required examination and before issuance of a license, applicant must pay all license fee; and

(f) An applicant is not required to provide proof of official transcripts in a field of practice if the applicant was previously licensed as a tattoo artist in Oregon.

(3) License Pathway 2 — Individual Qualifying for Licensure Through Reciprocity must:

(a) Submit an affidavit of licensure pursuant to OAR 331-030-0040 demonstrating proof of holding a current license as a tattoo artist, which is active with no current or pending disciplinary action. The licensing requirements must be substantially equivalent to Oregon licensing requirements pursuant to ORS 690.365 or if not substantially equivalent the applicant must demonstrate to the satisfaction of the Office that the applicant has been working as a tattoo artist with the equivalent of three years of experience which was obtained within the last five years or five years out of the last 10 years. Documentation proving experience may include but is not limited to tax documents, employer letters or business licensing;

(b) Pay an examination fee;

(c) Submit passing score of an Office approved written examination in accordance with OAR 331-915-0030(1)(a) within two years from the date of application; and

(d) Upon passage of the required examination and before issuance of a license, applicant must pay the required license fee.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 3-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12; HLA 1-2013, f. & cert. ef. 1-16-13; HLO 1-2017, f. & cert. ef. 1-6-17

331-915-0020

Temporary Tattoo License

(1) A temporary tattoo license pursuant to ORS 690.365 is a temporary license to perform tattooing services on a limited basis, not to exceed 30 consecutive calendar days. A temporary tattoo license holder;

(a) May renew the license up to two times in a 12 month period from the date the Office receives the initial application. License renewal can be done consecutively with no lapse in active license dates;

(b) Must submit all requests to renew a license on a form prescribed by the Agency Office. Request to renew a license must be received at least 20 days before tattooing services are provided unless otherwise approved by the Office;

(c) Must submit notification of a change in work location at least 24 hours before services are performed on a form prescribed by the Office; and

(d) Must work in a licensed facility.

(2) A temporary tattoo license holder must adhere to all standards under OAR 331-915-0065, 331-915-0070, 331-915-0075, 331-915-0080, 331-915-0085 and all applicable rules listed in OAR 331 division 925.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 3-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12; HLA 15-2012(Temp), f. & cert. ef. 10-15-12 thru 4-12-13; HLA 1-2013, f. & cert. ef. 1-16-13; HLA 15-2013, f. 12-30-13, cert. ef. 1-1-14; HLO 1-2017, f. & cert. ef. 1-6-17

331-915-0025

Application Requirements for Temporary Tattoo License

An individual applying for a Temporary Tattoo License must:

(1) Meet the requirements of OAR 331 division 30;

(a) Submit a completed application form prescribed by the Office, which must contain the information listed in OAR 331-030-0000, including one form of government issued identification which must be photographic and show proof of being 18 years of age. The completed application must be accompanied by payment of the required application and license fees and must be received at least 20 days before tattooing services are provided to clients;

(b) Submit proof of current training in blood-borne pathogens; and

(c) Attest to six months of training or experience, within the last two years, performing tattooing on a form prescribed by the Office.

(2) For the purpose of this rule training or experience includes attendance or participation at an instructional program presented, recognized, or under the sponsorship of any permanently organized institution, agency, or professional organization or association recognized by the Office.

(3) All applications received after the required 20th day deadline will not be accepted by the Office.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 7-2012(Temp), f. & cert. ef. 4-20-12 thru 10-16-12; HLA 8-2012(Temp), f. & cert. ef. 5-3-12 thru 10-16-12; HLA 10-2012, f. & cert. ef. 6-25-12; HLA 15-2012(Temp), f. & cert. ef. 10-15-12 thru 4-12-13; HLA 1-2013, f. & cert. ef. 1-16-13; HLO 1-2017, f. & cert. ef. 1-6-17

331-915-0030

Approved Examination for Tattoo

The Office has approved the Oregon written examination for tattooing.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLO 1-2017, f. & cert. ef. 1-6-17

331-915-0035

General Tattooing Examination Information

(1) To be eligible for examination, an applicant must meet identification requirements listed under OAR 331-030-0000.

(2) The examination is administered in English only, unless an Office approved testing contractor or vendor provides the examination in languages other than English.

(3) Examination candidates may be electronically monitored during the course of testing.

(4) Examination candidates must adhere to the maximum time allowance for the examination, as established by the Office.

(5) Examination candidates are prohibited from taking items and devices into examination areas which include but are not limited to notes, textbooks, notebooks, electronic equipment communication devices or any other items or devices the Office deems inappropriate.

(6) Candidate conduct that interferes with the examination may result in the candidate's disqualification during or after the examination, the candidate's examination being deemed invalid, and forfeiture of the candidate's examination fee. Such conduct includes but is not limited to:

ADMINISTRATIVE RULES

- (a) Directly or indirectly giving, receiving, soliciting, and attempting to give, receive or solicit aid during the examination process;
 - (b) Violations of subsections (5) of this rule;
 - (c) Removing or attempting to remove any examination-related information, notes or materials from the examination site;
 - (d) Failing to follow directions relative to the conduct of the examination; and
 - (e) Exhibiting behavior that impedes the normal progress of the examination.
- (7) If the candidate is disqualified from taking the examination or the candidate's examination is deemed invalid for reasons under subsection (6) of this rule, the candidate must meet requirements listed in OAR 331-915-0040 and submit an additional examination fee.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415
Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35
Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 1-2013, f. & cert. ef. 1-16-13; HLO 1-2017, f. & cert. ef. 1-6-17

331-915-0040

Written Examination Retake Requirements

(1) Failed sections of the written examination may be retaken as follows:

- (a) After first failed attempt — applicant may not retake for seven calendar days;
- (b) After second failed attempt — applicant may not retake for seven calendar days;
- (c) After third failed attempt — applicant may not retake for 30 calendar days, must pay all additional fees and must submit an official transcript certifying completion of an additional 100 hours of instruction in theory, focused on the approved curriculum outlined in OAR 331-915-0005 from a career school licensed under ORS 345 on a form prescribed by the Office;
- (d) After fourth failed attempt — applicant may not retake for seven calendar days;
- (e) After fifth failed attempt — applicant may not retake for seven calendar days;
- (f) After sixth failed attempt — applicant may not retake for 30 calendar days, must pay all additional fees and must submit an official transcript certifying completion of an additional 100 hours of instruction in theory, focused on the approved curriculum outlined in OAR 331-915-0005 from a career school licensed under ORS 345 on a form prescribed by the Office;
- (g) After seventh failed attempt — ability to retake, requirements for retake, or both will be determined by the Office on a case-by-case basis.

(2) Applicants retaking the examination must meet the requirements under OAR 331-030-0000.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415
Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35
Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 3-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12; HLO 1-2017, f. & cert. ef. 1-6-17

331-915-0050

Renewal of a Tattoo License

(1) A licensee is subject to the provisions of OAR chapter 331, division 30 regarding the renewal of a license and provisions regarding authorization to practice, identification, and requirements for issuance of a duplicate license.

(2) Tattoo license renewal under this rule is valid for one year.

(3) LICENSE RENEWAL: To avoid delinquency penalties, a tattoo license renewal must be made prior to the license entering inactive status. The licensee must submit the following:

- (a) Renewal application form;
- (b) Payment of required renewal fee pursuant to 331-940-0000;
- (c) Attestation of having obtained required annual continuing education under OAR 331-915-0055, on a form prescribed by the Office. Continuing education is required whether the license is current or inactive;
- (d) Attestation of current certification in cardiopulmonary resuscitation from an Office approved provider;
- (e) Attestation of current first aid training from an Office approved provider; and
- (f) Attestation of current certification in blood borne pathogens training from an Office approved provider.

(4) INACTIVE LICENSE RENEWAL: A tattoo license may be inactive for up to three years. A licensee who is inactive is not authorized to practice. When renewing after entering inactive status, the licensee holder must submit the following:

- (a) Renewal application form;
- (b) Payment of delinquency and license fees pursuant to OAR 331-940-0000;
- (c) Attestation of having obtained required annual continuing education under OAR 331-915-0055, on a form prescribed by the Office. Continuing education is required whether the license is current or inactive;
- (d) Attestation of current certification in cardiopulmonary resuscitation from an Office approved provider;
- (e) Attestation of current first aid training an Office approved provider; and
- (f) Attestation of current certification in blood borne pathogens training from an Office approved provider.

(5) EXPIRED LICENSE: A tattoo license that has been inactive for more than three years is expired and the license holder must reapply and meet the requirements listed in OAR 331-915-0015.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415
Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35
Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 1-2013, f. & cert. ef. 1-16-13; HLO 1-2017, f. & cert. ef. 1-6-17

331-915-0055

Continuing Education for Tattoo License

(1) To maintain licensure, a tattoo license holder must complete a minimum of 10 hours of satisfactory continuing education every year.

(2) A tattoo license holder must document compliance with the continuing education requirement through attestation on the license renewal application. Licensees will be subject to the provisions of OAR 331-915-0060 pertaining to periodic audit of continuing education.

(3) Satisfactory continuing education must be obtained as follows:

- (a) Five hours must be obtained by participation in or attendance at a course provided by:
 - (A) Institutions or programs accredited by a federally recognized accrediting agency;
 - (B) Institutions or programs approved by an Office within the Oregon Higher Education Coordinating Commission;
 - (C) An organization offering continuing medical education opportunities, including Accreditation Council for Continuing Medical Education;
 - (D) Any additional board approved professional organization, or association, hospital, or health care clinic offering continuing education related to subject matter listed in (4) of this rule.

(b) Five hours may be self-study, where subject matter meets the requirements under subsection (4) of this rule, which may include the following:

- (A) Correspondence courses including online courses through completion and certification by an approved national home study organization;
- (B) Review of publications, textbooks, printed material, or audio cassette(s);
- (C) Viewing of films, videos, or slides;

(4) The subject matter of the continuing education must be specifically related to tattooing. As outlined in the approved course of study under OAR 331-915-0005(4). Continuing education may include the laws and rules regulating licensed tattooists, safety and sterilization, color theory, design, art and placement, client services, and business operations.

(5) Continuing education is required for renewal, every year, even if the license has been inactive or suspended.

(6) Obtaining and maintaining proof of participation in required continuing education is the responsibility of the licensee. The licensee must ensure that adequate proof of attainment of required continuing education is available for audit or investigation or when otherwise requested by the Office. Adequate proof of participation is listed under OAR 331-915-0060(3).

(7) Documentation of participation in continuing education requirements must be maintained for a period of five years following renewal, and must be available to the Office upon request.

(8) Current training and certification in CPR, First Aid, and Blood borne pathogens is a condition of renewal and is not eligible for continuing education credit.

(9) A tattoo license holder may carry up to 8 hours of excess continuing education hours forward to the next renewal cycle.

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(10) For the purpose of this rule continuing education hours mean actual academic, classroom, or course work time, including but not limited to workshops, symposiums, or seminars. Continuing education hours do not include travel time to or from the training site, registration or check-in periods, breaks or lunch periods.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 1-2013, f. & cert. ef. 1-16-13; HLA 15-2013, f. 12-30-13, cert. ef. 1-1-14; HLO 1-2017, f. & cert. ef. 1-6-17

331-915-0060

Continuing Education: Audit, Required Documentation and Sanctions

(1) The Office will audit a select percentage of licenses to verify compliance with continuing education requirements.

(2) Licensees notified of selection for audit of continuing education attestation must submit to the Office, within 30 calendar days from the date of the issuance of the notification, satisfactory evidence of participation in required continuing education in accordance with OAR 331-915-0055.

(3) Evidence of successful completion of the required continuing education must include the following:

(a) Name of continuing education sponsor/provider;

(b) Course agenda — including the date of the training and breakdown of hours for each agenda item, lunch and breaks;

(c) Course outline — including a detailed summary of each topic discussed and the learning objective or training goal of each agenda item; The content of the course must have a direct relationship between the course training and subject matter related to tattooing as set forth in OAR 331-915-0055(4);

(d) Documentation of attendance or successful course completion. Examples include certificate, transcript, sponsor statement or affidavit attesting to attendance, and diploma.

(4) Documentation substantiating the completion of continuing education through self-study must show a direct relation to tattooing as set forth in OAR 331-915-0055(4), be submitted on forms provided by the Office and include the following:

(a) Name of sponsor or source, type of study, description of content, date of completion and duration in clock hours;

(b) Name of approved correspondence courses or national home study issues;

(c) Name of publications, textbooks, printed material or audiocassette's, including date of publication, publisher, and ISBN identifier; and

(d) Name of films, videos, or slides, including date of production, name of sponsor or producer and catalog number.

(5) If documentation of continuing education is invalid or incomplete, the licensee has 30 calendar days from the date of the deficiency notice to correct the deficiency and submit further documentation of completion of the required continuing education.

(6) Misrepresentations of continuing education or failure to complete continuing education requirements may result in disciplinary action, which may include, but is not limited to assessment of a civil penalty and suspension or revocation of the license.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 1-2013, f. & cert. ef. 1-16-13; HLA 15-2013, f. 12-30-13, cert. ef. 1-1-14; HLO 1-2017, f. & cert. ef. 1-6-17

331-915-0065

Tattoo Practice Standards and Prohibitions

(1) Inks, dyes, or pigments must be purchased from a commercial supplier or manufacturer and must have an expiration date present on the container. Use of expired ink, dyes or pigments is prohibited. Products banned or restricted by the Food and Drug Administration are prohibited.

(2) A tattoo license holder must disinfect plastic or acetate stencil used to transfer the design to the client's skin, if not using disposable stencils. If the plastic or acetate stencil is reused the licensee must thoroughly clean and rinse and immerse in a high level disinfectant according to the manufacturer's instructions.

(3) Upon completion of a tattoo service, the following procedures are required:

(a) The skin must be cleansed; excluding the area surrounding the eyes, with a clean single-use paper product saturated with an antiseptic solution; and

(b) Use a clean absorbent material or bandages intended to cover wounds to prevent the spread of blood or other potentially infectious materials and cross contamination must be adhered to the skin. Absorbent materials or bandages may include but are not limited to medical grade bandages or bandages intended to cover tattoos. All coverings and bandages must be used according to manufacturer's instructions.

(4) Tattooing services may be performed on a person under 18 years of age when authorized or prescribed by a physician's statement.

(5) Tattooing is prohibited:

(a) On a person who shows signs of being inebriated or appears to be incapacitated by the use of alcohol or drugs;

(b) On a person with sunburn or other skin diseases or disorders such as open lesions, rashes, wounds, puncture marks in areas of treatment;

(c) On a person under 18 years of age, regardless of parental or legal guardian consent unless the requirements of subsection (4) of this rule are met.

(6) Tattoo artists are prohibited from performing nonablative tattoo removal in Oregon unless they hold an appropriate authorization.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 10-2012, f. & cert. ef. 6-25-12; HLA 1-2013, f. & cert. ef. 1-16-13; HLA 15-2013, f. 12-30-13, cert. ef. 1-1-14; HLA 15-2013, f. 12-30-13, cert. ef. 1-1-14; HLO 1-2017, f. & cert. ef. 1-6-17

331-915-0070

General Standards for Tattooing

(1) The cleanliness of any common area in a facility is the responsibility of each license holder. All license holders may be cited for violations found in the common area.

(2) An individual licensed to perform services in a field of practice or a licensed facility owner must:

(a) Use and maintain appropriate equipment and instruments for providing services in a field of practice at the place of business;

(b) Use equipment and instruments in a manner described in the manufacturer's instructions which is consistent with the manufacturer's intended use of the device by the FDA;

(c) Use equipment and instruments that are not prohibited for use in a field of practice by the Office or the FDA;

(d) Ensure a high-level disinfectant is used in accordance with manufacturer's instructions to disinfect surfaces where services are performed;

(e) Ensure chemicals are stored in labeled, closed containers;

(f) Ensure that single-use disposable paper products, needles, and protective gloves or personal protection equipment including but not limited to aprons are not reused on clients. Use of towels and linens are prohibited;

(g) Have unrestricted access or availability to a sink with hot and cold running water, as part of the surrounding premises or adjacent to the facility but separate from a restroom;

(h) Ensure restrooms located within the facility are kept clean and in good working order at all times. Air blowers within restrooms can be substituted for disposable hand towels;

(i) Ensure all waste material related to a service in a field of practice, including waste which contains blood or other potentially infectious materials, be enclosed in a glove or bag then disposed of in a covered container with a garbage liner following service for each client. Service related waste is prohibited from being disposed of in non-service related areas such as lobby or waiting areas;

(j) Ensure pets or other animals not be permitted in the business facility. This prohibition does not apply to service animals recognized by the American with Disabilities Act or to fish in aquariums or nonpoisonous reptiles in terrariums;

(k) Ensure all disinfecting solutions or agents be kept at adequate strengths to maintain effectiveness, be free of foreign material and be available for immediate use at all times the facility is open for business;

(l) Ensure all non-service related waste or garbage is disposed of in a covered container with a garbage liner;

(m) Ensure disposable sharp objects that come in contact with blood or other potentially infectious materials be disposed of in a sharps container;

(n) Ensure biohazard labels or red biohazard bags are available on the facility premises;

(o) Adhere to all Centers for Disease Control and Prevention Standards; and

(p) Ensure that all instruments that come in contact with blood or other potentially infectious materials be either disposed of or sterilized

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according to requirements listed under 331-915-0080, including completely disassembling the tattoo machine including grips or handles.

(q) Ensure bottles used for rinsing tattoos, grips and clip cords are covered during a tattoo procedure and sterilized or disinfected following service on each client.

(r) Ensure if bottles used for rinsing tattoos, are filled with distilled or sterilized water.

(s) Ensure inks, dyes, and pigments are stored in a way to prevent contamination through touch or air particulates, including but not limited to a closed cabinet or drawer. Proper hand washing and gloving techniques must be used in accordance with OAR 331-915-0075 before handling or dispensing inks, dyes and pigments including when services are being performed on a client.

(r) Dilute inks, dyes, and pigments using sterile or distilled water.

(3) A licensee must wear eye goggles, shields or a mask if spattering is possible while providing services.

(4) All substances must be dispensed from containers in a manner to prevent contamination of the unused portion of product.

(5) Single use tubes, containers and applicators must be discarded following service on each client.

(6) Cross contaminating from touch or air particulates in any procedure area which comes in direct contact with client is prohibited.

(7) Between each service area there must be a clean nonporous barrier, unless services are being provided under an event facility license, or five feet between each client to prevent contact with blood or other potentially infectious materials.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 10-2012, f. & cert. ef. 6-25-12; HLA 15-2012(Temp), f. & cert. ef. 10-15-12 thru 4-12-13; HLA 1-2013, f. & cert. ef. 1-16-13; HLA 15-2013, f. 12-30-13, cert. ef. 1-1-14; HLO 1-2017, f. & cert. ef. 1-6-17

331-915-0075

Standards for Client Services for Tattooing

(1) A licensee must wash hands in accordance with Subsection (2) of this rule as follows:

(a) Prior to donning gloves to set-up of instruments used for conducting a tattoo procedure;

(b) Immediately prior to donning gloves to perform a tattoo procedure;

(c) Immediately after removing gloves at the conclusion of performing a tattoo procedure and after removing gloves at the conclusion of procedures performed in the sterilization area;

(d) When leaving the work area;

(e) When coming in contact with blood or other potentially infectious materials;

(f) Before and after performing the following acts not limited to eating, drinking, smoking, applying lip cosmetics or lip balm, handling contact lenses, or using the bathroom; or

(g) When hands are visibly soiled.

(2) Hand washing must include thoroughly washing the hands in warm, running water with liquid soap using friction on all surfaces of the hands and wrists, for at least 20 seconds then rinsing hands and drying hands with a clean, disposable paper towel, or by using an antibacterial hand sanitizer by using friction on all surfaces of the hands and wrists. Antibacterial hand sanitizer may be used between the first and last hand washing.

(3) A new pair of disposable gloves must be worn during the treatment of each client;

(4) A minimum of one pair of disposable gloves must be used for each of the following stages of the tattooing procedure as follows:

(a) Set-up of instruments used for conducting tattooing procedures and skin preparation of the tattooing procedure area;

(b) The tattooing procedure and post-procedure teardown; and

(c) Cleaning and disinfection of the procedure area after each use or between clients.

(5) Once gloves have been removed, they must be disposed of immediately and hand washing instructions listed in Subsection (2) of this rule must be followed.

(6) Torn or perforated gloves must be removed immediately, and hand washing instructions listed in Subsection (2) of this rule must be followed and gloves changed following hand washing.

(7) Disposable gloves must be removed before leaving the area where tattoo procedures are performed.

(8) When a licensee leaves the tattooing procedure area in the middle of a tattooing procedure, gloves must be removed before leaving the procedure area, hand washing instructions listed in Subsection (2) of this rule must be followed and a new pair of gloves put on when returning to the procedure area.

(9) The use of disposable gloves does not preclude or substitute for hand washing instructions listed in subsection (2) of this rule.

(10) A client's skin must be thoroughly cleaned with an antiseptic solution.

(11) A licensee is prohibited from wearing jewelry under gloves.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 10-2012, f. & cert. ef. 6-25-12; HLA 15-2012(Temp), f. & cert. ef. 10-15-12 thru 4-12-13; HLA 1-2013, f. & cert. ef. 1-16-13; HLO 1-2017, f. & cert. ef. 1-6-17

331-915-0080

Approved Sterilization Standards for Tattooing

(1) Needles must be single use, used on one client, then properly disposed of in an approved sharps container defined under OAR 331-915-0000.

(2) All non-sterilized or reusable instruments that come in direct contact with a client's skin or are exposed to blood or other potentially infectious materials must be cleaned and sterilized before use on a client or reuse on another client.

(3) New gloves must be worn during any sterilization procedure.

(4) The cleaning and sterilization process listed in subsection (5) of this rule is not required if single-use prepackaged sterilized instruments, obtained from suppliers or manufacturers are used.

(5) Approved cleaning and sterilization process for non-sterilized or reusable instruments includes the following ordered method after each use:

(a) Place non-sterilized instruments or reusable instruments in an ultrasonic cleaner filled with an appropriate ultrasonic solution including but not limited to an enzymatic cleaner. The ultrasonic unit must be used according to the manufacturer's instructions. The ultrasonic unit must operate at 40 to 60 kilohertz. The ultrasonic cleaner must remain covered when in use. Self-contained instrument washer used to decontaminate instruments prior to sterilization may be used in place of an ultrasonic cleaner and used according to manufacturer instructions.

(b) Remove non-sterilized or reusable instruments from the ultrasonic unit. Clean non-sterilized or reusable instruments by manually brushing or swabbing visible foreign matter and rinsing the instruments with warm water and an appropriate detergent solution to remove blood and other potentially infectious materials;

(c) Remove non-sterilized or reusable instruments from the ultrasonic unit or self-contained instrument washer. All instruments must be rinsed, air dried, and individually packaged in sterilization pouches that include use of a color change indicator strip to assure sufficient temperature during each sterilization cycle, the date the sterilization was performed must be applied to the sterilization pouch; OR Instruments which are sterilized in an autoclave which the manufacturer does not require packaging of instruments or use of a color change indicator strip must be used immediately after sterilization process is complete. Storage of sterilized Instruments using this method is prohibited;

(d) Non-sterilized or reusable instruments must be sterilized by using an autoclave sterilizer, steam or chemical, registered and listed with the FDA;

(e) A steam sterilization integrator must be used to monitor the essential conditions of steam sterilization for each autoclaved load or cycle. Results must be recorded in a log book for each sterilization cycle. Each steam sterilization integrator must indicate the date the sterilization cycle took place. Steam sterilization integrators must be kept for a minimum of sixty days; and

(f) After sterilization, the sterilized instruments must be stored in individually packaged sterilization pouches that include a color change indicator strip listed under (5)(c) of this rule and in a dry, disinfected, closed cabinet or other tightly-covered container reserved for the storage of such instruments. The date the sterilization was performed must be applied to the sterilization pouch while being stored.

(6) Use of a biological monitoring system ("spore tests") must be done at least once a month, verified through an independent laboratory, to assure all microorganisms have been destroyed and sterilization achieved.

(7) The ultrasonic unit listed in subsection (5)(a) of this rule must be used, cleaned, and maintained in accordance with manufacturer's instruc-

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tions and a copy of the manufacturer's recommended procedures for the operation of the ultrasonic unit must be kept on file at the body art facility.

(8) All sterilization pouches with color change indicator strips listed in subsection (5)(c) of this rule must contain a chemical/temperature and/or humidity sensitive tapes, strips or pellets for monitoring each sterilization cycle.

(9) Sterilization pouches with color change indicator strips listed in subsection (5)(c) of this rule and steam sterilization integrators listed in (5)(e) of this rule must be available at all times for inspection by the Office.

(10) Biological spore test results listed in subsection (6) of this rule must be immediately available at all times for inspection by the Office and kept at facility premises for a minimum of two years.

(11) The autoclave listed in subsection (5)(d) must be used, cleaned, and maintained in accordance with manufacturer's instructions and a copy of the manufacturer's recommended procedures for the operation of the autoclave must be kept on file at the body art facility.

(12) The expiration date for sterilized instruments is one year from the date of sterilization unless the integrity of the package is compromised.

(13) Sterilized instruments may not be used if the package integrity has been breached, is wet or stained, or the expiration date has exceeded without first meeting the requirements listed in Subsection (5) of this rule.

(14) All sterilized instruments used in tattooing procedures must remain stored in sterile packages and in a dry, disinfected, closed cabinet or other tightly-covered container reserved for the storage of such instruments until just prior to the performance of a tattooing procedure.

(15) If a biological spore test listed in subsection (6) of this rule, result is positive, a licensee must discontinue the use of that sterilizer (autoclave) until it has been serviced and a negative spore test has been recorded before putting that sterilizer back into service. Until a negative spore test has been received, the licensee must:

- (a) Use an alternative sterilizer (autoclave);
- (b) Use only sterilized instruments that have a sterilization date on or before the date that last negative spore test was recorded; or
- (c) Use only single use instruments.

(16) Following a positive spore test instruments which were sterilized following the receipt of the positive spore test must be repackaged and sterilized pursuant to subsection (5) of this rule, before use.

(17) Following a positive spore test the licensee or facility must contact all clients in writing who may have received services prior to receiving the negative spore test results.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415
Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35
Hist.: HLA 10-2012, f. & cert. ef. 6-25-12; HLA 1-2013, f. & cert. ef. 1-16-13; HLO 1-2017, f. & cert. ef. 1-6-17

331-915-0085

Client Records and Information for Tattooing

(1) A licensee is responsible for maintaining and keeping copies of all client records. If client records are maintained by the facility the facility owner must provide the licensee with copies of those client records upon request. The record must include the following for each client:

- (a) Name, address, telephone number and date of birth of client;
- (b) Date of each service, procedure location on the body;
- (c) Name and license number of the licensee providing service;
- (d) Special instructions or notations relating to the client's medical or skin conditions including but not limited to diabetes, cold sores and fever blisters, psoriasis or eczema, pregnancy or breast-feeding/nursing;
- (e) Complete list of the client's sensitivities to medicines or topical solutions;
- (f) History of the client's bleeding disorders;
- (g) Description of complications during procedure(s); and
- (h) A signature acknowledging the client received and understands the following information and consents to the tattoo procedure. The information must be provided verbally and in writing:
 - (A) Explanation of procedure;
 - (B) Risk(s) of procedure or process;
 - (C) Description of potential complications or side effects;
 - (D) Adverse outcomes or reactions;
 - (E) Restrictions; and
 - (F) After care instructions.

(2) A licensee may obtain advice from a physician regarding medical information needed to safeguard client and licensee. Advice from the physician must be documented in the client record.

(3) A licensee must obtain proof of age for all clients; a copy of a government issued photographic identification must be included in the client record.

(4) A physician may authorize or prescribe a tattoo service be performed on a client who is a minor pursuant to OAR 331-915-0065. Written authorization or prescription from the physician is required. The physician authorization or prescription must be submitted to the licensee by the physician prior to tattooing the minor. A copy of the minor's photographic identification must be included in the client record.

(5) For the purpose of Subsection (1) through (4) of this rule records must be maintained on the facility premises for a minimum of three years and must be made immediately available to the Office upon request.

(6) Client records must be typed or printed in a legible format. Client records, which are not legible to the Office, will be treated as incomplete.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415
Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35
Hist.: HLA 10-2012, f. & cert. ef. 6-25-12; HLA 15-2012(Temp), f. & cert. ef. 10-15-12 thru 4-12-13; HLA 1-2013, f. & cert. ef. 1-16-13; HLO 1-2017, f. & cert. ef. 1-6-17

Oregon Health Authority, Health Licensing Office, Board of Certified Advanced Estheticians Chapter 819

Rule Caption: Permanently adopt requirements for certification in advanced esthetics.

Adm. Order No.: BCAA 1-2017

Filed with Sec. of State: 1-3-2017

Certified to be Effective: 1-3-17

Notice Publication Date: 10-1-2016

Rules Adopted: 819-005-0005, 819-020-0015, 819-020-0020, 819-020-0035, 819-020-0045, 819-020-0055, 819-020-0065, 819-020-0075, 819-020-0085, 819-020-0090, 819-030-0000, 819-040-0005

Subject: During the 2015 Legislative Session, House Bill 2642 was enacted, which created the Board of Certified Advanced Estheticians (Board) in Oregon. The purpose of the Board is to oversee and regulate the practice of advanced nonablative esthetics, including the use of lasers and other devices registered with the U.S. Food and Drug Administration. However, according to the bill, the Board did not have the authority to begin meeting or making decisions until July 1, 2016. As of July 1, 2016, the Health Licensing Office (office) began issuing certificates to practice nonablative esthetics under temporary administrative rules.

Since this is a newly regulated profession there has been little standardized training available to individuals. The legislature contemplated these facts and provided provisions for grandfathering individuals into the profession until December 31, 2017.

For individuals who obtained training prior to July 1, 2016 or who worked at least 500 hours under a health care professional whose scope of practice included nonablative esthetics, a temporary certification was issued until the Board approved examinations appropriate for the specific grandfathering criteria could be adopted by the Board.

Under pathway one of the grandfathering provisions which require 500 hours of experience under a health care professional, three examinations have been approved by the Board through December 31, 2017.

Under pathway two of the grandfathering provisions 168 hours of practical experience and 40 hours of theory and education six examinations have been approved by the Board through December 31, 2017.

In order to establish requirements for individuals who had either no education/training or partial education/training as of July 1, 2016 the Board created a provisional certification with supervision for individuals to complete training either under pathway one or two of the law. The Board has described the education and training under pathway two as 40 hours of theory and fundamentals and 24 hours in each of the following modalities: skin rejuvenation, photo reju-

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venation, body contouring, dyschromia reduction, cellulite reduction, hair removal or reduction, and nonablative tattoo removal.

All application requirements for permanent certification, including passing examination scores must be met on or before December 31, 2017.

For certification there are specific law requirements that have been blended in to the rule including collaborative agreement and disclosure whether the certification holder has malpractice

The legislature approved fees during the 2015 Legislative Session which have been added to the fee schedule within the rule.

Practice standards and client records have been established.

Rules Coordinator: Samantha Patnode—(503) 373-1917

819-005-0005

Definitions

As used in OAR 819-005-0005 to 819-040-0005:

(1) “Applicant” means a natural person applying to be certified as a “certified advanced esthetician” as that term is defined in ORS 676.630(2).

(2) “Board” means the Board of Certified Advanced Estheticians.

(3) “Modality” means

(a) Skin rejuvenation;

(b) Photo rejuvenation;

(c) Body contouring;

(d) Dyschromia reduction;

(e) Cellulite reduction;

(f) Hair removal or reduction; and

(g) Nonablative tattoo removal.

(4) “Nonablative” as defined under ORS 676.630 means involving an action performed on the skin or hair of a person that does not result in the wounding of skin or underlying tissue.

(5) “Office” means Health Licensing Office.

(6) “Provisional certificate” means an authorization to perform advanced nonablative esthetics procedures as defined in ORS 676.630(1) under supervision for purposes related to education or training.

(7) “Temporary certificate” means an authorization to practice advanced nonablative esthetics for a limited time.

Stat. Auth.: ORS 676.586, 676.615, 6786.630, 676.655, 2015 OL Ch. 722

Stats. Implemented: ORS 676.586, 6786.630, 676.655, 2015 OL Ch. 722

Hist.: BCAE 1-2017, f. & cert. ef. 1-3-17

819-020-0015

Advanced Esthetician Permanent Certification through Grandfathering

(1) A permanent certification authorizes the holder to practice advanced nonablative esthetics.

(2) A permanent certification is valid for one year and becomes inactive on the last day of the month one year from the issuance or renewal.

Stat. Auth.: ORS 676.586, 676.615, 6786.630, 676.655, 2015 OL Ch. 722

Stats. Implemented: ORS 676.586, 6786.630, 676.655, 2015 OL Ch. 722

Hist.: BCAE 1-2017, f. & cert. ef. 1-3-17

819-020-0020

Application Requirements for Permanent Certification through Grandfathering

An applicant for a permanent certificate through grandfathering requirements pursuant to Oregon Law 2015, Chapter 722, Section 8 must:

(1) Comply with the requirements of OAR chapter 331 division 30;

(2) Submit a completed application form prescribed by the Office, containing the information listed in OAR 331-030-0000, and payment of all required fees;

(3) Be at least 18 years of age. Applicant must provide the Office official documentation confirming date of birth, such as a copy of the applicant’s birth certificate, driver’s license, or passport;

(4) Hold an active esthetic certificate through the Oregon Board of Cosmetology pursuant to ORS 690.046-690.047 and be in good standing with no current or pending disciplinary action;

(5) Provide name, license number and address of the Oregon Board of Cosmetology facility listed under ORS 690.005 pursuant to ORS 676.655(2)(a);

(6) Attest to maintaining client disclosure forms that include, at minimum, disclosure of the existence of professional liability insurance, pursuant to ORS 676.655(2)(b)

(7) Submit information identifying the individual with whom the applicant has entered into a collaborative agreement pursuant to ORS 676.655(2)(c). The collaborative agreement must be with one of the fol-

lowing health care professional who holds an active license in good standing with no current or pending disciplinary action:

(a) Physician licensed under ORS chapter 677;

(b) Nurse practitioner licensed under ORS 678.375 to 678.390;

(c) Dentist licensed under ORS 679 who works at the same location as the certified advanced esthetician and who has the authority to prescribe drugs listed in Schedule III, IV or V; OR

(d) Naturopathic physician licensed under ORS 685 who works at the same location as the certified advanced esthetician and who has the authority to prescribe drugs listed in Schedule III, IV or V.

(8) Submit documentation of qualification for certification through one of the following pathways:

(a) Pathway One: 500 Supervised Hours of Experience – An applicant under pathway one must:

(A) Submit documentation to the Office showing proof of employment for at least 500 hours as a laser operator under the supervision of one of the following licensed health care professionals whose scope of practice includes the practice of advanced nonablative esthetics procedures and whose license is in good standing with no current or pending disciplinary action with the health care professional’s respective regulatory body:

(i) A physician licensed under ORS chapter 677;

(ii) A nurse practitioner licensed under ORS 678.375 to 678.390;

(iii) A dentist licensed under ORS 679;

(iv) A naturopathic physician licensed under ORS 685; AND

(B) Submit official documentation demonstrating that the applicant has successfully passed a Board approved examination listed under OAR 819-020-0090, within two years preceding the date of application. The documentation of a passing score must be mailed by the organization directly to the Office. Copies of examination results or other documentation provided by the applicant are not acceptable. OR

NOTE: The applicant is responsible for payment of fees to other organizations including but not limited to examination fees.

(b) Pathway Two: 168 Hours of Experience and 40 Hours of Education – An applicant under pathway two must:

(A) Submit documentation showing completion of forty hours of education related to laser theory and fundamentals and twenty-four hours of practical experience in each modality defined under OAR 819-005-0005. Documentation may include but is not limited to manufacturer training certificates, educational transcripts, supervision records signed by a supervisor, employment records and client records; and

(B) Submit official documentation demonstrating that the applicant has successfully passed a Board approved examination listed under OAR 819-020-0090, within two years preceding the date of application. The documentation of a passing score must be mailed by the organization directly to the Office. Copies of examination results or other documentation provided by the applicant are not acceptable.

NOTE: The applicant is responsible for payment of fees to other organizations including but not limited to examination fees.

Stat. Auth.: ORS 676.586, 676.615, 6786.630, 676.655, 2015 OL Ch. 722

Stats. Implemented: ORS 676.586, 6786.630, 676.655, 2015 OL Ch. 722

Hist.: BCAE 1-2017, f. & cert. ef. 1-3-17

819-020-0035

Advanced Esthetician Temporary Certification

(1) A temporary certification authorizes the holder to temporarily practice advanced nonablative esthetics while waiting to pass the Board-approved qualifying examination required under ORS 676.640.

(2) A temporary certification is valid through December 31, 2017 or until a permanent certificate is obtained.

(3) A temporary certificate holder must notify the Office within 10 business days if a change in collaborative agreement has occurred.

Stat. Auth.: ORS 676.586, 676.615, 6786.630, 676.655, 2015 OL Ch. 722

Stats. Implemented: ORS 676.586, 6786.630, 676.655, 2015 OL Ch. 722

Hist.: BCAE 1-2017, f. & cert. ef. 1-3-17

819-020-0045

Application Requirements for Temporary Certification

An applicant for a temporary certificate must:

(1) Comply with the requirements of OAR chapter 331 division 30;

(2) Submit a completed application form prescribed by the Office, containing the information listed in OAR 331-030-0000, and payment of all required fees;

(3) Be at least 18 years of age. Applicant must provide the Office official documentation confirming date of birth, such as a copy of the applicant’s birth certificate, driver’s license, or passport;

(4) Hold an active esthetic certificate through the Oregon Board of Cosmetology pursuant to ORS 690.046-690.047 and be in good standing with no current or pending disciplinary action;

ADMINISTRATIVE RULES

(5) Provide name, license number and address of the Oregon Board of Cosmetology facility listed under ORS 690.005 pursuant to ORS 676.655(2)(a);

(6) Attest to maintaining client disclosure forms that include, at minimum, disclosure of the existence of professional liability insurance, pursuant to ORS 676.655(2)(b)

(7) Submit information identifying the individual with whom the applicant has entered into a collaborative agreement pursuant to ORS 676.655(2)(c). The collaborative agreement must be with one of the following health care professional who holds an active license in good standing with no current or pending disciplinary action:

(a) Physician licensed under ORS Chapter 677;

(b) Nurse practitioner licensed under ORS 678.375 to 678.390;

(c) Dentist licensed under ORS 679 who works at the same location as the certified advanced esthetician and who has the authority to prescribe drugs listed in Schedule III, IV or V; OR

(d) Naturopathic physician licensed under ORS 685 who works at the same location as the certified advanced esthetician and who has the authority to prescribe drugs listed in Schedule III, IV or V.

(8) Submit documentation of qualification for certification through one of the following pathways:

(a) Pathway One: 500 Supervised Hours of Experience — An applicant under pathway one must:

(A) Submit documentation to the Office showing proof of employment for at least 500 hours as a laser operator under the supervision of one of the following licensed health care professionals whose scope of practice includes the practice of advanced nonablative esthetics procedures and whose license is in good standing with no current or pending disciplinary action with the health care professional's respective regulatory body:

(i) A physician licensed under ORS chapter 677;

(ii) A nurse practitioner licensed under ORS 678.375 to 678.390;

(iii) A dentist licensed under ORS 679;

(iv) A naturopathic physician licensed under ORS 685; OR

(b) Pathway Two: 168 Hours of Experience and 40 Hours of Education — An applicant under pathway two must:

(A) Submit documentation showing completion of forty hours of education related to laser theory and fundamentals and twenty-four hours of practical experience in each modality defined under OAR 819-005-0005. Documentation may include but is not limited to manufacturer training certificates, educational transcripts, supervision records signed by a supervisor, employment records and client records.

Stat. Auth.: ORS 676.586, 676.615, 678.630, 676.655, 2015 OL Ch. 722

Stats. Implemented: ORS 676.586, 678.630, 676.655, 2015 OL Ch. 722

Hist.: BCAE 1-2017, f. & cert. ef. 1-3-17

819-020-0055

Advanced Esthetician Provisional Certification — Education and Training

(1) A provisional certification authorizes the holder to practice advanced nonablative esthetics under supervision for the purpose of education and training for each modality defined to OAR 819-005-0005 and in laser theory and fundamentals.

(2) A provisional certification is valid through December 31, 2017 or until a temporary or permanent certificate is obtained.

Stat. Auth.: ORS 676.586, 676.615, 678.630, 676.655, 2015 OL Ch. 722

Stats. Implemented: ORS 676.586, 678.630, 676.655, 2015 OL Ch. 722

Hist.: BCAE 1-2017, f. & cert. ef. 1-3-17

819-020-0065

Application Requirements for Provisional Certification — Education and Training

An applicant for a provisional certificate must:

(1) Comply with the requirements of OAR chapter 331 division 30;

(2) Submit a completed application form prescribed by the Office, containing the information listed in OAR 331-030-0000, and pay all required fees;

(3) Be at least 18 years of age. Applicant must provide to the Office official documentation confirming date of birth, such as a copy of the applicant's birth certificate, driver's license, or passport;

(4) Hold an active esthetic certificate through the Oregon Board of Cosmetology pursuant to ORS 690.046-690.047 and be in good standing with no current or pending disciplinary action;

(5) Submit information identifying the applicant's proposed supervisor. The proposed supervisor must meet the requirements listed under OAR 819-020-0070(1)(a) or (b);

(6) Provide name, license number and address of the Oregon Board of Cosmetology facility listed under ORS 690.005 where advanced nonabla-

tive esthetics procedures are performed by the applicant pursuant to ORS 676.655(2)(a);

(7) Attest to maintaining client disclosure forms that include, but are not limited to, at minimum, disclosure of the existence of professional liability insurance pursuant to ORS 676.655(2)(b)

(8) Submit information identifying the individual with whom the applicant has entered into a collaborative agreement pursuant to ORS 676.655(2)(c). The collaborative agreement must be with one of the following health care professional who holds an active license in good standing with no current or pending disciplinary action:

(a) Physician licensed under ORS Chapter 677;

(b) Nurse practitioner licensed under ORS 678.375 to 678.390;

(c) Dentist licensed under ORS 679 who works at the same location as the certified advanced esthetician and who has the authority to prescribe drugs listed in Schedule III, IV or V; OR

(d) Naturopathic physician licensed under ORS 685 who works at the same location as the certified advanced esthetician and who has the authority to prescribe drugs listed in Schedule III, IV or V.

Stat. Auth.: ORS 676.586, 676.615, 678.630, 676.655, 2015 OL Ch. 722

Stats. Implemented: ORS 676.586, 678.630, 676.655, 2015 OL Ch. 722

Hist.: BCAE 1-2017, f. & cert. ef. 1-3-17

819-020-0075

Supervisor Approval and Requirements

(1) To be approved as a supervisor of a provisional certificate holder the supervisor must:

(a) Hold an active license as a physician under ORS Chapter 677, a nurse practitioner licensed under ORS 678.375 to 678.390, a dentist licensed under ORS 679, or a naturopathic physician licensed under ORS 685. A licensed health care professional's scope of practice must include relevant advanced nonablative esthetics defined under ORS 676.630. If the supervisor has any current or pending disciplinary further information may be requested by the Office. AND

(b) Attest to practicing advanced nonablative esthetics for at least three years prior to beginning supervision in the modality in which they will be supervising the provisional certificate holder; OR

(2) To be approved as a supervisor of a provisional certificate holder, an advanced esthetician temporary or permanent certificate holder must:

(a) Hold an active esthetic certificate through the Oregon Board of Cosmetology pursuant to ORS 690.046-690.047 and be in good standing with no current or pending disciplinary action

(b) Hold an active permanent or temporary advanced nonablative esthetics certification under ORS 676.630 to 676.660 through the Board of Certified Advanced Estheticians with no current or pending disciplinary action with the Office; and

(c) Attest to practicing advanced nonablative esthetics for at least three years prior to the date of application in the modality for which they will be supervising the provisional certificate holder.

(3) For each modality, the supervisor must do, at a minimum, the following:

(a) Directly supervise the provisional certificate holder for at least the first ten hours of supervision. Direct supervision means the supervisor is present in the facility and actively involved in direct oversight and training including allowing the provisional certificate holder to assist in the procedure;

(b) Indirectly supervise the provisional certificate holder for at least the next fourteen hours of procedures. Indirect supervision is being available for direct consultation in person or from offsite including but not limited to phone or video conferencing; and

(c) Upon completion of the above twenty-four hours listed in (a) and (b) of this rule in a modality, or additional hours if required by a supervisor under (7), the provisional certificate holder must meet with the supervisor in that modality at least once every 30 days to discuss the provisional certificate holder's procedures and questions, and provide information on contraindications and appropriate referrals or consultations.

(4) The supervisor must have the provisional certificate holder obtain at least forty hours of education in laser theory and fundamentals listed in the 2014 American National Standard Z136.1 and 2011 American National Standards Laser Safety Education Program Z136.3. The education must include the following topics:

(a) The Laser

(A) Physics and biological effects

(B) Dosimetry and beam parameters

(C) Components of the laser system, delivery devices, and instrumentation

(D) Overview of clinical applications

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- (b) Administrative Controls
 - (A) Laser committee
 - (B) Role of the LSO, DLSO, LSSC
 - (C) Development of policies and procedures
 - (D) Documentation methods
 - (E) Regulations, standards and recommended professional practices
 - (F) Certification criteria and skills validation
- (c) Procedural Controls
 - (A) Controlled access
 - (B) Eye protection
 - (C) Reflection hazards
 - (D) Flammability hazards and draping
 - (E) Electrical safety
 - (F) Management of plume
 - (G) Equipment testing, aligning, and troubleshooting

(4) A supervisor must exercise management, guidance, and control over the activities of the provisional certificate holder and must use reasonable professional judgment when supervising. A supervisor is responsible for all matters related to the provisional certificate holder's advanced nonablative esthetics procedures.

(5) A supervisor must document the provisional certificate holder's education and training on a form prescribed by the Office.

(6) A supervisor must provide the supervision described under subsection (3) of this rule in the modality in which they are supervising for the duration of time the individual holds a provisional certificate.

(7) If a supervisor determines the provisional certificate holder needs further direct or indirect supervision, the supervisor may require supervision and hours in addition to what is described under subsection (3) of this rule.

(8) A supervisor must notify the Office in writing within 10 calendar days if a provisional certificate holder is no longer being supervised, and must provide the number of hours of education and training the provisional certificate holder completed on a form prescribed by the Office.

(9) The Office may withdraw its approval of a supervisor if the supervisor provides incomplete or inadequate education or training during supervision, provides incompetent or negligent education or training, as those terms are defined in OAR 331-020-0070, fails to exercise management, guidance, and control over the activities of the provisional certificate holder, fails to exercise reasonable professional judgment when supervising, is disciplined by the supervisor's licensing board, or falsifies documentation.

(10) A supervisor is prohibited from supervising in a modality until the supervisor is approved by the Office.

Stat. Auth.: ORS 676.586, 676.615, 6786.630, 676.655, 2015 OL Ch. 722
Stats. Implemented: ORS 676.586, 6786.630, 676.655, 2015 OL Ch. 722
Hist.: BCAE 1-2017, f. & cert. ef. 1-3-17

819-020-0085

Requirements for a Provisional Certificate Holder

(1) For each modality, the provisional certificate holder must:

(a) For at least the first ten hours of supervision, the provisional certificate holder must assist the supervisor performing procedures in a modality under the supervisor's direct supervision as described under OAR 819-020-0075;

(b) For at least the next fourteen hours of supervision, the provisional certificate holder must perform services under the supervisor's indirect supervision, as described under OAR 819-020-0075.

(c) Upon completion of the twenty-four hours in a modality listed in (a) and (b) of this rule, or additional hours or supervision required by the supervisor, the provisional certificate holder must meet with the supervisor in that modality at least once every 30 days to discuss the provisional certificate holder's procedures and questions, and provide information on contraindications and appropriate referrals or consultations.

(2) The provisional certificate holder must obtain at least forty hours of education in laser theory and fundamentals listed in the 2011 American National Standard Z136.1 and 2014 American National Standards Laser Safety Education Program Z136.3. The education must include the following topics:

- (a) The Laser:
 - (A) Physics and biological effects;
 - (B) Dosimetry and beam parameters;
 - (C) Components of the laser system, delivery devices, and instrumentation;
 - (D) Overview of clinical applications.
- (b) Administrative Controls:
 - (A) Laser committee;
 - (B) Role of the LSO, DLSO, LSSC;

- (C) Development of policies and procedures;
- (D) Documentation methods;
- (E) Regulations, standards and recommended professional practices;
- (F) Certification criteria and skills validation.

(c) Procedural Controls:

- (A) Controlled access;
- (B) Eye protection;
- (C) Reflection hazards;
- (D) Flammability hazards and draping;
- (E) Electrical safety;
- (F) Management of plume;
- (G) Equipment testing, aligning, and troubleshooting.

(3) A provisional certificate holder must notify the Office within 10 calendar days of changing a supervisor or obtaining an additional supervisor.

(4) A provisional certificate holder is prohibited from practicing in a modality until the supervisor, having experience in that modality, is approved by the Office.

Stat. Auth.: ORS 676.586, 676.615, 6786.630, 676.655, 2015 OL Ch. 722
Stats. Implemented: ORS 676.586, 6786.630, 676.655, 2015 OL Ch. 722
Hist.: BCAE 1-2017, f. & cert. ef. 1-3-17

819-020-0090

Approved Certified Advanced Estheticians Examination for Grandfathering

(1) The examination for advanced esthetic certification through one of the grandfathering pathways consists of at least one written examination. A list of Board approved written examinations may be accessed on the Office Website at <http://www.oregon.gov/OHA/hlo/Pages/Board-Certified-Advanced-Estheticians.aspx>

(2) The grandfathering pathways are valid through December 31, 2017 at which time the Board may approve other examinations to meet minimum qualifications for certification listed under ORS 676.640.

(3) Other examinations may be considered by the Board as they become available.

Stat. Auth.: ORS 676.586, 676.615, 6786.630, 676.655, 2015 OL Ch. 722
Stats. Implemented: ORS 676.586, 6786.630, 676.655, 2015 OL Ch. 722
Hist.: BCAE 1-2017, f. & cert. ef. 1-3-17

819-030-0000

General Practice Standards

(1) Pursuant to ORS 676.655(2)(a) all certification holders must work in a licensed Board of Cosmetology facility issued under ORS 690.655.

(2) A certified advanced esthetician must adhere to the standards set forth in 2014 American National Standard Z136.1 and 2011 American National Standards Laser Safety Education Program Z136.3.

Stat. Auth.: ORS 676.586, 676.615, 6786.630, 676.655, 2015 OL Ch. 722
Stats. Implemented: ORS 676.586, 6786.630, 676.655, 2015 OL Ch. 722
Hist.: BCAE 1-2017, f. & cert. ef. 1-3-17

819-040-0005

Fees

(1) An applicant or authorization holder is subject to provisions of OAR 331-010-0010 and 331-010-0020 regarding payment of fees, penalties and charges.

(2) Fees established by the Health Licensing Office, are as follows:

- (a) Application for Provisional Certification: \$100
- (b) Original Provisional Certification: \$100
- (c) Application for Temporary Certification: \$100.
- (d) Original Temporary Certification: \$100

(3) An applicant applying for a temporary certification who previously held a provisional certification may be granted a \$100 certification fee discount through December 31, 2017. The certification fee discount is available to individuals who meet all application requirements for a temporary advanced esthetic certification under OAR 819-020-0040 and reside in Oregon. An application fee of \$100 for temporary certification must be paid in order to be granted the \$100 certification fee discount.

Stat. Auth.: ORS 676.586, 676.615, 6786.630, 676.655, 2015 OL Ch. 722
Stats. Implemented: ORS 676.586, 6786.630, 676.655, 2015 OL Ch. 722
Hist.: BCAE 1-2017, f. & cert. ef. 1-3-17

Oregon Health Authority, Health Licensing Office, Board of Licensed Dietitians Chapter 834

Rule Caption: Adding clarifying language to continuing education rules for licensed dietitians.

ADMINISTRATIVE RULES

Adm. Order No.: BELD 1-2017
Filed with Sec. of State: 1-9-2017
Certified to be Effective: 1-9-17
Notice Publication Date: 12-1-2016
Rules Amended: 834-050-0000, 834-050-0010
Subject: Adding clarifying language to continuing education rules for licensed dietitians.
Rules Coordinator: Samantha Patnode—(503) 373-1917

834-050-0000

Continuing Education Requirements

(1) To maintain licensure, dietitians must complete a minimum of 15 CE credits every licensure year. For the purposes of this rule and OAR 834-050-0010, the licensure year begins on the day of the month that the licensee was originally licensed and extends for the following 364 days.

(2) CE credits obtained in excess of those required for the current licensure year reporting period may be carried forward for up to four licensure years. However, no more than 60 annual excess CE credits may be carried forward.

(3) Excess CE credits may not be used to reinstate an expired license.

(4) Each licensee shall document compliance with the CE requirement through attestation on the license renewal application. Licensees are subject to provisions of OAR 834-050-0010 pertaining to periodic audit of CE.

(5) Upon CE credit audit, the licensee must provide documentation supporting all credits claimed and all excess credits carried forward.

(6) CE must address subject matter related to dietetics practice in accordance with ORS 691.405(1) and OAR 834-020-0000(4).

(7) CE credits will be awarded based on the following criteria:

(a) Completion and passing of academic courses taken from an accredited college or university are awarded 15 CE credits for each semester-based credit earned, 14 CE credits for each trimester-based credit earned or 10 CE credits for each quarter-based credit earned;

(b) Completion of professional courses which meet academic course requirements in content, instruction and evaluation will be assigned 15 CE credits for each semester-based credit earned, 14 CE credits for each trimester-based credit earned or 10 CE credits for each quarter-based credit earned;

(c) Courses that do not meet standards as set forth in paragraphs (a) and (b) of this subsection, such as workshops, symposiums, seminars, laboratory exercises, or any applied experience with or without formal classroom work may be assigned credit at the rate of 1.0 CE credit for each hour of attendance.

(8) Documentation supporting compliance with CE requirements must be maintained for a period of two licensure years following renewal and be available to the Office upon request.

Stat. Auth.: ORS 691.475, 691.485

Stats. Implemented: ORS 691.435, 691.445, 691.475, 691.477, 691.479

Hist.: BELD 2-2012, f. 8-16-12, cert. ef. 8-17-12; BELD 2-2016, f. 2-18-16, cert. ef. 3-1-16; BELD 1-2017, f. & cert. ef. 1-9-17

834-050-0010

Continuing Education: Audit, Required Documentation and Sanctions

(1) The Office will audit a percentage of licensees, as determined by the board, to verify compliance with CE requirements of OAR 834-050-0000.

(2) Licensees notified of selection for audit of CE attestation must submit to the Office satisfactory evidence of participation in required CE in accordance with OAR 834-050-0000 within 30 calendar days from the date of issuance of the notification.

(3) If selected for audit, the licensee must provide the following documentation of the required CE:

(a) For Office pre-approved programs or courses: A certificate of completion or other Office-approved documentation that includes the Office pre-approval number;

(b) For courses provided by an accredited college or university: An official transcript from the accredited college or university; or

(c) For CDR approved programs or courses: A completed CDR portfolio or state licensure verification worksheet, which is available from CDR or the Office.

(4) If documentation of CE is incomplete, the registrant has 30 calendar days from the date of notice to submit further documentation to substantiate having completed the required CE within the audit period. For purposes of this rule, the audit period is the previous licensure year.

(5) A licensee who fails to meet CE requirements must obtain missing CE hours within six months and pay a \$100 civil penalty. The licensee must

obtain the missing CE credits in addition to the 15 CE credits required in a licensure year under OAR 834-050-0000(1). A licensee who fails to meet CE requirements a second time must obtain missing CE hours within six months and pay a \$500 civil penalty. A licensee who fails to meet CE requirements a third time must obtain missing CE hours within six months and pay a \$1,000 civil penalty. A licensee who fails to meet CE requirements a fourth time will have their case brought before the Board. For example, if a licensee fails to meet CE requirements by eight CE credits, then the licensee must (1) fulfill the 15 CE credit requirement under OAR 834-050-0000(1) and, in addition, (2) obtain the missing eight CE credits within six months of the date stated in the final order.

Stat. Auth.: ORS 691.475, 691.485

Stats. Implemented: ORS 691.435, 691.445, 691.475, 691.477, 691.479

Hist.: BELD 2-2012, f. 8-16-12, cert. ef. 8-17-12; BELD 1-2016, f. 2-17-16, cert. ef. 3-1-16; BELD 1-2017, f. & cert. ef. 1-9-17

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

Rule Caption: Extending Patient-Centered Primary Care Home Program application deadline to 90 days from 30 days.

Adm. Order No.: OHP 16-2016

Filed with Sec. of State: 12-22-2016

Certified to be Effective: 12-22-16

Notice Publication Date: 12-1-2016

Rules Amended: 409-055-0030, 409-055-0040, 409-055-0045, 409-055-0050

Rules Repealed: 409-055-0030(T)

Subject: The Authority is filing an amendment to extend at the Authority's discretion, from a 30-day to a 90-day grace period for Patient-Centered Primary Care Homes to reapply on January 1, 2017 to submit a renewal application without having a lapse in recognition status. The Authority is also correcting in the rule and in Table 1 a miscalculation to the Recognition Criteria points for Tier 4 from 255-390 to 255-380. This change will not impact the clinics applying for recognition.

Rules Coordinator: Zarie Haverkate—(503) 931-6420

409-055-0030

Practice Application and Recognition Process

(1) Practices, or other entities on behalf of the practice, that wish to be recognized as a PCPCH shall submit a PCPCH Recognition Application electronically to the Authority via the Program's online application system found on the Program website or by mail to the address posted on the Program website. The application shall include the quantitative data described in OAR 409-055-0040.

(2) The Authority shall review the application within 60 days of its submission to determine whether it is accurate, complete, and meets the recognition requirements. If the application is incomplete the the Authority shall notify the applicant in writing of the information that is missing and when it must be submitted.

(3) The Authority shall review a complete application within 60 days of submission. If the Authority determines that the applicant has met the requirements of these rules the Authority shall:

(a) Inform the applicant in writing that the application has been approved as a recognized PCPCH,

(b) Assign a Tier level, and

(c) Include the effective recognition date.

(4) The Authority shall maintain instructions and criteria for submitting a PCPCH Recognition Application posted on the Program website.

(5) The Authority may deny PCPCH recognition if an applicant does not meet the requirements of these rules.

(6) A practice may request that the Authority reconsider the denial of PCPCH recognition or reconsider the assigned tier level. A request for reconsideration must be submitted in writing to the Authority within 90 days of the date of the denial or approval letter and must include a detailed explanation of why the practice believes the Authority's decision is in error along with any supporting documentation. The Authority shall inform the practice in writing whether it has reconsidered its decision.

(7) Practices submitting applications on or after September 3, 2013 must apply to renew their recognition once every two years. Recognition shall expire two years from the recognition effective date issued by the Authority.

ADMINISTRATIVE RULES

(a) At the Authority's discretion a 30-day grace period may be allowed for PCPCHs to submit a renewal application without having a lapse in recognition status.

(b) If a PCPCH believes that it meets the criteria to be recognized at a higher tier or increase its point threshold by at least 15 points, it may request to have its tier status reassessed by re-submitting an application not more than once every six months. The Authority may grant exceptions to the six month time period for good cause shown.

(c) Currently recognized PCPCHs that are due to reapply between January 1, 2016 and December 31, 2016 shall be granted an extension of their PCPCH recognition until January 1, 2017.

(d) Currently recognized PCPCHs that choose to reapply for recognition between January 1, 2016 and December 31, 2016 shall be recognized until January 1, 2017.

(e) Practices applying for PCPCH recognition for the first time between January 1, 2016 and December 31, 2016 shall be recognized until January 1, 2017.

(f) For PCPCHs due to reapply on January 1, 2017 the Authority, at its discretion, may grant a 90-day grace period to submit a renewal application without having a lapse in recognition status.

Stat. Auth: ORS 413.042, 413.259 & 414.655

Stats. Implemented: ORS 413.259, 413.260 & 414.655

Hist.: OHP 6-2011(Temp), f. 9-29-11, cert. ef. 10-1-11 thru 3-15-12; OHP 2-2012, f. 2-29-12, cert. ef. 3-1-12; OHP 7-2012(Temp), f. & cert. ef. 10-4-12 thru 4-1-13; OHP 5-2013, f. 3-22-13, cert. ef. 4-1-13; OHP 6-2013, f. 8-23-13, cert. ef. 9-3-13; OHP 9-2013, f. 10-1-13, cert. ef. 1-1-14; OHP 2-2015, f. 1-16-15, cert. ef. 2-1-15; OHP 10-2015(Temp), f. 12-29-15, cert. ef. 1-1-16 thru 6-24-16; OHP 9-2016, f. & cert. ef. 5-13-16; OHP 12-2016(Temp), f. & cert. ef. 8-29-16 thru 2-21-17; OHP 16-2016, f. & cert. ef. 12-22-16

409-055-0040

Recognition Criteria

(1) The PCPCH recognition criteria are divided into "Must-Pass" measures and other measures that place the practice on a scale of maturity or 'tier' that reflect basic to more advanced PCPCH functions.

(2) Must-Pass and 5 point measures focus on foundational PCPCH elements that should be achievable by most practices in Oregon with significant effort, but without significant financial outlay.

(3) 10 and 15 point measures reflect intermediate and advanced functions.

(4) Except for the 11 Must-Pass measures, each measure is assigned a point value. A practice must meet the following point allocation criteria to be recognized as a PCPCH:

(a) Tier 1: 30 — 60 points and all 11 Must-Pass Measures

(b) Tier 2: 65 — 125 points and all 11 Must-Pass Measures

(c) Tier 3: 130 points — 250 points and all 11 Must-Pass Measures

(d) Tier 4: 255 — 380 points and all 11 Must-Pass Measures

(5) The Authority may designate a practice as a Tier 5 STAR Patient-Centered Primary Care Home for implementing multiple advanced PCPCH criteria as described in OAR 409-055-0045.

(6) The Authority shall calculate a practice's point score through the recognition process described in OAR 409-055-0030.

(7) Table 1, incorporated by reference, contains the detailed list of Measures and corresponding point assignments.

(8) Table 2, incorporated by reference, contains a detailed list of the PCPCH Quality Measures.

(9) Measure specifications, thresholds for demonstrating improvement, and benchmarks for quantitative data elements are available on the Program website.

(10) National Committee for Quality Assurance (NCQA) recognition shall be acknowledged in the Authority's PCPCH recognition process; however, a practice is not required to use its NCQA recognition to meet the Oregon PCPCH standards. A practice that does not wish to use its NCQA recognition to meet the Oregon PCPCH standards must indicate so during the PCPCH application process and submit a complete PCPCH application.

(11) A practice seeking Oregon PCPCH Tier 1, 2 or 3 recognition based on its NCQA recognition must:

(a) Submit a PCPCH application and evidence of its NCQA recognition along with its application;

(b) Comply with Table 3, incorporated by reference, for NCQA PCMH practices using 2011 and 2014 NCQA criteria.

(12) A practice seeking Oregon PCPCH Tier 4 or 5 STAR recognition based on its NCQA recognition must submit a complete PCPCH application.

[ED. NOTE: Tables reference are available from the agency.]

Stat. Auth: ORS 413.042, 413.259 & 414.655

Stats. Implemented: ORS 413.259, 413.260 & 414.655

Hist.: OHP 6-2011(Temp), f. 9-29-11, cert. ef. 10-1-11 thru 3-15-12; OHP 2-2012, f. 2-29-12, cert. ef. 3-1-12; OHP 9-2013, f. 10-1-13, cert. ef. 1-1-14; OHP 2-2015, f. 1-16-15, cert.

ef. 2-1-15; OHP 10-2015(Temp), f. 12-29-15, cert. ef. 1-1-16 thru 6-24-16; OHP 9-2016, f. & cert. ef. 5-13-16; OHP 16-2016, f. & cert. ef. 12-22-16

409-055-0045

3 STAR Designation

(1) The Authority shall award 5 STAR designations to practices implementing multiple advanced PCPCH measures.

(2) A practice seeking 5 STAR designation, must meet the following criteria:

(a) Be recognized as a Tier 4 PCPCH under the Measures in Table 1, adopted and incorporated by reference;

(b) Attest to 255 points or more on the PCPCH application; and

(c) Attest to 11 or more of the 13 PCPCH Measures in Table 4, adopted and incorporated by reference.

(3) The Authority shall review PCPCH applications of practices attesting to the Measures in Table 1, to determine which practices meet the criteria in section (2) of this rule

(4) The Authority shall notify a practice meeting 5 STAR designation criteria in writing of their eligibility.

(5) The Authority shall contact the eligible practice to schedule an on-site verification visit as described in OAR 409-055-0060.

(6) A practice seeking 5 STAR designation must comply with an on-site verification site visit.

(7) The Authority shall award 5 STAR designation to a practice after verifying the practice meets all 5 STAR designation criteria.

(8) 5 STAR designation is valid for the duration of the practice's current PCPCH recognition as described in OAR 409-055-0030(7).

[ED. NOTE: Tables reference are available from the agency.]

Stat. Auth: ORS 413.042, 413.259 & 414.655

Stats. Implemented: ORS 413.259, 413.260 & 414.655

Hist.: OHP 2-2015, f. 1-16-15, cert. ef. 2-1-15; OHP 9-2016, f. & cert. ef. 5-13-16; OHP 16-2016, f. & cert. ef. 12-22-16

409-055-0050

Data Reporting Requirements for Recognized PCPCHs

(1) To be recognized as a PCPCH, a practice must attest to meeting the criteria and submit quantitative data elements to support its attestation in accordance with Tables 1 & 2, incorporated by reference.

(2) Quantitative data shall be aggregated at the practice level, not the individual patient level, and a practice may not transfer any personal health information to the Authority during the PCPCH application process.

(3) PCPCHs must submit new quantitative and attestation data as a part of the recognition renewal process and must use the specifications found on the Program website for calculating application data.

(4) If approved by the practice, other entities may submit information on behalf of a practice, as long as appropriate practice staff has reviewed all application information and data prior to submission.

(5) A practice may request an exception to any of the quantitative data reporting requirements in Table 2 or the Must-Pass criteria by submitting a form prescribed by the program. The Authority may grant exceptions for good cause shown.

(6) Practices are required to submit 12 months of quantitative data in order to meet standards 2.A., 4.A., and 4.B. A practice may request an exception to the 12 month data reporting period by submitting a form prescribed by the program. The Authority may grant exceptions for good cause shown.

(7) The Authority shall notify the practice within 60 days of complete application and exception submission whether or not the requested exception has been granted.

[ED. NOTE: Tables reference are available from the agency.]

Stat. Auth: ORS 413.042, 413.259 & 414.655

Stats. Implemented: ORS 413.259, 413.260 & 414.655

Hist.: OHP 6-2011(Temp), f. 9-29-11, cert. ef. 10-1-11 thru 3-15-12; OHP 2-2012, f. 2-29-12, cert. ef. 3-1-12; OHP 9-2013, f. 10-1-13, cert. ef. 1-1-14; OHP 9-2016, f. & cert. ef. 5-13-16; OHP 16-2016, f. & cert. ef. 12-22-16

Rule Caption: Amendment to the Health Evidence Review Commission administrative rule to streamline coverage guidance process.

Adm. Order No.: OHP 17-2016

Filed with Sec. of State: 12-22-2016

Certified to be Effective: 12-22-16

Notice Publication Date: 12-1-2016

Rules Amended: 409-060-0110, 409-060-0120, 409-060-0140, 409-060-0150

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Subject: The Oregon Health Authority is amending the rule to align with the Health Evidence Review Commission's request to streamline its coverage guidance process.

Rules Coordinator: Zarie Haverkate—(503) 931-6420

409-060-0110

Definitions

The following definitions apply to OAR 409-060-0100 to 409-060-0150:

(1) "Ad hoc expert" means an individual identified by the Commission as having particular expertise in a technology or its application.

(2) "Authority" means the Oregon Health Authority.

(3) "Commission" means the Health Evidence Review Commission.

(4) "Coverage guidance" means a report approved by the Commission on a health service or technology which makes coverage recommendations for insurers and health care purchasers in furthering the use of evidence-based healthcare.

(5) "Evidence-based guideline" means an evidence-based report on a health service or technology, for use by health care providers in encouraging the use of the safest and most effective care possible.

(6) "Evidence-based report" means a medical technology assessment, evidence-based guideline or coverage guidance which includes conclusions and recommendations based on the information in the source documents, and which incorporates the clinical context necessary for the information to be properly interpreted by policymakers.

(7) "EbGS" means the Evidence-based Guidelines Subcommittee.

(8) "HTAS" means the Health Technology Assessment Subcommittee

(9) "Medical technology" or "technology" means medical equipment and devices, medical or surgical procedures and other techniques used or prescribed by health care providers in delivering health care to individuals, and the organizational or supportive systems within which health care is delivered.

(10) "Medical technology assessment" means an evidence-based report on the use, clinical effectiveness and risks, and cost of a technology in comparison with its alternatives.

(11) "Subcommittee" means a subcommittee established by the Commission.

(12) "Scientific evidence" means scientific studies found in peer-reviewed medical literature, printed in journals or other publications that publish original manuscripts only after the manuscripts have been critically reviewed by unbiased independent experts for scientific accuracy, validity and reliability. Such evidence will be evaluated by the Commission for evidence of bias based on the current principles of evidence-based medicine.

Stat. Auth.: ORS 414.695 & 413.042

Stats. Implemented: 414.695 & 414.698

Hist.: OHP 4-2013, f. & cert. ef. 2-1-13; OHP 5-2016, f. & cert. ef. 4-19-16; OHP 17-2016, f. & cert. ef. 12-22-16

409-060-0120

Health Evidence Review Commission Process for Evidence-based Reports

(1) The Commission shall base its reports on scientific evidence, taking into account the strength of the evidence, including an assessment of any biases present. Meetings shall be public and conducted in a manner consistent with the Commission's policies and procedures.

(2) Topics for review shall be publicly identified at least 28 days prior to the initial Subcommittee meeting at which a draft evidence-based report is reviewed. In this notice, the Subcommittee shall make publicly available the primary evidence source documents to be used in creating the initial draft report, except when source documents are proprietary. If additional sources are added to the initial draft report after this notice, the Subcommittee shall publicly identify them no later than 14 days prior to the Subcommittee meeting where they will be discussed. In lieu of proprietary source documents, the Subcommittee shall make publicly available a citation of the evidence source. In the case of a proprietary evidence source, a full listing of citations from the proprietary source shall be made available when allowed by the source. If providing the citations is not allowed or not otherwise feasible, a summary of the evidence findings will be provided at least 14 days in advance of the meeting at which the initial draft report will be discussed.

(3) When developing an evidence-based report other than a coverage guidance, the Commission or its designated Subcommittee shall consult with two or more ad hoc experts on the subject matter of the evidence-based report. Subcommittee shall publicly solicit ad hoc experts at least 28

days prior to the meeting at which it reviews the initial draft evidence-based report. One of the ad hoc experts must be a provider who manages patients who would potentially receive the treatment, service or device in question. Candidates wishing to serve as ad hoc experts shall disclose conflicts of interest according to HERC bylaws. The Authority shall appoint ad hoc experts that best meet the needs of the state, considering any conflicts of interest, and shall not be limited to those who have volunteered to serve.

(4) After the Subcommittee reviews the initial draft report, the subcommittee may revise the initial draft report. The Subcommittee shall then solicit public comment on this version of the draft report over a 30-day period. Draft reports posted for comment shall include citations for all sources used in developing the report and a summary of evidence findings. The Subcommittee shall publicly disclose written comments received during the 30-day period, draft responses and additional revisions (if any) to the draft report at least seven days before the Subcommittee meeting at which the Subcommittee reviews public comments. After discussing the available evidence and considering public comment, including additional verbal testimony, the Subcommittee shall make conclusions as to the overall importance of beneficial effects versus potential harms and approve its final draft evidence-based report reflecting these conclusions.

(5) Before an evidence-based report is reviewed at a Commission meeting, a final draft report approved by the Subcommittee, along with all written public comments received during the public comment period and the Subcommittee's responses to these public comments shall be made publicly available 14 days prior to the meeting. At the meeting, the Commission shall consider the Subcommittee's approved draft report and accept further public comment.

(6) After evaluating the report and public comments the Commission may take one of three actions:

(a) Accept the report as written.

(b) Make edits to the report and accept as modified.

(c) Return the report to the Subcommittee with recommendations for further work.

(7) The Commission or its Subcommittees may revise evidence-based reports when additional information relevant to the report is presented to the Commission or its Subcommittees. The Commission or its Subcommittees may initiate a review of evidence-based reports at the request of interested parties who provide information or interpretations not considered in developing an existing evidence-based report. The Commission may also elect to retire a coverage guidance based on an assessment of the importance of the coverage guidance and the resources that would be required to update it. HERC shall annually solicit requests to revise its coverage guidances and any requests shall be presented to HERC at a regular meeting along with the results of staff research on the topic and any recommendations related to the request.

Stat. Auth.: ORS 414.695 & 413.042

Stats. Implemented: 414.695 & 414.698

Hist.: OHP 4-2013, f. & cert. ef. 2-1-13; OHP 5-2016, f. & cert. ef. 4-19-16; OHP 17-2016, f. & cert. ef. 12-22-16

409-060-0140

Evidence-based Guidelines

The EbGS shall develop evidence-based guidelines based on one or more existing guidelines which may involve the consideration of additional research. Evidence-based guidelines shall be developed according to the process described in OAR 409-060-0120 except as described in this section.

Stat. Auth.: ORS 414.695 & 413.042

Stats. Implemented: 414.695 & 414.698

Hist.: OHP 4-2013, f. & cert. ef. 2-1-13; OHP 17-2016, f. & cert. ef. 12-22-16

409-060-0150

Coverage Guidances

(1) A Subcommittee shall develop coverage guidances based on evidence searches using scope statements approved by the EbGS or HTAS after a seven-day public comment period. These evidence searches may be supplemented as necessary to provide additional contextual, economic, clinical or policy information based on questions which arise during the development of the coverage guidance. Coverage guidances shall be developed according to the process described in OAR 409-060-0120 except as described in this section.

(2) OAR 409-060-0120(3) does not apply to this section. Instead, if the Subcommittee responsible for development of the report determines that it lacks sufficient expertise in the relevant field, or a request is received from an interested outside party, the Subcommittee shall solicit one or more ad hoc experts to provide additional information. Requests from interested parties to appoint ad hoc experts must be submitted within fourteen days

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after the public notice announcing the subcommittee's first review of the initial draft coverage guidance. The subcommittee may solicit ad hoc experts at any time thereafter if the committee determines such expertise is necessary. Candidates wishing to serve as ad hoc experts shall disclose conflicts of interest according to HERC bylaws. Ad hoc experts, if needed, shall be appointed by the Authority. The Authority shall select experts that best meet the needs of the state, considering any conflicts of interest, and shall not be limited to those who have volunteered to serve. Ad hoc experts shall answer technical questions and provide clinical context during the review of the evidence.

Stat. Auth.: ORS 414.695 & 413.042

Stats. Implemented: 414.695 & 414.698

Hist.: OHP 4-2013, f. & cert. ef. 2-1-13; OHP 5-2016, f. & cert. ef. 4-19-16; OHP 17-2016, f. & cert. ef. 12-22-16

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

Rule Caption: Updates the Covered and Non-Covered Dental Services According to the Prioritized List

Adm. Order No.: DMAP 71-2016(Temp)

Filed with Sec. of State: 12-28-2016

Certified to be Effective: 1-1-17 thru 6-29-17

Notice Publication Date:

Rules Amended: 410-123-1220, 410-123-1260

Subject: OARs 410-123-1220 and 410-123-1260 updates the version of the Covered and Non-Covered dental services list on January 1, 2017. This rule needs to be amended promptly so that the Authority can clarify which document providers and clients should reference when they have questions about dental care coverage.

Rules Coordinator: Sandy Cafourek — (503) 945-6430

410-123-1220

Coverage According to the Prioritized List of Health Services

(1) This rule incorporates by reference the "Covered and Non-Covered Dental Services" document dated January 1, 2017, and located on the Health Systems Division, Medical Assistance Programs (Division) website at <http://www.oregon.gov/oha/healthplan/Pages/dental.aspx>:

(a) The "Covered and Non-Covered Dental Services" document lists coverage of Current Dental Terminology (CDT) procedure codes according to the Oregon Health Evidence Review Commission (HERC) Prioritized List of Health Services (Prioritized List) and the client's specific Oregon Health Plan benefit package;

(b) This document is subject to change if there are funding changes to the Prioritized List.

(2) Changes to services funded on the Prioritized List are effective on the date of the Prioritized List change:

(a) The Division administrative rules (chapter 410, division 123) will not reflect the most current Prioritized List changes until they have gone through the Division rule filing process;

(b) For the most current Prioritized List, refer to the HERC website at www.oregon.gov/oha/herc/Pages/PrioritizedList.aspx;

(c) In the event of an alleged variation between a Division-listed code and a national code, the Division shall apply the national code in effect on the date of request or date of service.

(3) Refer to OAR 410-123-1260 for information about limitations on procedures funded according to the Prioritized List. Examples of limitations include frequency and client's age.

(4) The Prioritized List does not include or fund the following general categories of dental services, and the Division does not cover them for any client. Several of these services are considered elective or "cosmetic" in nature (i.e., done for the sake of appearance):

- (a) Desensitization;
- (b) Implant and implant services;
- (c) Masticque or veneer procedure;
- (d) Orthodontia (except when it is treatment for cleft palate);
- (e) Overhang removal;
- (f) Procedures, appliances, or restorations solely for aesthetic or cosmetic purposes;
- (g) Temporomandibular joint dysfunction treatment; and
- (h) Tooth bleaching.

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 3-1994, f. & cert. ef. 2-1-94; HR 21-1994(Temp), f. 4-29-94, cert. ef. 5-1-94; HR 32-1994, f. & cert. ef. 11-1-94; HR 20-1995, f. 9-29-95, cert. ef. 10-1-95; HR 9-1996, f. 5-31-96, cert. ef. 6-1-96; OMAP 13-1998(Temp), f. & cert. ef. 5-1-98 thru 9-1-98; OMAP 28-1998, f. & cert. ef. 9-1-98; OMAP 23-1999, f. & cert. ef. 4-30-99; OMAP 8-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 17-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 48-2002, f. & cert. ef. 10-1-02; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 65-2003, f. 9-10-03 cert. ef. 10-1-03; DMAP 25-2007, f. 12-11-07, cert. ef. 1-1-08; DMAP 38-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 16-2009 f. 6-12-09, cert. ef. 7-1-09; DMAP 41-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 14-2010, f. 6-10-10, cert. ef. 7-1-10; DMAP 31-2010, f. 12-15-10, cert. ef. 1-1-11; DMAP 17-2011, f. & cert. ef. 7-12-11; DMAP 41-2011, f. 12-21-11, cert. ef. 1-1-12; DMAP 46-2011, f. 12-23-11, cert. ef. 1-1-12; DMAP 13-2013, f. 3-27-13, cert. ef. 4-1-13; DMAP 7-2015(Temp), f. & cert. ef. 2-17-15 thru 8-15-15; DMAP 28-2015, f. & cert. ef. 5-1-15; DMAP 46-2015(Temp), f. 8-26-15, cert. ef. 10-1-15 thru 3-28-16; DMAP 65-2015, f. 11-3-15, cert. ef. 12-1-15; DMAP 20-2016(Temp), f. 5-6-16, cert. ef. 5-10-16 thru 11-5-16; DMAP 48-2016(Temp), f. & cert. ef. 7-22-16 thru 11-5-16; DMAP 61-2016, f. & cert. ef. 10-13-16; DMAP 71-2016(Temp), f. 12-28-16, cert. ef. 1-1-17 thru 6-29-17

410-123-1260

OHP Dental Benefits

This administrative rule aligns with and reflects changes to the Prioritized List of Health Services and the American Dental Association's (ADA) Code on Dental Procedures and Nomenclature (CDT Codes), as well as a restoration of benefits resulting from legislative action in 2015. Effective January 1, 2017, the Health Evidence Review Commission (HERC) added and deleted oral health procedure codes. This rule provides information on how the Oregon Health Plan will cover newly opened CDT codes and restored benefits as of October, 1, 2016.

(1) GENERAL:

(a) Early and Periodic Screening, Diagnosis and Treatment (EPSDT):

(A) Refer to Code of Federal Regulations (42 CFR 441, Subpart B) and OAR chapter 410, division 120 for definitions of the EPSDT program, eligible clients, and related services. EPSDT dental services include, but are not limited to:

(i) Dental screening services for eligible EPSDT individuals; and

(ii) Dental diagnosis and treatment that is indicated by screening at as early an age as necessary, needed for relief of pain and infections, restoration of teeth, and maintenance of dental health.

(B) Providers shall provide EPSDT services for eligible Division clients according to the following documents:

(i) The Dental Services Program administrative rules (OAR chapter 410, division 123), for dentally appropriate services funded on the Oregon Health Evidence Review Commission's Prioritized List of Health Services (Prioritized List); and

(ii) The "Oregon Health Plan (OHP) — Recommended Dental Periodicity Schedule," dated January 1, 2010, incorporated in rule by reference and posted on the Division website in the Dental Services Provider Guide document at www.oregon.gov/oha/healthplan/Pages/dental.aspx.

(b) Restorative, periodontal, and prosthetic treatments:

(A) Documentation shall be included in the client's charts to support the treatment. Treatments shall be consistent with the prevailing standard of care and may be limited as follows:

(i) When prognosis is unfavorable;

(ii) When treatment is impractical;

(iii) A lesser-cost procedure would achieve the same ultimate result; or

(iv) The treatment has specific limitations outlined in this rule.

(B) Prosthetic treatment, including porcelain fused to metal crowns, are limited until rampant progression of caries is arrested and a period of adequate oral hygiene and periodontal stability is demonstrated; periodontal health needs to be stable and supportive of a prosthetic.

(2) ENHANCED ORAL HEALTH SERVICES IN PRIMARY CARE SETTINGS:

(a) Topical fluoride treatment:

(A) For children under 19 years of age, topical fluoride varnish may be applied by a licensed medical practitioner during a medical visit. Providers must bill:

(i) The Division directly when the client is fee-for-service (FFS), is enrolled in a Coordinated Care Organization (CCO) that does not include integrated medical and dental services, or is enrolled in a PHP that does not include integrated medical and dental services;

(ii) The client's CCO if the client is enrolled in a CCO that includes integrated medical and dental services;

(iii) Using a professional claim format with either the appropriate Current Dental Terminology (CDT) code (D1206-Topical Fluoride Varnish) or the appropriate Current Procedural Terminology (CPT) code (99188 – Application of topical fluoride varnish by a physician or other qualified health care professional).

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(B) Topical fluoride treatment from a medical practitioner counts toward the overall maximum number of fluoride treatments, as described in subsection (4) of this rule.

(b) Assessment of a patient:

(A) For children under six years of age, CDT code D0191-Assessment of a Patient is covered as an enhanced oral health service in medical settings;

(B) For reimbursement in a medical setting, D0191-Assessment of a patient must include all of the following components:

(i) Caries risk assessment using a standardized tool endorsed by Oregon Oral Health Coalition, the American Dental Association, the American Academy of Pediatric Dentistry, or the American Academy of Pediatrics;

(ii) Anticipatory guidance and counseling with the client's caregiver on good oral hygiene practices and nutrition;

(iii) Referral to a dentist in order to establish a dental home;

(iv) Documentation in medical chart of risk assessment findings and service components provided.

(C) For reimbursement, the performing provider must meet all of the following criteria:

(i) Be a physician (MD or DO), an advance practice nurse, or a licensed physician assistant; and

(ii) Hold a certificate of completion from one of the following approved training programs within the previous three years:

(I) Smiles for Life; or

(II) First Tooth through the Oregon Oral Health Coalition.

(D) For reimbursement, the medical practitioners must bill:

(i) The Division directly when the client is fee-for-service (FFS), is enrolled in a Coordinated Care Organization (CCO) that does not include integrated medical and dental services, or is enrolled in a PHP that does not include integrated medical and dental services;

(ii) The client's CCO if the client is enrolled in a CCO that includes integrated medical and dental services;

(iii) Using a professional claim format with the appropriate CDT code (D0191-Assessment of a Patient).

(E) D0191 Assessment of a Patient may be reimbursed under this subsection up to a maximum of once every 12 months;

(F) D0191 Assessment of a Patient from a medical practitioner does not count toward the maximum number of CDT code D0191-Assessment of a Patient services performed by a dental practitioner described in subsection three (3) of this rule.

(c) For tobacco cessation services provided during a medical visit, follow criteria outlined in OAR 410-130-0190.

(3) DIAGNOSTIC SERVICES:

(a) Exams:

(A) For children under 19 years of age:

(i) The Division shall reimburse exams (billed as CDT codes D0120, D0145, D0150, or D0180) a maximum of twice every 12 months with the following limitations:

(I) D0150: once every 12 months when performed by the same practitioner;

(II) D0150: twice every 12 months only when performed by different practitioners;

(III) D0180: once every 12 months.

(ii) The Division shall reimburse D0160 only once every 12 months when performed by the same practitioner.

(B) For adults 19 years of age and older, the Division shall reimburse exams (billed as CDT codes D0120, D0150, D0160, or D0180) once every 12 months;

(C) For problem focused exams (urgent or emergent problems), the Division shall reimburse D0140 for the initial exam. The Division shall reimburse D0170 for related problem-focused follow-up exams. Providers must not bill D0140 and D0170 for routine dental visits;

(D) The Division only covers oral exams performed by medical practitioners when the medical practitioner is an oral surgeon;

(E) As the American Dental Association's Current Dental Terminology (CDT) codebook specifies, the evaluation, diagnosis, and treatment planning components of the exam are the responsibility of the dentist. The Division may not reimburse dental exams when performed by a dental hygienist (with or without an expanded practice permit).

(b) Assessment of a patient (D0191):

(A) When performed by a dental practitioner, the Division shall reimburse:

(i) If performed by a dentist outside of a dental office;

(ii) If performed by a dental hygienist with an expanded practice dental hygiene permit;

(iii) Only if an exam (D0120-D0180) is not performed on the same date of service. Assessment of a patient (D0191) is included as part of an exam (D0120-D0180);

(iv) For children under 19 years of age, a maximum of twice every 12 months; and

(v) For adults age 19 and older, a maximum of once every 12 months.

(B) An assessment does not take the place of the need for oral evaluations/exams.

(c) Radiographs:

(A) The Division shall reimburse for routine radiographs once every 12 months;

(B) The Division shall reimburse bitewing radiographs for routine screening once every 12 months;

(C) The Division shall reimburse a maximum of six radiographs for any one emergency;

(D) For clients under age six, radiographs may be billed separately every 12 months as follows:

(i) D0220 — once;

(ii) D0230 — a maximum of five times;

(iii) D0270 — a maximum of twice, or D0272 once.

(E) The Division shall reimburse for panoramic (D0330) or intra-oral complete series (D0210) once every five years, but both cannot be done within the five-year period;

(F) Clients shall be a minimum of six years old for billing intra-oral complete series (D0210). The minimum standards for reimbursement of intra-oral complete series are:

(i) For clients age six through 11 — a minimum of ten periapicals and two bitewings for a total of 12 films;

(ii) For clients ages 12 and older — a minimum of ten periapicals and four bitewings for a total of 14 films.

(G) If fees for multiple single radiographs exceed the allowable reimbursement for a full mouth complete series (D0210), the Division shall reimburse for the complete series;

(H) Additional films may be covered if dentally or medically appropriate, e.g., fractures (Refer to OAR 410-123-1060 and 410-120-0000);

(I) If the Division determines the number of radiographs to be excessive, payment for some or all radiographs of the same tooth or area may be denied;

(J) The exception to these limitations is if the client is new to the office or clinic and the office or clinic is unsuccessful in obtaining radiographs from the previous dental office or clinic. Supporting documentation outlining the provider's attempts to receive previous records shall be included in the client's records;

(K) Digital radiographs, if printed, shall be on photo paper to assure sufficient quality of images.

(4) PREVENTIVE SERVICES:

(a) Prophylaxis:

(A) For children under 19 years of age — Limited to twice per 12 months;

(B) For adults 19 years of age and older — Limited to once per 12 months;

(C) Additional prophylaxis benefit provisions may be available for persons with high risk oral conditions due to disease process, pregnancy, medications, or other medical treatments or conditions, severe periodontal disease, rampant caries and for persons with disabilities who cannot perform adequate daily oral health care;

(D) Are coded using the appropriate Current Dental Terminology (CDT) coding:

(i) D1110 (Prophylaxis — Adult) — Use for clients 14 years of age and older; and

(ii) D1120 (Prophylaxis — Child) — Use for clients under 14 years of age.

(b) Topical fluoride treatment:

(A) For adults 19 years of age and older — Limited to once every 12 months;

(B) For children under 19 years of age — Limited to twice every 12 months;

(C) Additional topical fluoride treatments may be available, up to a total of four treatments per client within a 12-month period, when high-risk conditions or oral health factors are clearly documented in chart notes for clients who:

(i) Have high-risk oral conditions due to disease process, medications, other medical treatments or conditions, or rampant caries;

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(ii) Are pregnant;
(iii) Have physical disabilities and cannot perform adequate, daily oral health care;

(iv) Have a developmental disability or other severe cognitive impairment that cannot perform adequate, daily oral health care; or

(v) Are under seven years old with high-risk oral health factors, such as poor oral hygiene, deep pits and fissures (grooves) in teeth, severely crowded teeth, poor diet, etc.

(D) Fluoride limits include any combination of fluoride varnish (D1206) or other topical fluoride (D1208).

(c) Sealants (D1351):

(A) Are covered only for children under 16 years of age;

(B) The Division limits coverage to:

(i) Permanent molars; and

(ii) Only one sealant treatment per molar every five years, except for visible evidence of clinical failure.

(d) Tobacco cessation:

(A) For services provided during a dental visit, bill as a dental service using CDT code D1320 when the following brief counseling is provided:

(i) Ask patients about their tobacco-use status at each visit and record information in the chart;

(ii) Advise patients on their oral health conditions related to tobacco use and give direct advice to quit using tobacco and a strong personalized message to seek help; and

(iii) Refer patients who are ready to quit, utilizing internal and external resources, to complete the remaining three A's (assess, assist, arrange) of the standard intervention protocol for tobacco.

(B) The Division allows a maximum of ten services within a three-month period.

(e) Space management:

(A) The Division shall cover fixed and removable space maintainers (D1510, D1515, D1520, D1525, and D1575) only for clients under 19 years of age;

(B) The Division may not reimburse for replacement of lost or damaged removable space maintainers.

(f) Interim caries arresting medicament application (D1354):

(A) Is limited to silver diamine fluoride (SDF) application as the medicament. It does not include coverage of any other medicaments;

(B) May be billed for two applications per year;

(C) Requires that the tooth or teeth numbers be included on the claim;

(D) Shall be covered with topical application of fluoride (D1206 or D1208) when they are performed on the same date of service if D1354 is being used to treat a carious lesion and D1206 or D1208 to prevent caries;

(E) Shall be covered with an interim therapeutic restoration (D2941) or a permanent restoration and (D1354) on the same tooth, when dentally appropriate.

(5) RESTORATIVE SERVICES:

(a) Amalgam and resin-based composite restorations, direct:

(A) Resin-based composite crowns on anterior teeth (D2390) are only covered for clients under 21 years of age or who are pregnant;

(B) The Division reimburses posterior composite restorations at the same rate as amalgam restorations;

(C) The Division limits payment for replacement of posterior composite restorations to once every five years;

(D) The Division limits payment of covered restorations to the maximum restoration fee of four surfaces per tooth. Refer to the American Dental Association (ADA) CDT codebook for definitions of restorative procedures;

(E) Providers shall combine and bill multiple surface restorations as one line per tooth using the appropriate code. Providers may not bill multiple surface restorations performed on a single tooth on the same day on separate lines. For example, if tooth #30 has a buccal amalgam and a mesial-occlusal-distal (MOD) amalgam, then bill MOD, B, using code D2161 (four or more surfaces);

(F) The Division may not reimburse for an amalgam or composite restoration and a crown on the same tooth;

(G) Interim therapeutic restoration on primary dentition (D2941) is covered to restore and prevent progression of dental caries. Interim therapeutic restoration is not a definitive restoration;

(H) Reattachment of tooth fragment (D2921) is covered once in the lifetime of a tooth when there is no pulp exposure and no need for endodontic treatment;

(I) The Division reimburses for a surface not more than once in each treatment episode regardless of the number or combination of restorations;

(J) The restoration fee includes payment for occlusal adjustment and polishing of the restoration.

(b) Indirect crowns and related services:

(A) General payment policies:

(i) The fee for the crown includes payment for preparation of the gingival tissue;

(ii) The Division shall cover crowns only when:

(I) There is significant loss of clinical crown and no other restoration will restore function; and

(II) The crown-to-root ratio is 50:50 or better, and the tooth is restorable without other surgical procedures.

(iii) The Division shall cover core buildup (D2950) only when necessary to retain a cast restoration due to extensive loss of tooth structure from caries or a fracture and only when done in conjunction with a crown. Less than 50 percent of the tooth structure must be remaining for coverage of the core buildup.

(iv) Reimbursement of retention pins (D2951) is per tooth, not per pin.

(B) The Division shall not cover the following services:

(i) Endodontic therapy alone (with or without a post);

(ii) Aesthetics (cosmetics);

(iii) Crowns in cases of advanced periodontal disease or when a poor crown/root ratio exists for any reason.

(C) Stainless steel crowns (D2930/D2931) are allowed only for anterior primary teeth and posterior permanent or primary teeth;

(D) The Division shall cover the following only for clients under 21 years of age or who are pregnant:

(i) Prefabricated plastic crowns (D2932) are allowed only for anterior teeth, permanent or primary;

(ii) Prefabricated stainless steel crowns with resin window (D2933) are allowed only for anterior teeth, permanent or primary;

(iii) Prefabricated post and core in addition to crowns (D2954/D2957);

(iv) Permanent crowns (resin-based composite — D2710 and D2712 and porcelain fused to metal (PFM) — D2751 and D2752) as follows:

(I) Limited to teeth numbers 6–11, 22, and 27 only, if dentally appropriate;

(II) Limited to four in a seven-year period. This limitation includes any replacement crowns allowed according to (E)(i) of this rule;

(III) Only for clients at least 16 years of age; and

(IV) Rampant caries are arrested, and the client demonstrates a period of oral hygiene before prosthetics are proposed.

(v) PFM crowns (D2751 and D2752) shall also meet the following additional criteria:

(I) The dental practitioner has attempted all other dentally appropriate restoration options and documented failure of those options;

(II) Written documentation in the client's chart indicates that PFM is the only restoration option that will restore function;

(III) The dental practitioner submits radiographs to the Division for review; history, diagnosis, and treatment plan may be requested. (See OAR 410-123-1100 Services Reviewed by the Division);

(IV) The client has documented stable periodontal status with pocket depths within 1–3 millimeters. If PFM crowns are placed with pocket depths of 4 millimeters and over, documentation shall be maintained in the client's chart of the dentist's findings supporting stability and why the increased pocket depths will not adversely affect expected long-term prognosis;

(V) The crown has a favorable long-term prognosis; and

(VI) If the tooth to be crowned is a clasp/abutment tooth in partial denture, both prognosis for the crown itself and the tooth's contribution to partial denture shall have favorable expected long-term prognosis.

(E) Crown replacement:

(i) Permanent crown replacement limited to once every seven years;

(ii) All other crown replacement limited to once every five years; and

(iii) The Division may make exceptions to crown replacement limitations due to acute trauma, based on the following factors:

(I) Extent of crown damage;

(II) Extent of damage to other teeth or crowns;

(III) Extent of impaired mastication;

(IV) Tooth is restorable without other surgical procedures; and

(V) If loss of tooth would result in coverage of removable prosthetic.

(F) Crown repair (D2980) is limited to only anterior teeth.

(6) ENDODONTIC SERVICES:

(a) Endodontic therapy:

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(A) Pulpal therapy on primary teeth (D3230 and D3240) is covered only for clients under 21 years of age;

(B) For permanent teeth:

(i) Anterior and bicuspid endodontic therapy (D3310 and D3320) is covered for all OHP Plus clients; and

(ii) Molar endodontic therapy (D3330):

(I) For clients through age 20, is covered only for first and second molars; and

(II) For clients age 21 and older who are pregnant, is covered only for first molars.

(C) The Division covers endodontics only if the crown-to-root ratio is 50:50 or better and the tooth is restorable without other surgical procedures.

(b) Endodontic retreatment and apicoectomy:

(A) The Division does not cover retreatment of a previous root canal or apicoectomy for bicuspid or molars;

(B) The Division limits either a retreatment or an apicoectomy (but not both procedures for the same tooth) to symptomatic anterior teeth when:

(i) Crown-to-root ratio is 50:50 or better;

(ii) The tooth is restorable without other surgical procedures; or

(iii) If loss of tooth would result in the need for removable prosthodontics.

(C) Retrograde filling (D3430) is covered only when done in conjunction with a covered apicoectomy of an anterior tooth.

(c) The Division does not allow separate reimbursement for open-and-drain as a palliative procedure when the root canal is completed on the same date of service or if the same practitioner or dental practitioner in the same group practice completed the procedure;

(d) The Division covers endodontics if the tooth is restorable within the OHP benefit coverage package;

(e) Apexification/recalcification procedures:

(A) The Division limits payment for apexification to a maximum of five treatments on permanent teeth only;

(B) Apexification/recalcification procedures are covered only for clients under 21 years of age or who are pregnant.

(7) PERIODONTIC SERVICES:

(a) Surgical periodontal services:

(A) Gingivectomy/Gingivoplasty (D4210 and D4211) — limited to coverage for severe gingival hyperplasia where enlargement of gum tissue occurs that prevents access to oral hygiene procedures, e.g., Dilantin hyperplasia; and

(B) Includes six months routine postoperative care;

(C) The Division shall consider gingivectomy or gingivoplasty to allow for access for restorative procedure, per tooth (D4212) as part of the restoration and will not provide a separate reimbursement for this procedure.

(b) Non-surgical periodontal services:

(A) Periodontal scaling and root planing (D4341 and D4342):

(i) Allowed once every two years;

(ii) A maximum of two quadrants on one date of service is payable, except in extraordinary circumstances;

(iii) Quadrants are not limited to physical area, but are further defined by the number of teeth with pockets 5 mm or greater:

(I) D4341 is allowed for quadrants with at least four or more teeth with pockets 5 mm or greater. Single implants may now be covered by counting the implant as an additional tooth when billing D4341. The maximum number per quadrant and pocket depth requirements still apply;

(II) D4342 is allowed for quadrants with at least two teeth with pocket depths of 5 mm or greater. Single implants may now be covered by counting the implant as an additional tooth when billing D4342. The maximum number per quadrant and pocket depth requirements still apply;

(iv) Prior authorization for more frequent scaling and root planing may be requested when:

(I) Medically/dentally necessary due to periodontal disease as defined above is found during pregnancy; and

(II) Client's medical record is submitted that supports the need for increased scaling and root planing.

(B) Full mouth debridement (D4355) allowed only once every two years.

(C) (D4346) Scaling in the presence of generalized moderate or severe gingival inflammation — full mouth, after oral evaluation, allowed only once every two years.

(c) Periodontal maintenance (D4910) allowed once every six months:

(A) Limited to following periodontal therapy (surgical or non-surgical) that is documented to have occurred within the past three years;

(B) Prior authorization for more frequent periodontal maintenance may be requested when:

(i) Medically/dentally necessary, such as due to presence of periodontal disease during pregnancy; and

(ii) Client's medical record is submitted that supports the need for increased periodontal maintenance (chart notes, pocket depths and radiographs).

(d) Records shall clearly document the clinical indications for all periodontal procedures, including current pocket depth charting and/or radiographs;

(e) The Division may not reimburse for procedures identified by the following codes if performed on the same date of service:

(A) D1110 (Prophylaxis — adult);

(B) D1120 (Prophylaxis — child);

(C) D4210 (Gingivectomy or gingivoplasty — four or more contiguous teeth or bounded teeth spaces per quadrant);

(D) D4211 (Gingivectomy or gingivoplasty — one to three contiguous teeth or bounded teeth spaces per quadrant);

(E) D4341 (Periodontal scaling and root planning — four or more teeth per quadrant);

(F) D4342 (Periodontal scaling and root planning — one to three teeth per quadrant);

(G) D4355 (Full mouth debridement to enable comprehensive evaluation and diagnosis); and

(H) D4910 (Periodontal maintenance).

(8) REMOVABLE PROSTHODONTIC SERVICES:

(a) Clients age 16 years and older are eligible for removable resin base partial dentures (D5211-D5212) and full dentures (complete or immediate, D5110-D5140);

(b) See OAR 410-123-1000 for detail regarding billing fabricated prosthetics;

(c) The fee for the partial and full dentures includes payment for adjustments during the six-month period following delivery to clients;

(d) Resin partial dentures (D5211-D5212):

(A) The Division may not approve resin partial dentures if stainless steel crowns are used as abutments;

(B) For clients through age 20, the client shall have one or more anterior teeth missing or four or more missing posterior teeth per arch with resulting space equivalent to that loss demonstrating inability to masticate. Third molars are not a consideration when counting missing teeth;

(C) For clients age 21 and older, the client shall have one or more missing anterior teeth or six or more missing posterior teeth per arch with documentation by the provider of resulting space causing serious impairment to mastication. Third molars are not a consideration when counting missing teeth;

(D) The dental practitioner shall note the teeth to be replaced and teeth to be clasped when requesting prior authorization (PA).

(e) Replacement of removable partial or full dentures, when it cannot be made clinically serviceable by a less costly procedure (e.g., reline, rebase, repair, tooth replacement), is limited to the following:

(A) For clients at least 16 years of age, the Division shall replace:

(i) Full dentures once every ten years, only if dentally appropriate;

(ii) Partial dentures once every five years, only if dentally appropriate.

(B) The five- and ten-year limitations apply to the client regardless of the client's OHP or Dental Care Organization (DCO)/Coordinated Care Organization (CCO) enrollment status at the time the client's last denture or partial was received. For example: A client receives a partial on February 1, 2002, and becomes a FFS OHP client in 2005. The client is not eligible for a replacement partial until February 1, 2012. The client gets a replacement partial on February 3, 2012 while FFS and a year later enrolls in a DCO or CCO. The client would not be eligible for another partial until February 3, 2022, regardless of DCO, CCO, or FFS enrollment;

(C) Replacement of partial dentures with full dentures is payable five years after the partial denture placement. Exceptions to this limitation may be made in cases of acute trauma or catastrophic illness that directly or indirectly affects the oral condition and results in additional tooth loss. This pertains to, but is not limited to, cancer and periodontal disease resulting from pharmacological, surgical, and medical treatment for aforementioned conditions. Severe periodontal disease due to neglect of daily oral hygiene may not warrant replacement.

(f) The Division limits reimbursement of adjustments and repairs of dentures that are needed beyond six months after delivery of the denture as follows for clients 21 years of age and older:

(A) A maximum of four times per year for:

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- (i) Adjusting complete and partial dentures, per arch (D5410-D5422);
- (ii) Replacing missing or broken teeth on a complete denture, each tooth (D5520);
- (iii) Replacing broken tooth on a partial denture, each tooth (D5640);
- (iv) Adding tooth to existing partial denture (D5650).
- (B) A maximum of two times per year for:
- (i) Repairing broken complete denture base (D5510);
- (ii) Repairing partial resin denture base (D5610);
- (iii) Repairing partial cast framework (D5620);
- (iv) Repairing or replacing broken clasp (D5630);
- (v) Adding clasp to existing partial denture (D5660).
- (g) Replacement of all teeth and acrylic on cast metal framework (D5670, D5671):
- (A) Is covered for clients age 16 and older a maximum of once every ten (10) years, per arch;
- (B) Ten years or more shall have passed since the original partial denture was delivered;
- (C) Is considered replacement of the partial so a new partial denture may not be reimbursed for another ten years; and
- (D) Requires prior authorization as it is considered a replacement partial denture.
- (h) Denture rebase procedures:
- (A) The Division shall cover rebases only if a relines may not adequately solve the problem;
- (B) For clients through age 20, the Division limits payment for rebase to once every three years;
- (C) For clients age 21 and older:
- (i) There shall be documentation of a current relines that has been done and failed; and
- (ii) The Division limits payment for rebase to once every five years.
- (D) The Division may make exceptions to this limitation in cases of acute trauma or catastrophic illness that directly or indirectly affects the oral condition and results in additional tooth loss. This pertains to, but is not limited to, cancer and periodontal disease resulting from pharmacological, surgical, and medical treatment for aforementioned conditions. Severe periodontal disease due to neglect of daily oral hygiene may not warrant rebasing;
- (i) Denture relines procedures:
- (A) For clients through age 20, the Division limits payment for relines of complete or partial dentures to once every three years;
- (B) For clients age 21 and older, the Division limits payment for relines of complete or partial dentures to once every five years;
- (C) The Division may make exceptions to this limitation under the same conditions warranting replacement;
- (D) Laboratory relines:
- (i) Are not payable prior to six months after placement of an immediate denture; and
- (ii) For clients through age 20, are limited to once every three years;
- (iii) For clients age 21 and older, are limited to once every five years.
- (j) Interim partial dentures (D5820-D5821, also referred to as “flippers”):
- (A) Are allowed if the client has one or more anterior teeth missing; and
- (B) The Division shall reimburse for replacement of interim partial dentures once every five years but only when dentally appropriate.
- (k) Tissue conditioning:
- (A) Is allowed once per denture unit in conjunction with immediate dentures; and
- (B) Is allowed once prior to new prosthetic placement.
- (9) MAXILLOFACIAL PROSTHETIC SERVICES:
- (a) Fluoride gel carrier (D5986) is limited to those patients whose severity of oral disease causes the increased cleaning and fluoride treatments allowed in rule to be insufficient. The dental practitioner shall document failure of those options prior to use of the fluoride gel carrier;
- (b) All other maxillofacial prosthetics (D5900-D5999) are medical services. Refer to the “Covered and Non-Covered Dental Services” document and OAR 410-123-1220:
- (A) Bill for medical maxillofacial prosthetics using the professional (CMS1500, DMAP 505 or 837P) claim format;
- (B) For clients receiving services through a CCO or PHP, bill medical maxillofacial prosthetics to the CCO or PHP;
- (C) For clients receiving medical services through FFS, bill the Division.
- (10) ORAL SURGERY SERVICES:
- (a) Bill the following procedures in an accepted dental claim format using CDT codes:
- (A) Procedures that are directly related to the teeth and supporting structures that are not due to a medical condition or diagnosis, including such procedures performed in an ambulatory surgical center (ASC) or an inpatient or outpatient hospital setting;
- (B) Services performed in a dental office setting or an oral surgeon’s office:
- (i) Such services include, but are not limited to, all dental procedures, local anesthesia, surgical postoperative care, radiographs, and follow-up visits;
- (ii) Refer to OAR 410-123-1160 for any PA requirements for specific procedures.
- (b) Bill the following procedures using the professional claim format and the appropriate American Medical Association (AMA) CPT procedure and ICD-10 diagnosis codes:
- (A) Procedures that are a result of a medical condition (i.e., fractures, cancer);
- (B) Services requiring hospital dentistry that are the result of a medical condition/diagnosis (i.e., fracture, cancer).
- (c) Refer to the “Covered and Non-Covered Dental Services” document to see a list of CDT procedure codes on the Prioritized List that may also have CPT medical codes. See OAR 410-123-1220. The procedures listed as “medical” on the table may be covered as medical procedures, and the table may not be all-inclusive of every dental code that has a corresponding medical code;
- (d) For clients enrolled in a DCO or CCO responsible for dental services, the DCO or CCO shall pay for those services in the dental plan package;
- (e) Oral surgical services performed in an ASC or an inpatient or outpatient hospital setting:
- (A) Require PA;
- (B) For clients enrolled in a CCO, the CCO shall pay for the facility charge and anesthesia services. For clients enrolled in a Physician Care Organization (PCO), the PCO shall pay for the outpatient facility charge (including ASCs) and anesthesia. Refer to the current Medical Surgical Services administrative rules in OAR chapter 410, division 130 for more information;
- (C) If a client is enrolled in a CCO or PHP, the provider shall contact the CCO or PHP for any required authorization before the service is rendered.
- (f) All codes listed as “by report” require an operative report;
- (g) The Division covers payment for tooth re-implantation only in cases of traumatic avulsion where there are good indications of success;
- (h) Biopsies collected are reimbursed as a dental service. Laboratory services of biopsies are reimbursed as a medical service;
- (i) The Division does not cover surgical excisions of soft tissue lesions (D7410-D7415);
- (j) Extractions — Includes local anesthesia and routine postoperative care, including treatment of a dry socket if done by the provider of the extraction. Dry socket is not considered a separate service;
- (k) Surgical extractions:
- (A) Include local anesthesia and routine post-operative care;
- (B) The Division limits payment for surgical removal of impacted teeth or removal of residual tooth roots to treatment for only those teeth that have acute infection or abscess, severe tooth pain, or unusual swelling of the face or gums;
- (C) The Division does not cover alveoplasty in conjunction with extractions (D7310 and D7311) separately from the extraction;
- (D) The Division covers alveoplasty not in conjunction with extractions (D7320-D7321) only for clients under 21 years of age or who are pregnant.
- (L) Frenulectomy/frenulotomy (D7960) and frenuloplasty (D7963):
- (A) The Division covers either frenulectomy or frenuloplasty once per lifetime per arch only for clients under age 21;
- (B) The Division covers maxillary labial frenulectomy only for clients age 12 through 20;
- (C) The Division shall cover frenulectomy/frenuloplasty in the following situations:
- (i) When the client has ankyloglossia;
- (ii) When the condition is deemed to cause gingival recession; or
- (iii) When the condition is deemed to cause movement of the gingival margin when the frenum is placed under tension.
- (m) The Division covers excision of pericoronal gingival (D7971) only for clients under age 21 or who are pregnant.

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(11) ORTHODONTIA SERVICES:

(a) The Division limits orthodontia services and extractions to eligible clients:

(A) With the ICD-10-CM diagnosis of:

(i) Cleft palate; or

(ii) Cleft palate with cleft lip; and

(B) Whose orthodontia treatment began prior to 21 years of age; or

(C) Whose surgical corrections of cleft palate or cleft lip were not completed prior to age 21.

(b) PA is required for orthodontia exams and records. A referral letter from a physician or dentist indicating diagnosis of cleft palate or cleft lip shall be included in the client's record and a copy sent with the PA request;

(c) Documentation in the client's record shall include diagnosis, length, and type of treatment;

(d) Payment for appliance therapy includes the appliance and all follow-up visits;

(e) Orthodontists evaluate orthodontia treatment for cleft palate/cleft lip as two phases. Stage one is generally the use of an activator (palatal expander), and stage two is generally the placement of fixed appliances (banding). The Division shall reimburse each phase separately;

(f) The Division shall pay for orthodontia in one lump sum at the beginning of each phase of treatment. Payment for each phase is for all orthodontia-related services. If the client transfers to another orthodontist during treatment, or treatment is terminated for any reason, the orthodontist shall refund to the Division any unused amount of payment after applying the following formula: Total payment minus \$300.00 (for banding) multiplied by the percentage of treatment remaining;

(g) The Division shall use the length of the treatment plan from the original request for authorization to determine the number of treatment months remaining;

(h) As long as the orthodontist continues treatment, the Division may not require a refund even though the client may become ineligible for medical assistance sometime during the treatment period;

(i) Code:

(A) D8660 — PA required (reimbursement for required orthodontia records is included);

(B) Codes D8010-D8690 — PA required.

(12) ADJUNCTIVE GENERAL AND OTHER SERVICES:

(a) Fixed partial denture sectioning (D9120) is covered only when extracting a tooth connected to a fixed prosthesis and a portion of the fixed prosthesis is to remain intact and serviceable, preventing the need for more costly treatment;

(b) Anesthesia:

(A) Only use general anesthesia or IV sedation for those clients with concurrent needs: age; physical, medical or mental status; or degree of difficulty of the procedure (D9223 and D9243);

(B) The Division reimburses providers for general anesthesia or IV sedation as follows:

(i) D9223 or D9243: For each 15-minute period, up to three and a half hours on the same day of service;

(ii) Each 15-minute period represents a quantity of one. Enter this number in the quantity column.

(C) The Division reimburses administration of Nitrous Oxide (D9230) per date of service, not by time;

(D) Oral pre-medication anesthesia for conscious sedation (D9248):

(i) Limited to clients under 13 years of age;

(ii) Limited to four times per year;

(iii) Includes payment for monitoring and Nitrous Oxide; and

(iv) Requires use of multiple agents to receive payment.

(E) Upon request, providers shall submit a copy of their permit to administer anesthesia, analgesia, and sedation to the Division;

(F) For the purpose of Title XIX and Title XXI, the Division limits payment for code D9630 to those oral medications used during a procedure and is not intended for "take home" medication.

(c) The Division limits reimbursement of house/extended care facility call (D9410) only for urgent or emergent dental visits that occur outside of a dental office. This code is not reimbursable for provision of preventive services or for services provided outside of the office for the provider or facilities' convenience;

(d) Oral devices/appliances (E0485, E0486):

(A) These may be placed or fabricated by a dentist or oral surgeon but are considered a medical service;

(B) Bill the Division, CCO, or the PHP for these codes using the professional claim format.

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 3-1994, f. & cert. ef. 2-1-94; HR 20-1995, f. 9-29-95, cert. ef. 10-1-95; OMAP 13-1998(Temp), f. & cert. ef. 5-1-98 thru 9-1-98; OMAP 28-1998, f. & cert. ef. 9-1-98; OMAP 23-1999, f. & cert. ef. 4-30-99; OMAP 8-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 17-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 48-2002, f. & cert. ef. 10-1-02; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 65-2003, f. 9-10-03, cert. ef. 10-1-03; OMAP 55-2004, f. 9-10-04, cert. ef. 10-1-04; OMAP 12-2005, f. 3-11-05, cert. ef. 4-1-05; DMAP 25-2007, f. 12-11-07, cert. ef. 1-1-08; DMAP 18-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 38-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 16-2009, f. 6-12-09, cert. ef. 7-1-09; DMAP 41-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 14-2010, f. 6-10-10, cert. ef. 7-1-10; DMAP 31-2010, f. 12-15-10, cert. ef. 1-1-11; DMAP 17-2011, f. & cert. ef. 7-12-11; DMAP 41-2011, f. 12-21-11, cert. ef. 1-1-12; DMAP 46-2011, f. 12-23-11, cert. ef. 1-1-12; DMAP 13-2013, f. 3-27-13, cert. ef. 4-1-13; DMAP 28-2013(Temp), f. 6-26-13, cert. ef. 7-1-13 thru 12-28-13; DMAP 68-2013, f. 12-5-13, cert. ef. 12-23-13; DMAP 75-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14; DMAP 10-2014(Temp), f. & cert. ef. 2-28-14 thru 8-27-14; DMAP 19-2014(Temp), f. 3-28-14, cert. ef. 4-1-14 thru 6-30-14; DMAP 36-2014, f. & cert. ef. 6-27-14; DMAP 56-2014, f. 9-26-14, cert. ef. 10-1-14; DMAP 7-2015(Temp), f. & cert. ef. 2-17-15 thru 8-15-15; DMAP 28-2015, f. & cert. ef. 5-1-15; DMAP 46-2015(Temp), f. 8-26-15, cert. ef. 10-1-15 thru 3-28-16; DMAP 51-2015, f. 9-22-15, cert. ef. 10-1-15; DMAP 65-2015, f. 11-3-15, cert. ef. 12-1-15; DMAP 74-2015(Temp), f. 12-18-15, cert. ef. 1-1-16 thru 6-28-16; DMAP 5-2016(Temp), f. & cert. ef. 2-9-16 thru 6-28-16; DMAP 36-2016, f. 6-30-16, cert. ef. 7-1-16; DMAP 45-2016, f. & cert. ef. 7-13-16; DMAP 71-2016(Temp), f. 12-28-16, cert. ef. 1-1-17 thru 6-29-17

Rule Caption: CCOs Ensure Discharge of Members from Extended/Long-Term Psychiatric Programs as Soon As Reasonably Possible

Adm. Order No.: DMAP 72-2016(Temp)

Filed with Sec. of State: 12-28-2016

Certified to be Effective: 1-1-17 thru 6-29-17

Notice Publication Date:

Rules Amended: 410-141-3160

Subject: The Division's rule requires Coordinated Care Organizations (CCOs) to demonstrate that they are able to provide care coordination services efficiently, effectively, and economically. The changes to this rule outline that CCOs shall ensure members receiving services from extended or long-term psychiatric care programs, such as secure residential facilities, shall receive follow-up services as medically appropriate to facilitate discharge as soon as reasonably possible. CCOs shall coordinate the care of members that enter Oregon State Hospital and develop agreements with community mental health programs regarding the management of adults who were members upon entering the state hospital and are transitioning from the Oregon State Hospital. The Division needs to create these temporary rules to provide immediate direction and clarification to the Coordinated Care Organizations and Prepaid Health Plans in order that they should be compliant with the Code of Federal Regulations.

Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-141-3160

Integration and Care Coordination

(1) In order to achieve the objectives of providing CCO members integrated person-centered care and services, CCOs shall assure that physical, behavioral, and oral health services are consistently provided to members in all age groups and all covered populations when medically appropriate and consistent with the needs identified in the community health assessment and community health improvement plan (Plan). CCOs shall develop, implement, and participate in activities supporting a continuum of care that integrates physical, behavioral, and oral health interventions in ways that are whole to the member and serve members in the most integrated setting appropriate to their needs:

(a) CCOs shall ensure the provision of care coordination, treatment engagement, preventive services, community-based services, and follow-up services for all members' health conditions;

(b) CCOs shall enter into contracts with providers of residential chemical dependency treatment services not later than July 1, 2013, and shall notify the Authority within 30 calendar days of executing the contract;

(c) By July 1, 2014, each CCO shall have a contractual relationship with any dental care organization that serves members in the area where they reside;

(d) CCOs shall have adequate, timely, and appropriate access to hospital and specialty services. CCOs shall establish hospital and specialty service agreements that include the role of patient-centered primary care homes and that specify processes for requesting hospital admission or specialty services, performance expectations for communication, and medical records sharing for specialty treatments at the time of hospital admission or discharge for after-hospital follow up appointments;

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(e) CCOs shall demonstrate how hospitals and specialty services shall be accountable to achieve successful transitions of care. CCOs shall ensure members are transitioned out of hospital settings into the most appropriate independent and integrated community settings. This includes transitional services and supports for children, adolescents, and adults with serious behavioral health conditions facing admission to or discharge from acute psychiatric care, residential treatment settings and the state hospital.

(2) CCOs shall develop evidence-based or innovative strategies for use within their delivery system networks to ensure access to integrated and coordinated care, especially for members with intensive care coordination needs. CCOs shall:

(a) Demonstrate that each member has a primary care provider or primary care team that is responsible for coordination of care and transitions and that each member has the option to choose a primary care provider of any eligible CCO participating provider type.

(b) Ensure that members with high health needs, multiple chronic conditions, or behavioral health issues are involved in accessing and managing appropriate preventive, health, behavioral health, remedial and supportive care and services;

(c) Use and require its provider network to use individualized care plans to the extent feasible to address the supportive and therapeutic needs of each member, particularly those with intensive care coordination needs, including members with severe and persistent mental illness receiving home and community-based services covered under the state's 1915(1) State Plan Amendment, and those receiving DHS Medicaid-funded long-term care services. Plans shall reflect member family or caregiver preferences and goals to ensure engagement and satisfaction;

(d) Implement systems to assure and monitor improved transitions in care so that members receive comprehensive transitional care, and improve members' experience of care and outcomes, particularly for transitions between hospitals and long-term care;

(e) Demonstrate that participating providers have the tools and skills necessary to communicate in a linguistically and culturally appropriate fashion with members and their families or caregivers and to facilitate information exchange between other providers and facilities (e.g., addressing issues of health literacy, language interpretation, having electronic health record capabilities);

(f) Work across provider networks to develop partnerships necessary to allow for access to and coordination with social and support services, including crisis management and community prevention and self-managed programs;

(g) Communicate its integration and coordination policies and procedures to participating providers, regularly monitor providers' compliance and take any corrective action necessary to ensure compliance. CCOs shall document all monitoring and corrective action activities.

(3) CCO's shall assess the needs of its membership and make available supported employment and assertive community treatment services available when medically appropriate and when an appropriate provider is available. Appropriate providers are those that meet the requirements in 309-016-0825. When no appropriate provider is available, the CCO shall consult with the Division and develop an approved plan to make supported employment and assertive community treatment services available.

(4) CCOs shall develop and use Patient Centered Primary Care Home (PCPCH) capacity by implementing a network of PCPCHs to the maximum extent feasible:

(a) PCPCHs shall become the focal point of coordinated and integrated care, so that members have a consistent and stable relationship with a care team responsible for comprehensive care management;

(b) CCOs shall develop mechanisms that encourage providers to communicate and coordinate care with the PCPCH in a timely manner, using electronic health information technology, where available;

(c) CCOs shall engage other primary care provider (PCP) models to be the primary point of care and care management for members, where there is insufficient PCPCH capacity;

(d) CCOs shall develop services and supports for primary care that are geographically located as close as possible to the member's residence and are, if available, offered in nontraditional settings that are accessible to families, diverse communities, and underserved populations. CCOs shall ensure that all other services and supports are provided as close to the member's residence as possible.

(5) If a CCO implements other models of patient-centered primary health care in addition to the use of PCPCH, the CCO shall ensure member access to coordinated care services that provide effective wellness and prevention, coordination of care, active management and support of individuals with special health care needs, a patient and family-centered approach

to all aspects of care, and an emphasis on whole-person care in order to address a patient's physical and behavioral health care needs.

(6) If the member is living in a DHS Medicaid funded long-term care (LTC) nursing facility or community-based care facility, or other residential facility, the CCO shall communicate with the member and the DHS Medicaid funded long-term care provider or facility about integrated and coordinated care services:

(a) The CCO shall establish procedures for coordinating member health services and how it will work with long-term care providers or facilities to develop partnerships necessary to allow for access to and coordination of CCO services with long-term care services and crisis management services;

(b) CCOs shall coordinate transitions to DHS Medicaid-funded long-term care by communicating with local AAA/APD offices when members are being discharged from an inpatient hospital stay or transferred between different LTC settings;

(c) CCOs shall develop a Memorandum of Understanding (MOU) or contract with the local type B Area Agency on Aging or the local office of the Department's APD, detailing their system coordination agreements regarding members' receiving Medicaid-funded LTC services.

(7) For members who are discharged to post hospital extended care, at the time of admission to a skilled nursing facility (SNF), the CCO shall notify the appropriate AAA/APD office and begin appropriate discharge planning. The CCO shall pay for the post hospital extended care benefit if the member were a member of the CCO during the hospitalization preceding the nursing facility placement. The CCO shall notify the SNF and the member no later than two working days before discharge from post hospital extended care. For members who are discharged to Medicare Skilled Care, the CCO shall notify the appropriate AAA/APD office when the CCO learns of the admission.

(8) When a member's care is being transferred from one CCO to another or for OHP clients transferring from fee-for-service or PHP to a CCO, the CCO shall make every reasonable effort within the laws governing confidentiality to coordinate, including but not limited to ORS 414.679, transfer of the OHP client into the care of a CCO participating provider.

(9) CCOs shall establish agreements with the Local Mental Health Authorities (LMHAs) and Community Mental Health Programs (CMHPs) operating in the service area, consistent with ORS 414.153, to maintain a comprehensive and coordinated behavioral health delivery system and to ensure member access to mental health services, some of which are not provided under the global budget.

(10) CCOs shall coordinate a member's care even when services or placements are outside the CCO service area. CCO assignment is based on the case member's residence and referred to as county of origin or jurisdiction. Temporary placements by the Authority, Department, or health services placements for services including residential placements may be located out of the service area; however, the CCO shall coordinate care while in placement and discharge planning for return to county of origin or jurisdiction. For out of area placements, an out of area exception shall be made for the member to retain the CCO enrollment in the county of origin or jurisdiction, while the member's placement is a temporary residential placement elsewhere. For program placements in Child Welfare, BRS, OYA, and PTRS, refer to OAR 410-141-3050 for program specific rules.

(11) CCOs shall ensure that members receiving services from extended or long-term psychiatric care programs, such as secure residential facilities, shall receive follow-up services as medically appropriate to facilitate discharge as soon as reasonably possible. CCOs shall coordinate the care of members that enter the Oregon State Hospital and develop agreements with community mental health programs regarding the management of adults who were members upon entering the state hospital and are transitioning from the Oregon State Hospital.

(12) CCOs shall coordinate with Community Emergency Service Agencies including, but not limited to, police, courts, juvenile justice, corrections, LMHAs, and CMHPs to promote an appropriate response to members experiencing a behavioral health crisis and to prevent inappropriate use of the emergency department or jails.

(13) CCOs shall accept FFS authorized services, medical, and pharmacy prior authorizations, ongoing services where a FFS prior authorization is not required, and services authorized by the Division's Medical Management Review Committee for 90 days, or until the CCO can establish a relationship with the member and develop an evidence based, medically appropriate coordinated care plan, whichever is later, except where customized equipment, services, procedures, or treatment protocol require service continuation for no less than six months.

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(14) Except as provided in OAR 410-141-3050, CCOs shall coordinate patient care, including care required by temporary residential placement outside the CCO service area, or out-of-state care in instances where medically necessary specialty care is not available in Oregon:

(a) CCO enrollment shall be maintained in the county of origin with the expectation of the CCO to coordinate care with the out of area placement and local providers;

(b) The CCO shall coordinate the discharge planning when the member returns to the county of origin.

(15) CCOs shall coordinate and authorize care, including instances where the member's medically appropriate care requires services and providers outside the CCO's contracted network, in another area, out-of-state, or a unique provider specialty not otherwise contracted. The CCO shall pay the services and treatment plan as a non-participating provider pursuant to OAR 410-120-1295.

Stat. Auth.: ORS 413.042, 414.615, 414.625, 414.635 & 414.651
Stats. Implemented: ORS 414.610-414.685

Hist.: DMAP 16-2012(Temp), f. & cert. ef. 3-26-12 thru 9-21-12; DMAP 37-2012, f. & cert. ef. 8-1-12; DMAP 1-2013(Temp), f. & cert. ef. 1-4-13 thru 7-2-13; DMAP 34-2013, f. & cert. ef. 6-27-13; DMAP 72-2016(Temp), f. 12-28-16, cert. ef. 1-1-17 thru 6-29-17

Rule Caption: Prioritized List Effective 1/1/17 Including Modifications to Biennial Changes January 1, 2016–December 31, 2017

Adm. Order No.: DMAP 73-2016(Temp)

Filed with Sec. of State: 12-28-2016

Certified to be Effective: 1-1-17 thru 6-29-17

Notice Publication Date:

Rules Amended: 410-141-0520

Subject: OAR 410-141-0520 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, f. 1-1-10 thru 3-29-10; DMAP 1-2010(Temp), f. & cert. ef. 1-15-10 thru 3-29-10; DMAP 3-2010, f. 3-5-10, cert. ef. 3-17-10; DMAP 5-2010(Temp), f. 3-26-10, cert. ef. 4-1-10 thru 9-1-10; DMAP 10-2010, f. & cert. ef. 4-26-10; DMAP 27-2010(Temp), f. 9-24-10, cert. ef. 10-1-10 thru 3-25-11; DMAP 43-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 4-2011, f. 3-23-11, cert. ef. 4-1-11; DMAP 24-2011(Temp), f. 9-15-11, cert. ef. 10-1-11 thru 3-26-12; DMAP 45-2011, f. 12-21-11, cert. ef. 12-23-11; DMAP 47-2011(Temp), f. 12-13-11, cert. ef. 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

Rule Caption: Compliance with a January 28, 2016 CMS Informational Bulletin Requiring Alternate Benefit Changes in OHP

Adm. Order No.: DMAP 74-2016

Filed with Sec. of State: 12-29-2016

Certified to be Effective: 1-1-17

Notice Publication Date: 12-1-2016

Rules Amended: 410-141-3070, 410-141-3300, 410-141-3395

Subject: The Affordable Care Act (ACA) amended section 1937 of the Social Security Act (the Act), requiring that Alternate Benefit Plan (ABP) coverage packages meet Essential Health Benefit (EHB) standards. A regulation published in 2015 made several regulatory changes to EHB standards that impact Medicaid ABPs (The Health and Human Services (HHS) Notice of Benefit and Payment Parameters for 2016, Final Regulation (CMS-9944-F), published by the Center for Consumer Information and Insurance Oversight (CCIIO) on February 27, 2015, (hereby called the CCIIO 2016 Payment Notice)). The Department of Labor issued interpretive information that also impacts preventive and contraceptive services under Medicaid ABPs. The CCIIO 2016 Payment Notice added new requirements for plans to use a pharmacy and therapeutics (P&T) committee starting in plan years beginning on or after January 1, 2017. Provisions regarding the P&T committee structure and operations, the formulary exceptions process, and the accessibility of formulary information were also included. Also, in order to be considered to provide EHB prescription drug coverage, health plans must publish up-to-date, accurate, and complete lists of all covered drugs on their formulary drug lists, including any tiering structures that have been adopted and any restrictions on the manner in which certain drugs can be obtained (see 45 CFR 156.122(d)). To the extent that a Medicaid ABP is furnished through a managed care network (including a pharmacy benefit manager), the ABP must satisfy the requirements of 45 CFR 156.122(e) by maintaining access to in-network retail pharmacies.

Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-141-3070

Preferred Drug List Requirements

(1) Prescription drugs are a covered service based on the funded Condition/Treatment Pairs. CCOs shall pay for prescription drugs except:

(a) As otherwise provided, mental health drugs that are in Standard Therapeutic Class 7 (ataractics-tranquilizers) or Standard Therapeutic Class 11 (psychostimulants-antidepressants), (based on the National Drug Code (NDC) as submitted by the manufacturer to First Data Bank);

(b) Depakote, Lamictal, and their generic equivalents and those drugs that the Authority specifically carved out from capitation according to sections (14) and (15) of this rule;

(c) For drugs covered under Medicare Part D when the client is fully dual eligible.

(2) CCOs may use the statewide Practitioner-Managed Prescription Drug Plan under ORS 414.330 to 414.337.

(3) CCOs may use a restrictive drug list as long as it allows access to other drug products not on the drug list through some process such as prior authorization (PA).

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(4) CCOs shall publish up-to-date, accurate, and complete lists of all covered drugs on their preferred drug lists, including any tiering structures, that have been adopted and any restrictions on the manner in which certain drugs can be obtained.

(5) As specified in 45 CFR 156.122, the preferred drug list must:

(a) Exist in a manner easily accessible to members and potential members, state and federal government, and the general public;

(b) Be accessible on the plan's public website through a clearly identifiable web link or tab without requiring an individual access account or policy number; and

(c) If the issuer has more than one plan, the member should be easily able to discern which of the preferred drug lists applies to which plan.

(6) The preferred drug list shall:

(a) Include Federal Drug Administration (FDA) approved drug products for each therapeutic class sufficient to ensure the availability of covered drugs with minimal prior approval intervention by the provider of pharmaceutical services;

(b) Include at least one item in each therapeutic class of over-the-counter medications; and

(c) Be revised periodically to assure compliance with this requirement.

(7) CCOs shall cover at least one form of contraception within each of the eighteen methods identified by the FDA. As stated in 410-141-3320, the member may refer oneself directly to family planning services without getting a referral from a PCP or other participating provider;

(8) CCOs shall provide their participating providers and their pharmacy subcontractor with:

(a) Their drug list and information about how to make non-drug listed requests;

(b) Updates made to their drug list within 30 days of a change that may include, but are not limited to:

(A) Addition of a new drug;

(B) Removal of a previously listed drug; and

(C) Generic substitution.

(9) Preauthorization for prescription drugs marked for urgent review shall be reviewed within 24 hours. If an urgent preauthorization for a prescription drug cannot be completed within 24 hours, the CCO shall provide for the dispensing of at least a 72-hour supply if there is an immediate medical need for the drug. All requests, including those not marked urgent, shall be reviewed and decision rendered within 72 hours of original receipt of the preauthorization request.

(10) CCOs shall authorize the provision of a drug requested by the Primary Care Provider or referring provider if the approved prescriber certifies medical necessity for the drug such as:

(a) The equivalent of the drug listed has been ineffective in treatment; or

(b) The drug listed causes or is reasonably expected to cause adverse or harmful reactions to the member.

(11) Prescriptions for Physician Assisted Suicide under the Oregon Death with Dignity Act are excluded. Payment is governed by OAR 410-121-0150.

(12) CCOs may not authorize payment for any Drug Efficacy Study Implementation (DESI) Less Than Effective (LTE) drugs that have reached the FDA Notice of Opportunity for Hearing (NOOH) stage, as specified in OAR 410-121-0420 (DESI)(LTE) Drug List.

(13) A CCO may seek to add drugs to the list contained in section (1) of this rule by submitting a request to the Authority no later than March 1 of any contract year. The request must contain all of the following information:

(a) The drug name;

(b) The FDA approved indications that identifies the drug may be used to treat a severe mental health condition; and

(c) The reason that the Authority should consider this drug for carve out.

(14) If a CCO requests that a drug not be paid within the global budget, the Authority shall exclude the drug from the global budget for the following January contract cycle if the Authority determines that the drug has an approved FDA indication for the treatment of a severe mental health condition such as major depressive, bi-polar, or schizophrenic disorders.

(15) The Authority shall pay for a drug that is not included in the global budget pursuant to the Pharmaceutical Services program rules (chapter 410, division 121). A CCO may not reimburse providers for carved-out drugs.

(16) CCOs shall submit quarterly utilization data within 60 days of the date of service as part of the CMS Medicaid Drug Rebate Program requirements pursuant to Section 2501 of the Affordable Care Act.

(17) CCOs are encouraged to provide payment only for outpatient and physician administered drugs produced by manufacturers that have valid rebate agreements in place with the CMS as part of the Medicaid Drug Rebate Program. CCOs may continue to have some flexibility in maintaining preferred drug lists regardless of whether the manufacturers of those drugs participate in the Medicaid Drug Rebate Program.

(18) CCOs shall utilize a pharmacy and therapeutics (P&T) committee to maintain written documentation of the rationale for all decisions regarding the drug list development and revisions. The committee shall follow the membership and meeting standards specified in 45 CFR 156.122(3)(i) and (ii). Meetings shall be held at least quarterly.

Stat. Auth.: ORS 413.042, 414.615, 414.625, 414.635 & 414.651

Stats. Implemented: ORS 414.610-414.685

Hist.: DMAP 16-2012(Temp), f. & cert. ef. 3-26-12 thru 9-21-12; DMAP 37-2012, f. & cert. ef. 8-1-12; DMAP 21-2014(Temp), f. & cert. ef. 4-1-14 thru 9-28-14; DMAP 32-2014, f. 5-30-14, cert. ef. 7-1-14; DMAP 40-2016, f. 6-30-16, cert. ef. 7-1-16; DMAP 74-2016, f. 12-29-16, cert. ef. 1-1-17

410-141-3300

Coordinated Care Organization (CCO) Member Education and Information Requirements

(1) For the purpose of this rule, the following definitions apply:

(a) "Alternate Format" means any alternate approach to presenting print information to an individual with a disability. The Americans with Disabilities Act (ADA) groups the standard alternate formats: braille, large (18 point) print, audio narration, oral presentation, and electronic file along with other aids and services for other disabilities, including sign language interpretation and sighted guide;

(b) "Alternate Format Statement Insert" means an insert developed by the Oregon Health Authority that includes instructions on how to receive an alternate format or oral interpretation of materials translated into the state's top sixteen preferred written languages as identified by OHP enrollees. CCOs shall insert their contact information into the template.

(c) "Health Literacy" means the degree to which individuals have the capacity to obtain, process, and understand basic health information needed to make appropriate health decisions regarding services needed to prevent or treat illness.

(d) "Prevalent Non-English Language" means: All non-English languages that are identified as the preferred written language by the lesser of either:

(A) 5 percent of the CCO's total OHP enrollment; or

(B) 1,000 of the CCO's members.

(2) CCOs may engage in activities for existing members related to outreach, health promotion, and health education. The Division shall approve, prior to distribution, any written communication by the CCO or its subcontractors and providers that:

(a) Is intended solely for members; and

(b) Pertains to requirements for obtaining coordinated care services at service area sites or benefits.

(3) CCOs may communicate with providers, caseworkers, community agencies, and other interested parties for informational purposes. The intent of these communications should be informational only and not to entice or solicit membership. Communication methodologies may include but are not limited to brochures, pamphlets, newsletters, posters, fliers, websites, health fairs, or sponsorship of health-related events. CCOs shall address health literacy issues by preparing these documents at a low-literacy reading level, incorporating graphics and utilizing alternate formats.

(4) The creation of name recognition because of the CCO's health promotion or education activities shall not constitute an attempt by the CCO to influence a client's enrollment.

(5) A CCO or its subcontractor's communications that express participation in or support for a CCO by its founding organizations or its subcontractors shall not constitute an attempt to compel or entice a client's enrollment.

(6) The following shall not constitute marketing or an attempt by the CCO to influence client enrollment:

(a) Communication to notify dual-eligible members of opportunities to align CCO provided benefits with a Medicare Advantage or Special Needs Plan;

(b) Improving coordination of care;

(c) Communicating with providers serving dual-eligible members about unique care coordination needs; or

(d) Streamlining communications to the dually-enrolled member to improve coordination of benefits.

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(7) CCOs shall have a mechanism to help members understand the requirements and benefits of the CCO's integrated and coordinated care plan. The mechanisms developed shall be culturally and linguistically appropriate.

(8) CCOs shall have written procedures, criteria, and an ongoing process of member education and information sharing that includes member orientation, member handbook, and health education. As a CCO transitions to fully coordinating a member's care, the CCO is responsible only for including information about the care they are coordinating. CCOs shall update their educational material as they add coordinated services. Member education shall:

(a) Include information about the coordinated care approach and how to navigate the coordinated health care system, including where applicable for dual-eligible individuals, the process for coordinating Medicaid and Medicare benefits;

(b) Clearly explain how members may receive assistance from advocates, including certified health care interpreters, community health workers, peer wellness specialists, and personal health navigators and include information to members that interpreter services at provider offices are free to CCO members as stated in 42 CFR 438.10(4).

(9) Within 14 calendar days or a reasonable timeframe of a CCO's receiving notice of a member's enrollment, CCOs shall mail a welcome packet to new members and to members returning to the CCO twelve months or more after previous enrollment. The packet shall include, at a minimum, a welcome letter, a member handbook, and information on how to access a provider directory, including a list of any in-network retail and mail-order pharmacies.

(10) Provider directories shall include notation of the following: names including names of in-network retail and mail-order pharmacies, locations, telephone numbers including TTY, office hours, accessibility for members with disabilities, non-English languages spoken by current contracted providers in the enrollee's service area, and direction on how members can access information on providers that are not accepting new patients.

(11) For those who are existing members, a CCO shall notify members annually of the availability of a member handbook and provider directory and how to access those materials. CCOs shall send hard copies upon request.

(12) CCOs shall facilitate materials as follows:

(a) Translate the following written materials into the prevalent non-English languages served by the CCO:

(A) Welcome Packets that include welcome letters and member handbooks; and

(B) Notices of medical benefit changes.

(b) Alternate format statement inserts with:

(A) Communications regarding member enrollment; and

(B) Notice of Action to deny, reduce, or stop a benefit.

(c) Accommodate requests of the member to translate written materials into prevalent non-English languages served by the CCO;

(d) Make oral interpretation services available free of charge to each potential member and member. This applies to all non-English languages, not just prevalent non-English languages;

(e) Notify enrollees:

(A) That oral interpretation is available free of charge for any language, and written information is available in prevalent non-English languages and alternate formats; and

(B) How to access those services.

(f) Make available materials in alternate formats by request. Alternate formats include but are not limited to audio recording, close-captioned videos, large type, and braille.

(13) A CCO shall electronically provide to the Division for approval each version of the printed welcome packet that includes a welcome letter, member handbook, and information on how to access a provider directory. At a minimum, the member handbook shall contain the following:

(a) Revision date;

(b) Tag lines in English and other prevalent non-English languages, as defined in this rule, spoken by populations of members. The tag lines shall be located at the beginning of the document for the ease of the member and describe how members may access free sign and oral interpreters, as well as translations and materials in other formats. Alternate formats may include but are not limited to audio recordings, close-captioned videos, large (18 point) type, and braille.

(c) CCO's office location, mailing address, web address if applicable, office hours, and telephone numbers including TTY;

(d) Availability and access to coordinated care services through a patient-centered primary care home or other primary care team with the member as a partner in care management. Explain how to choose a PCP, how to make an appointment, and how to change PCPs and the CCO's policy on changing PCPs;

(e) How to access information on contracted providers currently accepting new members and any restrictions on the member's freedom of choice among participating providers;

(f) What participating or non-participating provider services the member may self-refer;

(g) Policies on referrals for specialty care, including prior authorization requirements and how to request a referral;

(h) Explanation of intensive care coordination services and how members with the following special health care needs can access intensive care coordination services: Those who are aged, blind, or disabled or who have complex medical needs, high health needs, multiple chronic conditions, mental illness, or chemical dependency.

(i) Information about the coordinated care approach, how to navigate the coordinated care health care system as applicable to dual-eligible individuals, and the process for coordinating Medicaid and Medicare benefits;

(j) How and where members are to access urgent care services and advice, including how to access these services and advice when away from home;

(k) How and when members are to use emergency services, both locally and when away from home, including examples of emergencies;

(L) Information on contracted hospitals in the member's service area;

(m) Information on post-stabilization care after a member is stabilized in order to maintain, improve, or resolve the member's condition;

(n) Information on the CCO's grievance and appeals processes and the Division's contested case hearing procedures, including:

(A) Information about assistance in filling out forms and completing the grievance process available from the CCO to the member as outlined in OAR 410-141-3260;

(B) Information about the member's right to continued benefits during the grievance process as provided in OAR 410-141-3263.

(o) Information on the member's rights and responsibilities, including the availability of the OHP Ombudsman;

(p) Information on charges for non-covered services and the member's possible responsibility for charges if they go outside of the CCO for non-emergent care, including information specific to deductibles and coinsurance for dually-enrolled qualified Medicare beneficiaries;

(q) Information about when providers may bill clients for services and what to do if they receive a bill, including information specific to payment responsibilities for dually-enrolled qualified Medicare beneficiaries;

(r) The transitional procedures for new members to obtain prescriptions, supplies, and other necessary items and services in the first month of enrollment if they are unable to meet with a PCP or PCD, other prescribing provider, or obtain new orders during that period; including specific communications for members who are becoming new Medicare enrollees;

(s) Information on advance directive policies including:

(A) Member rights under federal and Oregon law to make decisions concerning their medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate advance directives;

(B) The CCO's policies for implementation of those rights, including a statement of any limitation regarding the implementation of advanced directives as a matter of conscience.

(t) Whether or not the CCO uses provider incentives to reduce cost by limiting services;

(u) The member's right to request and obtain copies of their clinical records, whether they may be charged a reasonable copying fee and that they may request the record be amended or corrected;

(v) How and when members are to obtain ambulance services;

(w) Resources for help with transportation to appointments with providers;

(x) Explanation of the covered and non-covered coordinated care services in sufficient detail to ensure that members understand the benefits to which they are entitled;

(y) How to access in-network retail and mail-order pharmacies;

(z) How members are to obtain prescriptions including information on the process for obtaining non-formulary and over-the-counter drugs;

(aa) The CCO's confidentiality policy;

(bb) How and where members are to access any benefits that are available under OHP but are not covered under the CCO's contract, including any cost sharing;

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(cc) When and how members can voluntarily and involuntarily disenroll from CCOs and change CCOs;

(dd) CCOs shall, at a minimum, annually review their member handbook for accuracy and update it with new and corrected information to reflect OHP program changes and the CCO's internal changes. If changes affect the member's ability to use services or benefits, the CCO shall offer the updated member handbook to all members;

(ee) The "Oregon Health Plan Client Handbook" is in addition to the CCO's member handbook, and a CCO may not use it to substitute for any component of the CCO's member handbook.

(14) Member health education shall include:

(a) Information on specific health care procedures, instruction in self-management of health care, promotion and maintenance of optimal health care status, patient self-care, and disease and accident prevention. CCO providers or other individuals or programs approved by the CCO may provide health education. CCOs shall endeavor to provide health education in a culturally sensitive and linguistically appropriate manner in order to communicate most effectively with individuals from non-dominant cultures;

(b) Information specifying that CCOs may not prohibit, or otherwise restrict, a provider acting within the lawful scope of practice from advising or advocating on behalf of an enrollee who is his or her patient, for the following:

(A) The enrollee's health status, medical care, or treatment options, including any alternative treatment that may be self-administered;

(B) Any information the enrollee needs to decide among all relevant treatment options;

(C) The risks, benefits, and consequences of treatment or non-treatment.

(c) CCOs shall ensure development and maintenance of an individualized health educational plan for members whom their provider has identified as requiring specific educational intervention. The Division may assist in developing materials that address specifically identified health education problems to the population in need;

(d) Explanation of intensive care coordination services and how to access intensive care coordination through outreach to members with special health care needs who are aged, blind, or disabled, or who have complex medical needs or high health care needs, multiple chronic conditions, mental illness, or chemical dependency;

(e) The appropriate use of the delivery system, including proactive and effective education of members on how to access emergency services and urgent care services appropriately;

(f) CCOs shall provide written notice to affected members of any significant changes in program or service sites that affect the member's ability to access care or services from CCO's participating providers. The CCO shall provide, translated as appropriate, the notice at least 30 calendar days before the effective date of that change, or as soon as possible if the participating provider has not given the CCO sufficient notification to meet the 30-day notice requirement. The Division shall review and approve the materials within two working days.

(15) Informational materials that CCOs develop for members shall meet the language requirements identified in this rule and be culturally and linguistically sensitive to members with disabilities or reading limitations, including members whose primary language is not English:

(a) CCOs shall provide free interpreters for all of their members with hearing impairments and limited English proficiency who request them. This also applies to family members and caregivers with hearing impairments or limited English proficiency who need to understand the member's condition and care:

(A) CCOs shall translate materials into all languages as identified in this rule. Written and spoken language preferences are indicated on the OHP application form and reported to plans in 834 enrollment updates. CCOs shall honor requests made by other sources such as members, family members, or caregivers for language accommodation, translating to the member's language needs as requested;

(B) CCOs shall provide written translations of informational materials including their welcome packet, consisting of at least a welcome letter and a member handbook in all languages as specified in this rule and as identified by members either through the OHP application or other means as their preferred written language.

(b) Form correspondence may be sent to members, including, but not limited to, enrollment information and notices of action to deny or stop a benefit, accompanied by alternate format statement inserts as specified in section (12) of this rule. If sent in English to members who prefer a different language, the tag lines, placed in the alternate format statement insert

shall have instructions on how to receive an oral or written translation of the material.

(16) CCOs shall provide an identification card to members, unless waived by the Division, that contains simple, readable, and usable information on how to access care in an urgent or emergency situation. The cards are solely for the convenience of the CCO, members, and providers.

Stat. Auth.: ORS 413.042, 414.615, 414.625, 414.635 & 414.651

Stats. Implemented: ORS 414.610 - 414.685

Hist.: DMAP 16-2012(Temp), f. & cert. ef. 3-26-12 thru 9-21-12; DMAP 37-2012, f. & cert. ef. 8-1-12; DMAP 16-2015, f. 3-31-15, cert. ef. 4-1-15; DMAP 21-2015, f. 4-14-15, cert. ef. 4-15-15; DMAP 24-2015, f. & cert. ef. 4-15-15; DMAP 44-2016(Temp), f. & cert. ef. 7-6-16 thru 1-1-17; DMAP 74-2016, f. 12-29-16, cert. ef. 1-1-17

410-141-3395

Member Protection Provisions

(1) In the event of a finding of impairment by OHA or of a termination of certification as a CCO or of the CCO contract, members of the CCO shall be offered disenrollment from the CCO and enrollment in accordance with OHA rule.

(2) For the purpose of this section only, and only in the event of a finding of impairment by OHA or of a termination of certification or of the CCO contract, any covered health care service furnished within the state by a provider to a member of a CCO shall be considered to have been furnished pursuant to a contract between the provider and the CCO with whom the member was enrolled when the services were furnished.

(3) Each contract between a CCO and a provider of health services shall provide that if the CCO fails to pay for covered health services as set forth in the contract, the member is not liable to the provider for any amounts owed by the CCO.

(4) If the contract between the contracting provider and the CCO has not been reduced to writing or fails to contain the provisions required by this rule, the member is not liable to the contracting provider for any amounts owed by the CCO.

(5) No contracting provider or agent, trustee or assignee of the contracting provider shall bill a member, send a member's bill to a Collection Agency, or maintain a civil action against a member to collect any amounts owed by the CCO for which the member is not liable to the contracting provider in this rule and under 410-120-1280.

(6) Nothing in this section impairs the right of a provider to charge, collect from, and attempt to collect from or maintain a civil action against a member for any of the following:

(a) Deductible or coinsurance amounts;

(b) Health services not covered by the CCO, if a valid OHP 3165, or facsimile, signed by the client, has been completed as described in OAR 410-120-1280; or

(c) Health services rendered after the termination of the contract between the CCO and the provider, unless the health services were rendered during the confinement in an inpatient facility and the confinement began prior to the date of termination or unless the provider has assumed post-termination treatment obligations under the contract. Before providing a non-covered service, the provider must complete an OHP 3165, or facsimile, as described in OAR 410-120-1280.

Stat. Auth.: ORS 413.042, 414.615, 414.625, 414.635 & 414.651

Stats. Implemented: ORS 414.610 - 414.685

Hist.: DMAP 16-2012(Temp), f. & cert. ef. 3-26-12 thru 9-21-12; DMAP 37-2012, f. & cert. ef. 8-1-12; DMAP 60-2013, f. & cert. ef. 10-31-13; DMAP 74-2016, f. 12-29-16, cert. ef. 1-1-17

Rule Caption: Amending Rules to Comply with Amended CFR's, Gender Identity and Provider Enrollee Communications

Adm. Order No.: DMAP 75-2016

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Rules Amended: 410-141-3015, 410-141-3145, 410-141-3260, 410-141-3300

Rules Repealed: 410-141-3015(T), 410-141-3145(T), 410-141-3260(T), 410-141-3300(T)

Subject: These rules provide direction and clarification to the Coordinated Care Organizations and Prepaid Health Plans in order to be compliant with the newly revised Code of Federal Regulations that became effective within sixty days of publication, May 5, 2016. These rules need to be amended to reflect current federal changes related to provider enrollee communications requirements and the addition of gender identity to the certification criteria.

Rules Coordinator: Sandy Cafourek—(503) 945-6430

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410-141-3015

Certification Criteria for Coordinated Care Organizations

(1) Applicants shall submit applications to the Authority describing their capacity and plans for meeting the goals and requirements established by the Oregon Integrated and Coordinated Health Care Delivery System including being prepared to enroll all eligible individuals within the CCO's proposed service area. The Authority shall use the RFA procurement process described in OAR 410-141-3010.

(2) In addition to the requirements for CCOs expressed in the laws establishing Health System Transformation, the Authority interprets the qualifications and expectations for CCO certification within the context of the Oregon Health Policy Board's report, Coordinated Care Organizations Implementation Proposal: HB 3650 Health System Transformation (Jan. 24, 2012).

(3) Applicants shall describe their demonstrated experience and capacity for:

(a) Managing financial risk and establishing financial reserves;

(b) Meeting the following minimum financial requirements:

(A) Maintaining restricted reserves of \$250,000 plus an amount equal to 50 percent of the entity's total actual or projected liabilities above \$250,000;

(B) Maintaining a net worth in an amount equal to at least 5 percent of the average combined revenue in the prior two quarters of the participating health care entities.

(c) Operating within a fixed global budget;

(d) Developing and implementing alternative payment methodologies that are based on health care quality and improved health outcomes;

(e) Coordinating the delivery of physical health care, mental health and Substance Use Disorder (SUD) services, oral health care, and covered long-term care services;

(f) Engaging community members and health care providers in improving the health of the community and addressing regional, cultural, socioeconomic, and racial disparities in health care that exist among the entity's enrollees and in the entity's community.

(4) In selecting one or more CCOs to serve a geographic area, the Authority shall:

(a) For members and potential members, optimize access to care and choice of providers;

(b) For providers, optimize choice in contracting with CCOs; and

(c) Allow more than one CCO to serve the geographic area if necessary to optimize access and choice under this subsection.

(5) Evaluation of CCO applications shall account for the developmental nature of the CCO system. The Authority recognizes that CCOs and partner organizations will need time to develop capacity, relationships, systems, and experience to fully realize the goals envisioned by the Oregon Integrated and Coordinated Health Care Delivery System. The Authority shall thoroughly review how the application describes community involvement in the governance of the CCO and the CCO's strategic plan for developing its community health assessment and community health improvement plan:

(a) In all cases, CCOs shall have plans in place to meet the criteria laid out in these rules and the application process and to make sufficient progress in implementing plans and realizing the goals established in contract;

(b) Each criterion will be listed followed by the elements that shall be addressed during the initial certification described in this rule without limiting the information that is requested in the RFA concerning these criteria.

(6) Each CCO shall have a governance structure that meets the requirements of ORS 414.625. The applicant shall:

(a) Clearly describe how it meets governance structure criteria from ORS 414.625, how the governance structure makeup reflects community needs and supports the goals of health care transformation, how the criteria is used to select governance structure members, and how it will assure transparency in governance;

(b) Identify key leaders who are responsible for successful implementation and sustainable operation of the CCO;

(c) Describe how its governance structure will reflect the needs of members with severe and persistent mental illnesses and members receiving DHS Medicaid-funded, long-term care services and supports.

(7) Each CCO shall convene a community advisory council (CAC) that meets the requirements of ORS 414.625. The applicant shall clearly describe how it meets the requirements for selection and implementation of a CAC consistent with ORS 414.625, how the CAC will be administered to achieve the goals of community involvement, and the development, adop-

tion, and updating of the community health assessment and community health improvement plan.

(8) CCOs shall partner with their local public health authority, hospital system, type B AAA, APD field office, and local mental health authority to develop a shared community health assessment that includes a focus on health disparities in the community:

(a) Since community health assessments will evolve over time as relationships develop and CCOs learn what information is most useful, initial CCO applicants may not have time to conduct a comprehensive community assessment before becoming certified;

(b) The applicant shall describe how it will develop its health assessment, meaningfully and systematically engaging representatives of critical populations and community stakeholders and its community advisory council to create a health improvement plan for addressing community need that builds on community resources and skills and emphasizes innovation.

(9) The CCO shall describe its strategy to adopt and implement a community health improvement plan consistent with OAR 410-141-3145.

(10) Dental care organizations: On or before July 1, 2014, each CCO shall have a contractual relationship with any DCO in its service area.

(11) CCOs shall have agreements in place with publicly funded providers to allow payment for point-of-contact services including immunizations, sexually transmitted diseases and other communicable diseases, family planning, and HIV/AIDS prevention services. Applicants shall confirm that these agreements have been developed unless good cause can be shown:

(a) CCOs shall also have agreements in place with the local mental health authority consistent with ORS 414.153. Applicants shall confirm that these agreements have been developed unless good cause can be shown;

(b) The Authority shall review CCO applications to ensure that statutory requirements regarding county agreements are met unless good cause is shown why an agreement is not feasible.

(12) CCOs shall provide integrated, person-centered care and services designed to provide choice, independence, and dignity:

(a) The applicant shall describe its strategy to assure that each member receives integrated, person-centered care and services designed to provide choice, independence, and dignity;

(b) The applicant shall describe its strategy for providing members the right care at the right place and the right time and to integrate and coordinate care across the delivery system.

(13) CCOs shall develop mechanisms to monitor and protect against underutilization of services and inappropriate denials, provide access to qualified advocates, and promote education and engagement to help members be active partners in their own care. Applicants shall:

(a) Describe their planned or established policies and procedures that protect member rights including access to qualified peer wellness specialists, personal health navigators, and qualified community health workers where appropriate;

(b) Describe planned or established mechanisms for a complaint, grievance, and appeals resolution process, including how that process shall be communicated to members and providers.

(14) CCOs shall operate in a manner that encourages patient engagement, activation, and accountability for the member's own health. Applicants shall describe how they plan to:

(a) Actively engage members in the design and, where applicable, implementation of their treatment and care plans;

(b) Ensure that member choices are reflected in the development of treatment plans, and member dignity is respected.

(15) CCOs shall assure that members have a choice of providers within the CCO's network, including providers of culturally and linguistically appropriate services and their providers participating in the CCO and shall:

(a) Work together to develop best practices for care and service delivery to reduce waste and improve health and well-being of all members;

(b) Are educated about the integrated approach and how to access and communicate within the integrated system about a member's treatment plan and health history;

(c) Emphasize prevention, healthy lifestyle choices, evidence-based practices, shared decision-making, and communication;

(d) Are permitted to participate in the networks of multiple CCOs;

(e) Include providers of specialty care;

(f) Are selected by the CCO using universal application and credentialing procedures, objective quality information, and are removed if the providers fail to meet objective quality standards;

(g) Describe how they will work with their providers to develop the partnerships necessary to allow for access to and coordination with med-

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ical, mental health and Substance Use Disorder (SUD) service providers, and dental care when the CCO includes a dental care organization and facilitate access to community social and support services including DHS Medicaid-funded long-term care services, mental health crisis services, and culturally and linguistically appropriate services;

(h) Describe their planned or established tools for provider use to assist in the education of members about care coordination and the responsibilities of both parties in the process of communication.

(16) CCOs shall assure that each member has a consistent and stable relationship with a care team that is responsible for providing preventive and primary care and for comprehensive care management in all settings. The applicant shall demonstrate how it will support the flow of information, identify a lead provider or care team to confer with all providers responsible for a member's care, and use a standardized patient follow-up approach.

(17) CCOs shall address the supportive and therapeutic needs of each member in a holistic fashion using patient-centered primary care homes and individualized care:

(a) Applicants shall describe their model of care or other models that support patient-centered primary care, adhere to ORS 414.625 requirements regarding individualized care plans particularly for members with intensive care coordination needs, and screen for all other issues including mental health;

(b) Applicants shall describe how its implementation of individualized care plans reflects member or family and caregiver preferences and goals to ensure engagement and satisfaction.

(18) CCOs shall assure that members receive comprehensive transitional health care including appropriate follow-up care when entering or leaving an acute care facility or long-term care setting. Applicants shall:

(a) Describe their strategy for improved transitions in care so that members receive comprehensive transitional care, and members' experience of care and outcomes are improved;

(b) Demonstrate how hospitals and specialty services will be accountable to achieve successful transitions of care and establish service agreements that include the role of patient-centered primary care homes;

(c) Describe their arrangements, including memorandum of understanding, with Type B Area Agencies on Aging or the Department's offices of Aging and People with Disabilities concerning care coordination and transition strategies for members.

(19) CCOs shall provide members with assistance in navigating the health care delivery system and accessing community and social support services and statewide resources including the use of certified or qualified health care interpreters, community health workers, and personal health navigators. The applicant shall describe its planned policies for informing members about access to personal health navigators, peer wellness specialists where appropriate, and community health workers.

(20) Services and supports shall be geographically located as close to where members reside as possible and are, when available, offered in non-traditional settings that are accessible to families, diverse communities, and underserved populations. Applicants shall describe:

(a) Delivery system elements that respond to member needs for access to coordinated care services and supports;

(b) Planned or established policies for the delivery of coordinated health care services for members in long-term care settings;

(c) Planned or established policies for the delivery of coordinated health care services for members in residential treatment settings or long term psychiatric care settings.

(21) Each CCO shall prioritize working with members who have high health care needs, multiple chronic conditions, mental illness, or Substance Use Disorder (SUD) services including members with severe and persistent mental illness covered under the State's 1915(i) State Plan Amendment. The CCO shall involve those members in accessing and managing appropriate preventive, health, remedial, and supportive care and services to reduce the use of avoidable emergency department visits and hospital admissions. The applicant shall describe how it will:

(a) Use individualized care plans to address the supportive and therapeutic needs of each member, particularly those with intensive care coordination needs;

(b) Reflect member or family and caregiver preferences and goals to ensure engagement and satisfaction.

(22) Each CCO shall participate in the learning collaborative described in ORS 442.210. Applicants shall confirm their intent to participate.

(23) Each CCO shall implement to the maximum extent feasible patient-centered primary care homes including developing capacity for

services in settings that are accessible to families, diverse communities, and underserved populations:

(a) The applicant shall describe its plan to develop and expand capacity to use patient-centered primary care homes to ensure that members receive integrated, person-centered care and services and that members are fully informed partners in transitioning to this model of care;

(b) The applicant shall require its other health and services providers to communicate and coordinate care with patient-centered primary care homes in a timely manner using health information technology.

(24) CCOs' health care services shall focus on achieving health equity and eliminating health disparities. Applicants shall:

(a) Describe their strategy for ensuring health equity (including interpretation and cultural competence) and elimination of avoidable gaps in health care quality and outcomes, as measured by gender identity, race, ethnicity, language, disability, sexual orientation, age, mental health and addictions status, geography, and other cultural and socioeconomic factors;

(b) Engage in a process that identifies health disparities associated with race, ethnicity, language, health literacy, age, disability (including mental illness and substance use disorders), gender identity, sexual orientation, geography, or other factors through community health assessment;

(c) Collect and maintain race, ethnicity, and primary language data for all members on an ongoing basis in accordance with standards jointly established by the Authority and the Division.

(25) CCOs are encouraged to use alternative payment methodologies consistent with ORS 414.653. The applicant shall describe its plan to move toward and begin to implement alternative payment methods alone or in combination with delivery system changes to achieve better care, controlled costs, and better health for members.

(26) Each CCO shall use health information technology (HIT) to link services and care providers across the continuum of care to the greatest extent practicable. The applicant shall describe:

(a) Its initial and anticipated levels of electronic health record adoption and health information exchange infrastructure and capacity for collecting and sharing patient information electronically and its HIT improvement plan for meeting transformation expectations;

(b) Its plan to ensure that each network provider participates in a health information organization (HIO) or is registered with a statewide or local direct-enabled health information service provider.

(27) Each CCO shall report on outcome and quality measures identified by the Authority under ORS 414.638 and participate in the All Payer All Claims (APAC) data reporting system. The applicant shall provide assurances that:

(a) It has the capacity to report and demonstrate an acceptable level of performance with respect to Authority-identified metrics;

(b) It will submit APAC data in a timely manner according to program specifications.

(28) Each CCO shall be transparent in reporting progress and outcomes. Applicants shall:

(a) Describe how it will assure transparency in governance;

(b) Agree to provide timely access to certain financial, outcomes, quality, and efficiency metrics that will be transparent and publicly reported and available on the Internet.

(29) Each CCO shall use best practices in the management of finances, contracts, claims processing, payment functions, and provider networks. The applicant shall describe:

(a) Its planned or established policies for ensuring best practices in areas identified by ORS 414.625;

(b) Whether the CCO will use a clinical advisory panel (CAP) or other means to ensure clinical best practices;

(c) Plans for an internal quality improvement committee that develops and operates under an annual quality strategy and work plan that incorporates implementation of system improvements and an internal utilization review oversight committee that monitors utilization against practice guidelines and treatment planning protocols and policies.

(30) Each CCO shall demonstrate sound fiscal practices and financial solvency and shall possess and maintain resources needed to meet their obligations:

(a) Initially, the financial applicant shall submit required financial information that allows the DCBS Insurance Division on behalf of the Authority to confirm financial solvency and assess fiscal soundness;

(b) The applicant shall provide information relating to assets and financial and risk management capabilities.

(31) Each CCO may provide coordinated care services within a global budget. Applicants shall submit budget cost information consistent with

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its proposal for providing coordinated care services within the global budget.

(32) A CCO shall operate, administer, and provide for integrated and coordinated care services within the requirements of the medical assistance program in accordance with the terms of the contract and rule. The applicant shall provide assurances about compliance with requirements applicable to the administration of the medical assistance program.

(33) Each CCO shall provide covered Medicaid services, other than DHS Medicaid-funded long-term care services, to members who are dually eligible for Medicare and Medicaid. The applicant may participate in the CMS Medicare/Medicaid Alignment Demonstration if the Authority obtains necessary federal approvals.

Stat. Auth.: ORS 413.042, 414.615, 414.625, 414.635 & 414.651
Stats. Implemented: ORS 414.610 - 414.685
Hist.: DMAP 16-2012(Temp), f. & cert. ef. 3-26-12 thru 9-21-12; DMAP 37-2012, f. & cert. ef. 8-1-12; DMAP 45-2014, f. 7-15-14, cert. ef. 8-1-14; DMAP 44-2016(Temp), f. & cert. ef. 7-6-16 thru 1-1-17; DMAP 75-2016, f. 12-29-16, cert. ef. 1-1-17

410-141-3145 Community Health Assessment and Community Health Improvement Plans

(1) Pursuant to ORS 414.627 to the extent practicable, CCOs shall partner with their local public health authority, local mental health authority, and hospital systems to develop a shared Community Health Assessment (CHA) process including conducting the assessment and development of the resulting Community Health Improvement Plan (CHP).

(2) CCOs shall work with the Authority to identify the components of the CHA. CCOs are encouraged to partner with their local public health authority, hospital system, type B Area Agency on Aging, APD field office and local mental health authority, the Early Learning Council, the Youth Development Council, and school health providers in the region using existing resources when available and avoiding duplication where practicable.

(3) In developing and maintaining a health assessment, CCOs shall meaningfully and systematically engage representatives of critical populations and community stakeholders to create a plan for addressing community health needs that build on community resources and skills and emphasizes innovation including, but not limited to, the following:

- (a) Emphasis on disproportionate, unmet, health-related need;
- (b) Emphasis on primary prevention;
- (c) Building a seamless continuum of care;
- (d) Building community capacity;
- (e) Emphasis on collaborative governance of community benefit.

(4) The CCO requirements for conducting a CHA and CHP will be met for purposes of ORS 414.627 if they substantially meet the community health needs assessment requirement of the federal Patient Protection and Affordable Care Act, 2010 Section 9007, and the Public Health Accreditation Board CHA and CHP requirements for local health departments and the AAA and local mental health authority in the process.

(5) The CCO's CAC shall oversee the CHA and adopt a plan to serve as a strategic population health and health care system service plan for the community served by the CCO. The Council shall annually publish a report on the progress of the CHP.

(6) The CHP adopted by the Council shall describe the scope of the activities, services, and responsibilities that the CCO shall consider upon implementation. The activities, services, and responsibilities defined in the CHP may include, but are not limited to:

- (a) Analysis and development of public and private resources, capacities, and metrics based on ongoing community health assessment activities and population health priorities;
- (b) Health policy;
- (c) System design;
- (d) Outcome and quality improvement;
- (e) Integration of service delivery;
- (f) Workforce development; and
- (g) Public Health Accreditation Board standards for CHPs.

(7) CCOs and their participating providers shall work together to develop best practices of culturally and linguistically appropriate care and service delivery to eliminate health disparities and improve member health and well-being.

(8) CCOs and their CAC shall collaborate with the Authority's Office of Equity and Inclusion to develop meaningful baseline data on health disparities. CCOs shall include in the CHA identification and prioritization of health disparities among CCOs' diverse communities, including those defined by race, ethnicity, language, health literacy, age, disability, gender identity, sexual orientation, behavioral health status, geography, or other

factors in their service areas such as type of living setting including, but not limited to, home independent support living, adult foster home, or homeless. CCOs shall collect and maintain data on race, ethnicity, and primary language for all members on an ongoing basis in accordance with standards established by the Authority. CCOs shall also include representatives of populations experiencing health disparities in CHA and CHP prioritization. CCOs shall track and report on any quality measure by these demographic factors and shall develop, implement, and evaluate strategies to improve health equity among members. CCOs shall make this information available by posting on the web.

(9) To the extent practicable, CCOs shall:

(a) Base the CHP on research including research into adverse childhood experiences;

(b) Evaluate the adequacy of the existing school-based health center (SBHC) network to meet the specific pediatric and adolescent health care needs in the community and make recommendations to improve the SBHC system;

(c) Improve the integration of all services provided to meet the needs of children, adolescents, and families;

(d) Address primary care, behavioral and oral health, promotion of health and prevention, and early intervention in the treatment of children and adolescents;

(e) With the development of its CHP SBHCs, school nurses, school mental health providers, and individuals representing child and adolescent health services shall be included.

(10) CCOs shall develop and review and update its CHA and plan at least every five years to ensure the provision of all medically appropriate covered coordinated care services including urgent care and emergency services, preventive, community support, and ancillary services in those categories of services included in CCO contracts or agreements with the Authority.

(11) CCOs shall communicate these policies and procedures to providers, regularly monitor providers' compliance, and take any corrective action necessary to ensure compliance. CCOs shall document all monitoring and corrective action activities.

(12) If there is more than one CCO in a community, the CCOs and their community partners may work together to develop one shared CHA and one shared CHP.

Stat. Auth.: ORS 413.042, 414.615, 414.625, 414.635 & 414.651
Stats. Implemented: ORS 414.610 - 414.685

Hist.: DMAP 16-2012(Temp), f. & cert. ef. 3-26-12 thru 9-21-12; DMAP 37-2012, f. & cert. ef. 8-1-12; DMAP 45-2014, f. 7-15-14, cert. ef. 8-1-14; DMAP 44-2016(Temp), f. & cert. ef. 7-6-16 thru 1-1-17; DMAP 75-2016, f. 12-29-16, cert. ef. 1-1-17

410-141-3260 Grievance System: Grievances, Appeals and Contested Case Hearings

(1) This rule applies to requirements related to the grievance system, which includes appeals, contested case hearings, and grievances. For purposes of this rule and OAR 410-141-3261 through 410-141-3264, references to member means a member, member's representative and the representative of a deceased member's estate.

(2) The CCO must establish and have a Division approved process and written procedures for the following:

- (a) Member rights to appeal and request a CCO's review of an action;
- (b) Member rights to request a contested case hearing on a CCO action under the Administrative Procedures Act; and
- (c) Member rights to file a grievance for any matter other than an appeal or contested case hearing;

(d) An explanation of how CCOs shall accept, process and respond to appeals, hearing requests and grievances;

(e) Compliance with grievance system requirements as part of the state quality strategy and to monitor and enforce consumer rights and protections within the Oregon Integrated and Coordinated Health Care Delivery System and ensure consistent response to complaints of violations of consumer right and protections.

(3) Upon receipt of a grievance or appeal, the CCO must:

- (a) Acknowledge receipt to the member;
- (b) Give the grievance or appeal to staff with the authority to act upon the matter;

(c) Obtain documentation of all relevant facts concerning the issues;

(d) Ensure staff making decisions on the grievance or appeal are:

(A) Not involved in any previous level of review or decision-making; and

(B) Health care professionals as defined in OAR 410-120-0000 with appropriate clinical expertise in treating the member's condition or disease

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if the grievance or appeal involves clinical issues or if the member requests an expedited review.

(4) The CCO must analyze all grievances, appeals and hearings in the context of quality improvement activity pursuant to OAR 410-141-3200 and 410-141-3260.

(5) CCOs must keep all healthcare information concerning a member's request confidential, consistent with appropriate use or disclosure as the terms treatment, payment or CCO health care operations are defined in 45 CFR 164.501.

(6) The following pertains to release of a member's information:

(a) The CCO and any provider whose authorizations, treatments, services, items, quality of care or requests for payment are involved in the grievance, appeal or hearing may use this information without the member's signed release for purposes of:

(A) Resolving the matter; or

(B) Maintaining the grievance or appeals log.

(b) If the CCO needs to communicate with other individuals or entities not listed in subsection (a) to respond to the matter, the CCO must obtain the member's signed release and retain the release in the member's record.

(7) The CCO must provide members with any reasonable assistance in completing forms and taking other procedural steps related to filing grievances, appeals or hearing requests. Reasonable assistance includes, but is not limited to:

(a) Assistance from qualified community health workers, qualified peer wellness specialists or personal health navigators to participate in processes affecting the member's care and services;

(b) Free interpreter services;

(c) Toll-free phone numbers that have adequate TTY/TTD and interpreter capabilities; and

(d) Reasonable accommodation or policy and procedure modifications as required by any disability of the member.

(8) The CCO and its participating providers may not:

(a) Discourage a member from using any aspect of the grievance, appeal or hearing process;

(b) Encourage the withdrawal of a grievance, appeal or hearing request already filed; or

(c) Use the filing or resolution of a grievance, appeal or hearing request as a reason to retaliate against a member or to request member disenrollment.

(9) In all CCO administrative offices and in those physical, behavioral and oral health offices where the CCO has delegated response to the appeal, hearing request or grievance, the CCO must have the following forms available:

(a) OHP Complaint Form (OHP 3001);

(b) Appeal forms;

(c) Hearing request form (DHS 443) and Notice of Hearing Rights (DMAP 3030); or

(d) The Division of Medical Assistance Programs Service Denial Appeal and Hearing Request form (DMAP 3302) or approved facsimile.

(10) A member's provider:

(a) Acting on behalf of and with written consent of the member may file an appeal;

(b) May not act as the member's authorized representative for requesting a hearing or filing a grievance.

(11) The CCO and its participating providers must cooperate with the Department of Human Services Governor's Advocacy Office, the Authority's Ombudsman and hearing representatives in all activities related to member appeals, hearing requests and grievances including providing all requested written materials.

(12) If the CCO delegates the grievance and appeal process to a subcontractor, the CCO must:

(a) Ensure the subcontractor meets the requirements consistent with this rule and OAR 410-141-3261 through 410-141-3264;

(b) Monitor the subcontractor's performance on an ongoing basis;

(c) Perform a formal compliance review at least once a year to assess performance, deficiencies or areas for improvement; and

(d) Ensure the subcontractor takes corrective action for any identified areas of deficiencies that need improvement.

(13) CCO's must maintain yearly logs of all appeals and grievances for seven calendar years with the following requirements:

(a) The logs must contain the following information pertaining to each member's appeal or grievance:

(A) The member's name, ID number, and date the member filed the grievance or appeal;

(B) Documentation of the CCO's review, resolution or disposition of the matter, including the reason for the decision and the date of the resolution or disposition;

(C) Notations of oral and written communications with the member; and

(D) Notations about appeals and grievances the member decides to resolve in another way if the CCO is aware of this.

(b) For each calendar year, the logs must contain the following aggregate information:

(A) The number of actions; and

(B) A categorization of the reasons for and resolutions or dispositions of appeals and grievances.

(14) The CCO must review the log monthly for completeness and accuracy, which includes but is not limited to timeliness of documentation and compliance with procedures.

(15) A member or a member's provider may request an expedited resolution of an appeal or a contested case hearing if the member or provider believes taking the standard time of resolution could seriously jeopardize the member's:

(a) Life, health, mental health or dental health; or

(b) Ability to attain, maintain or regain maximum function.

(16) A member who may be entitled to continuing benefits may request and receive continuing benefits in the same manner and same amount while an appeal or contested case hearing is pending:

(a) To be entitled to continuing benefits, the member must complete a hearing request or request for appeal requesting continuing benefits no later than:

(A) The tenth day following the date of the notice or the notice of appeal resolution; and

(B) The effective date of the action proposed in the notice, if applicable.

(b) In determining timeliness under section (3)(a) of this rule, delay for good cause, as defined in OAR 137-002-0528, is not counted;

(c) The benefits must be continued until:

(A) A final appeal resolution resolves the appeal unless the member requests a hearing with continuing benefits no later than ten days following the date of the notice of appeal resolution;

(B) A final order resolves the contested case;

(C) The time period or service limits of a previously authorized service have been met; or

(D) The member withdraws the request for hearing.

(17) The CCO shall review and report to the Authority complaints that raise issues related to racial or ethnic background, gender identity, sexual orientation, socioeconomic status, culturally or linguistically appropriate service requests, disability status and other identity factors for consideration in improving services for health equity.

(18) If a CCO receives a complaint or grievance related to a member's entitlement of continuing benefits in the same manner and same amount during the transition of transferring from one CCO to another CCO for reasons defined in OAR 410-141-3080 (15) the CCO shall log the complaint/grievance and work with the receiving/sending CCO to ensure continuity of care during the transition.

Stat. Auth.: ORS 413.032, 414.615, 414.625, 414.635, 414.651

Stats. Implemented: ORS 414.610 - 414.685

Hist.: DMAP 16-2012(Temp), f. & cert. ef. 3-26-12 thru 9-21-12; DMAP 37-2012, f. & cert. ef. 8-1-12; DMAP 54-2012(Temp), f. & cert. ef. 11-1-2 thru 4-29-13; DMAP 22-2013, f. & cert. ef. 4-26-13; DMAP 60-2013, f. & cert. ef. 10-31-13; DMAP 33-2014, f. 5-30-14, cert. ef. 7-1-14; DMAP 44-2016(Temp), f. & cert. ef. 7-6-16 thru 1-1-17; DMAP 75-2016, f. 12-29-16, cert. ef. 1-1-17

410-141-3300

Coordinated Care Organization (CCO) Member Education and Information Requirements

(1) For the purpose of this rule, the following definitions apply:

(a) "Alternate Format" means any alternate approach to presenting print information to an individual with a disability. The Americans with Disabilities Act (ADA) groups the standard alternate formats: braille, large (18 point) print, audio narration, oral presentation, and electronic file along with other aids and services for other disabilities, including sign language interpretation and sighted guide;

(b) "Alternate Format Statement Insert" means an insert developed by the Oregon Health Authority that includes instructions on how to receive an alternate format or oral interpretation of materials translated into the state's top sixteen preferred written languages as identified by OHP enrollees. CCOs shall insert their contact information into the template.

(c) "Health Literacy" means the degree to which individuals have the capacity to obtain, process, and understand basic health information need-

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ed to make appropriate health decisions regarding services needed to prevent or treat illness.

(d) "Prevalent Non-English Language" means: All non-English languages that are identified as the preferred written language by the lesser of either:

- (A) 5 percent of the CCO's total OHP enrollment; or
- (B) 1,000 of the CCO's members.

(2) CCOs may engage in activities for existing members related to outreach, health promotion, and health education. The Division shall approve, prior to distribution, any written communication by the CCO or its subcontractors and providers that:

(a) Is intended solely for members; and

(b) Pertains to requirements for obtaining coordinated care services at service area sites or benefits.

(3) CCOs may communicate with providers, caseworkers, community agencies, and other interested parties for informational purposes. The intent of these communications should be informational only and not to entice or solicit membership. Communication methodologies may include but are not limited to brochures, pamphlets, newsletters, posters, fliers, websites, health fairs, or sponsorship of health-related events. CCOs shall address health literacy issues by preparing these documents at a low-literacy reading level, incorporating graphics and utilizing alternate formats.

(4) The creation of name recognition because of the CCO's health promotion or education activities shall not constitute an attempt by the CCO to influence a client's enrollment.

(5) A CCO or its subcontractor's communications that express participation in or support for a CCO by its founding organizations or its subcontractors shall not constitute an attempt to compel or entice a client's enrollment.

(6) The following shall not constitute marketing or an attempt by the CCO to influence client enrollment:

(a) Communication to notify dual-eligible members of opportunities to align CCO provided benefits with a Medicare Advantage or Special Needs Plan;

(b) Improving coordination of care;

(c) Communicating with providers serving dual-eligible members about unique care coordination needs; or

(d) Streamlining communications to the dually-enrolled member to improve coordination of benefits.

(7) CCOs shall have a mechanism to help members understand the requirements and benefits of the CCO's integrated and coordinated care plan. The mechanisms developed shall be culturally and linguistically appropriate.

(8) CCOs shall have written procedures, criteria, and an ongoing process of member education and information sharing that includes member orientation, member handbook, and health education. As a CCO transitions to fully coordinating a member's care, the CCO is responsible only for including information about the care they are coordinating. CCOs shall update their educational material as they add coordinated services. Member education shall:

(a) Include information about the coordinated care approach and how to navigate the coordinated health care system, including where applicable for dual-eligible individuals, the process for coordinating Medicaid and Medicare benefits;

(b) Clearly explain how members may receive assistance from advocates, including certified health care interpreters, community health workers, peer wellness specialists, and personal health navigators and include information to members that interpreter services at provider offices are free to CCO members as stated in 42 CFR 438.10 (4).

(9) Within 14 calendar days or a reasonable timeframe of a CCO's receiving notice of a member's enrollment, CCOs shall mail a welcome packet to new members and to members returning to the CCO twelve months or more after previous enrollment. The packet shall include, at a minimum, a welcome letter, a member handbook, and information on how to access a provider directory.

(10) Provider directories shall include notation of the following: names, locations, telephone numbers including TTY, office hours, accessibility for members with disabilities, non-English languages spoken by current contracted providers in the enrollee's service area, and direction on how members can access information on providers that are not accepting new patients.

(11) For those who are existing members, a CCO shall notify members annually of the availability of a member handbook and provider directory and how to access those materials. CCOs shall send hard copies upon request.

(12) CCOs shall facilitate materials as follows:

(a) Translate the following written materials into the prevalent non-English languages served by the CCO:

(A) Welcome Packets that include welcome letters and member handbooks; and

(B) Notices of medical benefit changes.

(b) Alternate format statement inserts with:

(A) Communications regarding member enrollment; and

(B) Notice of Action to deny, reduce, or stop a benefit.

(c) Accommodate requests of the member to translate written materials into prevalent non-English languages served by the CCO;

(d) Make oral interpretation services available free of charge to each potential member and member. This applies to all non-English languages, not just prevalent non-English languages;

(e) Notify enrollees:

(A) That oral interpretation is available free of charge for any language, and written information is available in prevalent non-English languages and alternate formats; and

(B) How to access those services.

(f) Make available materials in alternate formats by request. Alternate formats include but are not limited to audio recording, close-captioned videos, large type, and braille.

(13) A CCO shall electronically provide to the Division for approval each version of the printed welcome packet that includes a welcome letter, member handbook, and information on how to access a provider directory. At a minimum, the member handbook shall contain the following:

(a) Revision date;

(b) Tag lines in English and other prevalent non-English languages, as defined in this rule, spoken by populations of members. The tag lines shall be located at the beginning of the document for the ease of the member and describe how members may access free sign and oral interpreters, as well as translations and materials in other formats. Alternate formats may include but are not limited to audio recordings, close-captioned videos, large (18 point) type, and braille.

(c) CCO's office location, mailing address, web address if applicable, office hours, and telephone numbers including TTY;

(d) Availability and access to coordinated care services through a patient-centered primary care home or other primary care team with the member as a partner in care management. Explain how to choose a PCP, how to make an appointment, and how to change PCPs and the CCO's policy on changing PCPs;

(e) How to access information on contracted providers currently accepting new members and any restrictions on the member's freedom of choice among participating providers;

(f) What participating or non-participating provider services the member may self-refer;

(g) Policies on referrals for specialty care, including prior authorization requirements and how to request a referral;

(h) Explanation of intensive care coordination services and how members with the following special health care needs can access intensive care coordination services: Those who are aged, blind, or disabled or who have complex medical needs, high health needs, multiple chronic conditions, mental illness, or chemical dependency.

(i) Information about the coordinated care approach, how to navigate the coordinated care health care system as applicable to dual-eligible individuals, and the process for coordinating Medicaid and Medicare benefits;

(j) How and where members are to access urgent care services and advice, including how to access these services and advice when away from home;

(k) How and when members are to use emergency services, both locally and when away from home, including examples of emergencies;

(L) Information on contracted hospitals in the member's service area;

(m) Information on post-stabilization care after a member is stabilized in order to maintain, improve, or resolve the member's condition;

(n) Information on the CCO's grievance and appeals processes and the Division's contested case hearing procedures, including:

(A) Information about assistance in filling out forms and completing the grievance process available from the CCO to the member as outlined in OAR 410-141-3260;

(B) Information about the member's right to continued benefits during the grievance process as provided in OAR 410-141-3263.

(o) Information on the member's rights and responsibilities, including the availability of the OHP Ombudsman;

(p) Information on copayments, charges for non-covered services, and the member's possible responsibility for charges if they go outside of

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the CCO for non-emergent care; including information specific to copayments, deductibles, and coinsurance for dually-enrolled qualified Medicare beneficiaries;

(q) Information about when providers may bill clients for services and what to do if they receive a bill, including information specific to payment responsibilities for dually-enrolled qualified Medicare beneficiaries;

(r) The transitional procedures for new members to obtain prescriptions, supplies, and other necessary items and services in the first month of enrollment if they are unable to meet with a PCP or PCD, other prescribing provider, or obtain new orders during that period; including specific communications for members who are becoming new Medicare enrollees;

(s) Information on advance directive policies including:

(A) Member rights under federal and Oregon law to make decisions concerning their medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate advance directives;

(B) The CCO's policies for implementation of those rights, including a statement of any limitation regarding the implementation of advanced directives as a matter of conscience.

(t) Whether or not the CCO uses provider incentives to reduce cost by limiting services;

(u) The member's right to request and obtain copies of their clinical records, whether they may be charged a reasonable copying fee and that they may request the record be amended or corrected;

(v) How and when members are to obtain ambulance services;

(w) Resources for help with transportation to appointments with providers;

(x) Explanation of the covered and non-covered coordinated care services in sufficient detail to ensure that members understand the benefits to which they are entitled;

(y) How members are to obtain prescriptions including information on the process for obtaining non-formulary and over-the-counter drugs;

(z) The CCO's confidentiality policy:

(aa) How and where members are to access any benefits that are available under OHP but are not covered under the CCO's contract, including any cost sharing;

(bb) When and how members can voluntarily and involuntarily disenroll from CCOs and change CCOs;

(cc) CCOs shall, at a minimum, annually review their member handbook for accuracy and update it with new and corrected information to reflect OHP program changes and the CCO's internal changes. If changes affect the member's ability to use services or benefits, the CCO shall offer the updated member handbook to all members;

(dd) The "Oregon Health Plan Client Handbook" is in addition to the CCO's member handbook, and a CCO may not use it to substitute for any component of the CCO's member handbook.

(14) Member health education shall include:

(a) Information on specific health care procedures, instruction in self-management of health care, promotion and maintenance of optimal health care status, patient self-care, and disease and accident prevention. CCO providers or other individuals or programs approved by the CCO may provide health education. CCOs shall endeavor to provide health education in a culturally sensitive and linguistically appropriate manner in order to communicate most effectively with individuals from non-dominant cultures;

(b) Information specifying that CCOs may not prohibit, or otherwise restrict, a provider acting within the lawful scope of practice from advising or advocating on behalf of a member who is his or her patient, for the following:

(A) The member's health status, medical care, or treatment options, including any alternative treatment that may be self-administered;

(B) Any information the member needs to decide among all relevant treatment options;

(C) The risks, benefits, and consequences of treatment or non-treatment.

(c) CCOs shall ensure development and maintenance of an individualized health educational plan for members whom their provider has identified as requiring specific educational intervention. The Division may assist in developing materials that address specifically identified health education problems to the population in need;

(d) Explanation of intensive care coordination services and how to access intensive care coordination through outreach to members with special health care needs who are aged, blind, or disabled, or who have complex medical needs or high health care needs, multiple chronic conditions, mental illness, or chemical dependency;

(e) The appropriate use of the delivery system, including proactive and effective education of members on how to access emergency services and urgent care services appropriately;

(f) CCOs shall provide written notice to affected members of any significant changes in program or service sites that affect the member's ability to access care or services from CCO's participating providers. The CCO shall provide, translated as appropriate, the notice at least 30 calendar days before the effective date of that change, or as soon as possible if the participating provider has not given the CCO sufficient notification to meet the 30-day notice requirement. The Division shall review and approve the materials within two working days.

(15) Informational materials that CCOs develop for members shall meet the language requirements identified in this rule and be culturally and linguistically sensitive to members with disabilities or reading limitations, including members whose primary language is not English:

(a) CCOs shall provide free interpreters for all of their members with hearing impairments and limited English proficiency who request them. This also applies to family members and caregivers with hearing impairments or limited English proficiency who need to understand the member's condition and care:

(A) CCOs shall translate materials into all languages as identified in this rule. Written and spoken language preferences are indicated on the OHP application form and reported to plans in 834 enrollment updates. CCOs shall honor requests made by other sources such as members, family members, or caregivers for language accommodation, translating to the member's language needs as requested;

(B) CCOs shall provide written translations of informational materials including their welcome packet, consisting of at least a welcome letter and a member handbook in all languages as specified in this rule and as identified by members either through the OHP application or other means as their preferred written language.

(b) Form correspondence may be sent to members, including, but not limited to, enrollment information and notices of action to deny or stop a benefit, accompanied by alternate format statement inserts as specified in section (12) of this rule. If sent in English to members who prefer a different language, the tag lines, placed in the alternate format statement insert shall have instructions on how to receive an oral or written translation of the material.

(16) CCOs shall provide an identification card to members, unless waived by the Division, that contains simple, readable, and usable information on how to access care in an urgent or emergency situation. The cards are solely for the convenience of the CCO, members, and providers.

Stat. Auth.: ORS 413.042, 414.615, 414.625, 414.635 & 414.651

Stats. Implemented: ORS 414.610 - 414.685

Hist.: DMAP 16-2012(Temp), f. & cert. ef. 3-26-12 thru 9-21-12; DMAP 37-2012, f. & cert. ef. 8-1-12; DMAP 16-2015, f. 3-31-15, cert. ef. 4-1-15; DMAP 21-2015, f. 4-14-15, cert. ef. 4-15-15; DMAP 24-2015, f. & cert. ef. 4-15-15; DMAP 44-2016(Temp), f. & cert. ef. 7-6-16 thru 1-1-17; DMAP 74-2016, f. 12-29-16, cert. ef. 1-1-17; DMAP 75-2016, f. 12-29-16, cert. ef. 1-1-17

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Rule Caption: Expanding Services in State Plan for Babies First!, CaCoon TCM Effective Per CMS Approval

Adm. Order No.: DMAP 76-2016

Filed with Sec. of State: 12-29-2016

Certified to be Effective: 1-1-17

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Rules Amended: 410-138-0000, 410-138-0005, 410-138-0007, 410-138-0009, 410-138-0020, 410-138-0040, 410-138-0060, 410-138-0080, 410-138-0390, 410-138-0420

Subject: The Division needs to amend these rules to incorporate changes to the State Plan for Targeted Case Management Public Health Nurse Home Visiting, Expanded Babies First!, CaCoon, and Nurse-Family Partnership services, recently approved by Centers for Medicare and Medicaid Services (CMS) effective 01/01/2017. The Division is adding definitions specific to the expanded services, qualifications of case managers, expanded target group, and identified risk criteria for clients eligible in the target group. All changes are pending subject to CMS approval of proposed language and/or changes to language for expanding services for Babies First!, CaCoon Targeted Case Management Services.

Rules Coordinator: Sandy Cafourek—(503) 945-6430

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410-138-0000

Targeted Case Management Definitions

The following definitions apply to OAR 410-138-0000 through 410-138-0420:

(1) Assessment means the act of gathering information and reviewing historical and existing records of an eligible client in a target group to determine the need for medical, educational, social, or other services. To perform a complete assessment, the case manager shall gather information from family members, medical providers, social workers, and educators, if necessary.

(2) Care Plan means a Targeted Case Management (TCM) Care Plan that is a multidisciplinary plan that contains a set of goals and actions required to address the medical, social, educational, and other service needs of the eligible client based on the information collected through an assessment or periodic reassessment.

(3) Case Management means services furnished by a case manager to assist individuals eligible under the Medicaid State plan in gaining access to and effectively using needed medical, social, educational, and other services (such as housing or transportation) in accordance with 42 CFR 441.18. See also definition for Targeted Case Management.

(4) Centers for Medicare and Medicaid Services (CMS) means the federal agency under the U.S. Department of Health and Human Services that provides the federal funding for Medicaid and Children's Health Insurance Program (CHIP).

(5) Children and Youth with Special Health Care Needs (CYSHCN) means those children and youth who have or are at increased risk for a chronic physical, developmental, behavioral, or emotional condition and who also require health and related services of a type or amount beyond that required by children generally.

(6) Department means the Department of Human Services (Department).

(7) Division means the Oregon Health Authority's Health Systems Division.

(8) Duplicate payment means more than one payment made for the same services to meet the same need for the same client at the same point in time.

(9) Early intervention (EI) means services for preschool children with disabilities from birth until three years of age, including Indian children and children who are homeless and their families.

(10) Early childhood special education (ECSE) means free, specially designed instruction to meet the unique needs of a preschool child with a disability, three years of age until the age of eligibility for public school, including instruction in physical education, speech-language services, travel training, and orientation and mobility services. Instruction is provided in any of the following settings: home, hospitals, institutions, special schools, classrooms, and community childcare or preschool settings.

(11) Early Intervention/Early Childhood Special Education (EI/ECSE) services means services provided to a preschool child with disabilities, eligible under the Individuals with Disabilities Education Act (IDEA), from birth until they are eligible to attend public school, pursuant to the eligible child's Individualized Family Service Plan (IFSP).

(12) EI/ECSE Case manager (i.e., service coordinator) means an employee of the EI/ECSE contracting or subcontracting agency meeting the personnel standards requirements in OAR 581-015-2900. The EI/ECSE case manager serves as a single point-of-contact and is responsible for coordinating all services across agency lines for the purpose of assisting an eligible client to obtain needed medical, social, educational, developmental and other appropriate services (such as housing or transportation) identified in the eligible client's care plan in coordination with the client's IFSP.

(13) EI/ECSE TCM Program means a service under the State plan and includes case management services furnished to eligible EI/ECSE preschool children age 0-5 with disabilities, assisting them to gain access to needed medical, social, educational, developmental and other appropriate services (such as housing or transportation) in coordination with their IFSP. EI/ECSE TCM providers shall meet the criteria for the provision of special education programs approved by the State Superintendent of Public Instruction qualifying such programs for State reimbursement under OAR 581-015-2710 EI/ECSE and shall be contractors with the Oregon Department of Education in the provision of EI/ECSE services or be subcontractors with such a contractor. Medicaid reimbursement for EI/ECSE TCM services is available only to eligible clients in the target group and does not restrict an eligible client's free choice of providers.

(14) Eligible client means an individual who is found eligible for Medicaid or the Children's Health Insurance Program (CHIP) by the Oregon Health Authority (Authority) and eligible for case management

services (including TCM services) as defined in the Medicaid State plan at the time the services are furnished.

(15) Federal Financial Participation (FFP) means the portion paid by the federal government to states for their share of expenditures for providing Medicaid services. FFP was created as part of the Title XIX, Social Security Act of 1965. There are two objectives that permit claims under FFP. They are:

(a) To assist individuals eligible for Medicaid to enroll in the Medicaid program; and

(b) To assist individuals on Medicaid to access Medicaid providers and services. The second objective involves TCM.

(16) Federal Medical Assistance Percentage (FMAP) means the percentage of federal matching dollars available to a state to provide Medicaid services. The FMAP is calculated annually based on a three-year average of state per capita personal income compared to the national average. The formula is designed to provide a higher federal matching rate to states with lower per capita income. No state receives less than 50 percent or more than 83 percent.

(17) Individualized Family Service Plan (IFSP) means a written plan of early childhood special education, related services, early intervention services, and other services developed in accordance with criteria established by the State Board of Education for each child eligible for services. (See OAR 581-015-2700 to 581-015-2910, Early Intervention and Early Childhood Special Education Programs.)

(18) Medical Assistance Program means a program administered by the Division that provides and pays for health services for eligible Oregonians. The Medical Assistance Program includes TCM services provided to clients eligible under the Oregon Health Plan (OHP) Title XIX, and the Children's Health Insurance Program (CHIP) Title XXI.

(19) Monitoring means ongoing face-to-face or other contact to conduct follow-up activities with the participating eligible client or the client's health care decision makers, family members, providers, or other entities or individuals when the purpose of the contact is directly related to managing the eligible client's care to ensure the care plan is effectively implemented.

(20) Oregon Health Plan (OHP) means the Medicaid program in Oregon that is known as the OHP and governed by a series of laws passed by the Oregon Legislature with the intention of providing universal access to healthcare to Oregonians. OHP is also governed by many federal laws.

(21) Perinatal (for the purpose of the state plan amendment for Public Health Nurse Home Visiting, Expanded Babies First!, CaCoon, and Nurse-Family Partnership TCM) means the period inclusive of pregnancy through two years postpartum to the child's second birthday. Services to a parent or primary caregiver may be available during this same two-year period following the birth of the child.

(22) Reassessment means periodically re-evaluating the eligible client to determine whether or not medical, social, educational, or other services continue to be adequate to meet the goals and objectives identified in the care plan. Reassessment decisions include those to continue, change, or terminate TCM services. A reassessment shall be conducted at least annually or more frequently if changes occur in an eligible client's condition; or when resources are inadequate, or the service delivery system is non-responsive to meet the client's identified service needs.

(23) Referral means performing activities such as scheduling appointments that link the eligible client with medical, social, or educational providers, or other programs and services, and follow-up and documentation of services obtained.

(24) Targeted Case Management (TCM) Services means case management services furnished to a specific target group of eligible clients under the Medicaid State plan to gain access to needed medical, social, educational, and other services (such as housing or transportation).

(25) Unit of Government means a city, a county, a special purpose district, or other governmental unit in the state.

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 20-1992, f. & cert. ef. 7-1-92; OMAP 61-2004, f. 9-10-04, cert. ef. 10-1-04; DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08; DMAP 22-2010, f. 6-30-10, cert. ef. 7-1-10; DMAP 41-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 75-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14; DMAP 23-2014, f. & cert. ef. 4-4-14; DMAP 76-2016, f. 12-29-16, cert. ef. 1-1-17

410-138-0005

Payment for Targeted Case Management Services Eligible for Federal Financial Participation

(1) This rule is to be used in conjunction with Targeted Case Management (TCM) rules OAR 410-138-0000 through 410-138-0009 and 410-138-0390, and the Division's General Rules chapter 410, division 120.

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(2) The TCM services rules are designed to assist the TCM provider organizations in matching state and federal funds for TCM services defined by Section 1915(g) of the Social Security Act, 42 USC § 1396n(g).

(3) Payment shall be made to the TCM provider enrolled with the Authority as a unit of government provider meeting the requirements set forth in the provider enrollment agreement.

(4) Signing the provider enrollment agreement sets forth the relationship between the State of Oregon, the Authority, and the TCM provider and constitutes agreement by the TCM provider to comply with all applicable Authority rules and federal and state laws and regulations.

(5) The TCM provider shall bill according to administrative rules in chapter 410, division 138 and the TCM supplemental information. Payments shall be made using the Medicaid Management Information System (MMIS), and the TCM provider shall retain the full payment for covered services provided. The TCM provider shall have a Trading Partner Agreement with the Authority prior to submission of electronic transactions.

(6) TCM authorized under these rules is a cost-sharing (Federal Financial Participation (FFP) matching) program in which the TCM provider as a public entity, unit of government, shall pay the non-federal matching share of the amount of the TCM claims, calculated using the Federal Medical Assistance Percentage (FMAP) rates in effect during the quarter when the TCM claims will be paid:

(a) The TCM provider's non-federal matching share means the public funds share of the Medicaid payment amount. Pursuant to the Social Security Act, 42 CFR 433.51, public funds may be considered as the state's share in claiming federal financial participation, if the public funds meet the following conditions:

(A) The public funds are transferred to the Authority from public entities that are units of government;

(B) The public funds are not federal funds or they are federal funds authorized by federal law to be used to match other federal funds; and

(C) All sources of funds shall be allowable under the Social Security Act 42 CFR 433 Subpart B;

(b) The unit of government TCM provider shall pay the non-federal matching share to the Authority in accordance with OAR 410-120-0035.

(7) Before the Authority pays for TCM claims, the Authority shall receive the corresponding local match payment as described in this rule. Failure to timely pay the non-federal matching funds to the Authority will delay payment.

(8) The Authority shall not be financially responsible for payment of any claim that CMS disallows under the Medicaid program. If the Authority has previously paid the TCM provider for any claim, which CMS disallows, the TCM provider shall reimburse the Authority the amount of the claim that the Authority has paid to the TCM provider, less any amount previously paid by the unit of government TCM provider to the Authority for the non-federal match portion for that claim.

(9) Providers shall only bill Medicaid for allowable activities in the TCM program that assist individuals eligible under the Medicaid State plan to gain access to needed medical, social, educational, and other services. One or more of the following allowable activities shall occur before billing:

(a) Assessment;

(b) Development of a care plan;

(c) Referral and follow up; and

(d) Monitoring and follow up.

(10) TCM claims may not duplicate payments made to:

(a) Public agencies or private entities for any other case management activities or direct services provided under the State Plan or OHP, through fee for service, managed care, or other contractual arrangement, that meet the same need for the same client at the same point in time;

(b) A TCM provider by program authorities under different funding authority than OHP, including but not limited to other public health funding;

(c) A TCM provider for administrative expenditures reimbursed under agreement with the Authority or any other program or funding source.

(11) Medicaid is only liable for the cost of otherwise allowable case management services if there are no other third parties liable to pay. However, while schools are legally liable to provide IDEA-related health services at no cost to eligible children, Medicaid reimbursement is available for these services because section 1903(c) of the Act requires Medicaid to be primary to the U.S. Department of Education for payment for covered Medicaid services furnished to a child with a disability. These services may include health services included in a child's Individualized Education Program (IEP) or Individual Family Service Plan (IFSP) under the IDEA.

Payment for those services that are included in the IEP or IFSP may not be available when those services are not covered Medicaid services.

(12) The Authority's acceptance of cost data provided by provider organizations for the purpose of establishing rates paid for TCM services does not imply or validate the accuracy of the cost data provided.

(13) Reimbursement is subject to all rules and laws pertaining to federal financial participation.

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065

Hist.: DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08; DMAP 22-2010, f. 6-30-10, cert. ef. 7-1-10; DMAP 41-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 76-2016, f. 12-29-16, cert. ef. 1-1-17

410-138-0007

Targeted Case Management — Covered Services

(1) Targeted case management (TCM) services shall be furnished only to assist individuals eligible under the Medicaid State plan in gaining access to and effectively using needed medical, social, educational, and other services (such as housing or transportation) in accordance with 42 CFR 441.18.

(2) TCM services billed to Medicaid shall be for allowable activities and include one or more of the following components:

(a) Assessment of an eligible client in the target group to determine the need for medical, educational, social, or other services as follows:

(A) Taking client history;

(B) Identifying the needs of the client, and completing related documentation;

(C) Gathering information from other sources, such as family members, medical providers, social workers, and educators, if necessary, to form a complete assessment of the eligible client;

(D) Periodically reassessing a client to determine if the client's needs or preferences have changed. A reassessment shall be conducted at least annually or more frequently if changes occur in the client's condition;

(b) Development of a care plan based on the information collected through the assessment or periodic reassessment, specifying the goals and actions to address the medical, social, educational, and other services needed by the eligible client. This may include:

(A) Active participation of the eligible client in the target group; or

(B) Working with the eligible client or the eligible client's authorized health care decision maker and others to develop goals and identify a course of action to respond to the assessed needs of the eligible client;

(c) Referral, linking and coordination of services and related activities including but not limited to:

(A) Scheduling appointments for the eligible client in the target group to obtain needed services; and

(B) Activities that help link the eligible client with medical, social, or educational providers, or other programs and services (e.g., food vouchers, transportation, child care, or housing assistance) that address identified needs and achieve goals specified in the care plan. The case management referral activity is completed once the referral and linkage have been made;

(C) Reminding and motivating the client to adhere to the treatment and services schedules established by providers.

(d) Monitoring or ongoing face-to-face or other contact:

(A) Monitoring and follow-up activities include activities and contacts:

(i) To ensure the care plan is effectively implemented;

(ii) To help determine if the services are being furnished in accordance with the eligible client's care plan;

(iii) To determine whether the care plan adequately addresses the needs of the eligible client in the target group;

(iv) To adjust the care plan to meet changes in the needs or status of the eligible client.

(B) Monitoring activities may include contacts with:

(i) The participating eligible client in the target group;

(ii) The eligible client's healthcare decision makers, family members, providers, or other entities or individuals when the purpose of the contact is directly related to the management of the eligible client's care.

(3) TCM services billed to Medicaid shall be documented in the client's case records for all client's receiving case management. The documentation shall include:

(a) The client's name;

(b) The dates of the case management services;

(c) The name of the provider agency (if relevant) and the person providing the case management service;

(d) The nature, content, units of the case management services received and whether goals specified in the care plan have been achieved;

(e) Whether the client has declined services in the care plan;

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(f) The need for, and occurrences of, coordination with other case managers;

(g) A timeline for obtaining needed services;

(h) A timeline for reevaluation of the plan.

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065

Hist.: DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08; DMAP 22-2010, f. 6-30-10, cert. ef. 7-1-10; DMAP 41-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 75-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14; DMAP 23-2014, f. & cert. ef. 4-4-14; DMAP 76-2016, f. 12-29-16, cert. ef. 1-1-17

410-138-0009

Targeted Case Management — Services Not Covered

Targeted Case Management (TCM) services do not cover:

(1) Direct delivery of an underlying medical, educational, social, or other service to which the eligible client has been referred;

(2) Providing transportation to a service to which an eligible client is referred;

(3) Escorting an eligible client to a service;

(4) Providing child care so that an eligible client may access a service;

(5) Contacts with individuals who are not categorically eligible for Medicaid or who are categorically eligible for Medicaid but not included in the eligible target population when those contacts relate directly to the identification and management of the non-eligible or non-targeted individual's needs and care;

(6) Assisting an individual who has not yet been determined eligible for Medicaid to apply for or obtain eligibility;

(7) TCM services provided to an individual if the services are case management services funded by Title IV-E or Title XX of the Social Security Act, or federal or State funded parole and probation, or juvenile justice programs;

(8) Activities for which third parties are liable to pay.

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065

Hist.: DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08; DMAP 43-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 22-2010, f. 6-30-10, cert. ef. 7-1-10; DMAP 41-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 75-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14; DMAP 23-2014, f. & cert. ef. 4-4-14; DMAP 76-2016, f. 12-29-16, cert. ef. 1-1-17

410-138-0020

Targeted Case Management Programs

(1) This rule includes expanded services in the State Plan for TCM and includes: Public Health Nurse Home Visiting, Expanded Babies First!, CaCoon, and Nurse-Family Partnership services approved by CMS.

(2) TCM programs include the following:

(a) Asthma/Healthy Homes;

(b) Early Intervention/Early Childhood Special Education (EI/ECSE);

(c) Human Immunodeficiency Virus (HIV);

(d) Public Health Nurse Home Visiting, Expanded Babies First!, CaCoon, and Nurse-Family Partnership;

(e) Substance Abusing Pregnant Women and Substance Abusing Parents with Children Under Age 18; and

(f) Federally Recognized Tribal Governments.

(3) The TCM Programs are medical assistance programs operated by public health authorities, unit of government providers, or Federally Recognized Tribal Governments in Oregon who are enrolled as TCM providers with the Authority. Participation by providers is voluntary and subject to approval by the Authority and CMS. With the exception of the Federally Recognized Tribal Governments TCM programs, the TCM programs authorized under these rules are cost-sharing (Federal Financial Participation (FFP) matching) programs in which the public fund agency, public entity, unit of government, shall pay the non-federal matching share of the amount of the TCM claims.

(4) The Public Fund Agency may contract TCM services provided by a Local Public Health Authority, or other public or private agency if the public fund agency's obligations for providing payment for the non-Federal share for services provided and billed to Medicaid are met in compliance with 42CFR433.51 and the TCM services are provided by an enrolled Medicaid TCM provider who will receive and retain 100 percent of the TCM payments. See OAR 410-138-0005, (Payment for Targeted Case Management Services Eligible for Federal Financial Participation.)

(5) Federally Recognized Tribal Governments TCM services authorized under these rules provided to Tribal members (American Indian/Alaska Native) at an Indian Health Service (IHS/638) facility operated by the Indian Health Service, by an Indian tribe or tribal organization are reimbursed at 100 percent by Title XIX (Medicaid) and Title XXI Children's Health Insurance Program (CHIP). TCM services provided by

IHS/638 facilities to non-tribal American Indian/Alaska Native members shall be reimbursed at the applicable FMAP rate.

(6) The Authority may not authorize services or reimbursement for direct care as part of any TCM activity. The following are TCM programs and services:

(a) The TCM Asthma/Healthy Homes program improves access to needed services for eligible clients with poorly controlled asthma or a history of environmentally induced respiratory distress. The TCM Asthma/Healthy Homes program services include management of medical and non-medical services, which address medical, social, nutritional, educational, housing, environmental, and other needs. Home visits constitute an integral part of the delivery of TCM services, provided by a TCM Asthma/Healthy Homes case manager consistent with these rules;

(b) The TCM Public Health Nurse Home Visiting program improves access to needed medical and non-medical services, which address medical, social, educational, and other services are expanded to include Medicaid eligible perinatal women, eligible infants and children through four years of age who have one or more risk factors for poor perinatal, birth and other poor health outcomes, or parent said child. See Table 1 Risk Criteria as outlined in OAR 410-138-0040 risk criteria. The TCM CaCoon program improves access to needed medical, psychosocial, educational, and other services for infants, children, and youth shall be provided to Medicaid eligible Children and Youth with Special Health Care Needs (CYSHCN), up to age 21, who have one or more diagnosis or very high risk factor listed in Table 2 as outlined in OAR 410-138-0040 risk criteria. Home visits constitute a significant part of the delivery of targeted case management services, provided by a Public Health Nurse Home Visiting, Expanded Babies First!, CaCoon, and Nurse-Family Partnership targeted case manager consistent with these rules;

(c) The TCM Early Intervention/Early Childhood Special Education (EI/ECSE) program is a medical assistance program provided by enrolled EI/ECSE providers that meet the criteria approved by the State Superintendent of Public Instruction to administer the provision of EI and ECSE. The TCM EI/ECSE program provides services to categorically eligible children with disabilities, receiving EI/ECSE services from birth until they are eligible for public school. These TCM services are available on a fee-for-service basis, within the limitations established by the Division and chapter 410, division 138 rules, consistent with the requirements of the Individuals with Disabilities Education Act (IDEA). This qualifies such programs for state reimbursement under EI/ECSE programs OAR 581-015-2700 through 581-015-2910. An enrolled TCM EI/ECSE provider shall be a contractor/agency designated by the Oregon Department of Education (ODE) to administer the provision of EI and ECSE within selected service areas or be a sub-contractor with such a contractor. TCM EI/ECSE program services include management of medical and non-medical services, to assist children with disabilities in gaining access to needed medical, social, educational, developmental and other appropriate services in coordination with a child's Individualized Family Service Plan (IFSP) developed and implemented pursuant to IDEA and based on information collected through the TCM assessment or periodic reassessment process;

(d) The TCM HIV program improves access to needed medical and non-medical services, which address physical, psychosocial, nutritional, educational, and other services for Medicaid categorically eligible clients with symptomatic or asymptomatic HIV disease. Home visits constitute an integral part of the delivery of TCM services, provided by a TCM HIV case manager consistent with these rules. Without TCM case management services, an eligible client's ability to remain safely in their home may be at risk;

(e) The TCM Substance Abusing Pregnant Women and Substance Abusing Parents with Children under age 18 program improves access to needed medical and non-medical services, which address physical, psychosocial, educational, nutritional and other services to Medicaid categorically eligible pregnant women or custodial parents with children under the age of 18 who have alcohol and/or drug addiction issues. Targeted clients are those who are not yet ready to actively engage in addiction treatment services. TCM services are provided by an enrolled TCM Substance Abusing Pregnant Women and Substance Abusing Parents with Children under age 18 provider consistent with these rules. Participation by all TCM providers is voluntary and subject to approval by the Division CMS;

(f) The TCM Federally Recognized Tribal Government program improves access to needed medical and non-medical services, which address health, psychosocial, economic, educational, nutritional, and other services for Medicaid categorically eligible tribal members served by tribal programs, provided by an enrolled tribal TCM provider consistent with these rules. The target group includes those members receiving elder care;

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individuals with diabetes; children and adults with health and social service care needs, and pregnant women.

(7) Refer to the State Plan Amendments for participating counties for each TCM program. The State Plan Amendments are located at <http://www.oregon.gov/oha/healthplan/Pages/stateplan.aspx>.

(8) Provision of any TCM Program services may not restrict an eligible client's choice of providers, in accordance with 42 CFR 441.18(a):

(a) Eligible clients shall have free choice of available TCM Program service providers or other TCM service providers available to the eligible client, subject to the Social Security Act, 42 USC 1396n and 42 CFR 441.18(b);

(b) Eligible clients shall have free choice of the providers of other medical care within their benefit package of covered services.

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065

Hist: HR 20-1992, f. & cert. ef. 7-1-92; OMAP 50-2004, f. 9-9-04, cert. ef. 10-1-04; DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08; DMAP 43-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 22-2010, f. 6-30-10, cert. ef. 7-1-10; DMAP 41-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 76-2016, f. 12-29-16, cert. ef. 1-1-17

410-138-0040

Targeted Case Management Public Health Nurse Home Visiting, Expanded Babies First!, CaCoon, and Nurse-Family Partnership Program Risk Criteria

(1) This rule is in effect for expanded services approved by CMS effective for services rendered beginning January 1, 2017, and sets forth the criteria for risk factors for the TCM Expanded Babies First! programs for infants and preschool children (birth through age four) to include perinatal and parental eligibility criteria in Table 1; and risk factors for TCM infant and children eligibility criteria and Diagnosis Table 2.

(2) Effective January 1, 2017, Table 1 risk criteria for TCM perinatal and parental eligibility and Table 2 risk criteria for TCM infant and children eligibility and diagnosis criteria become effective and may be accessed at:

[Note: Tables referenced are not included in rule text. See Ed. Note]

[ED. NOTE: Tables referenced are available by contacting Medical Assistance Programs directly.]

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 20-1992, f. & cert. ef. 7-1-92; HR 37-1994, f. 12-30-94, cert. ef. 1-1-95; OMAP 50-2004, f. 9-9-04, cert. ef. 10-1-04; DMAP 22-2010, f. 6-30-10, cert. ef. 7-1-10; DMAP 41-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 76-2016, f. 12-29-16, cert. ef. 1-1-17

410-138-0060

Targeted Case Management Program — Provider Requirements

(1) This rule is in effect for services rendered retroactive to July 1, 2009, except for the TCM Asthma/Healthy Homes Program, that is retroactive to July 1, 2010; and Public Health Nurse Home Visiting, Expanded Babies First!, CaCoon, and Nurse-Family Partnership for services rendered effective January 1, 2017.

(2) TCM Public Health Nurse Home Visiting, Expanded Babies First!, CaCoon, and Nurse-Family Partnership targeted case managers may be an employee of a Local County Health Department or other public or private agency contracted by a Local Public Health Authority with the demonstrated ability to meet all state and federal laws governing the participation of providers in the state Medicaid program and the ability to link with the Maternal and Child Health (MCH) Data System.

(3) TCM Asthma/Healthy Homes, Early Intervention/Early Childhood Special Education (EI/ECSE), and Human Immunodeficiency Virus (HIV) provider organizations shall be unit of government providers. TCM EI/ECSE providers may also be a subcontractor of a government entity.

(4) TCM Substance Abusing Pregnant Women and Substance Abusing Parents with Children Under Age 18 provider organizations shall be locally based agencies.

(5) TCM Federally Recognized Tribal Governments providers shall be Indian Health Services/638 facilities.

(6) All providers shall demonstrate the ability to provide all core elements of case management services including:

(a) Comprehensive assessment, which may include triage and environmental assessment, of client needs. All providers for the Public Health Nurse Home Visiting, Expanded Babies First!, CaCoon, and Nurse-Family Partnership targeted case managers program shall provide comprehensive nursing assessment of client needs;

(b) Reassessment of the client's status and needs annually or more frequently with a significant change in client's condition;

(c) Development and periodic revision of a comprehensive care and service plan;

(d) Referral and linking/coordination of services;

(e) Ongoing monitoring and follow-up of referral and related services;

(f) A financial management capacity and system that provides documentation of services and costs, and provides computerized tracking and monitoring to assure adequate follow-up and avoid duplication.

(7) Except for Federally Recognized Tribal Governments providers, the TCM provider shall provide the non-federal matching share from public funds in compliance with OAR 410-138-0005.

(8) If the provider is a subcontractor of a governmental entity, the governmental entity shall make the non-federal matching share with public fund payments in compliance with OAR 410-138-0005.

(9) All program providers shall demonstrate the following TCM experience and capacity:

(a) Understanding and knowledge of local and state resources and services available to the target population;

(b) Demonstrated case management experience in coordinating and linking community resources as required by the target population;

(c) Demonstrated and documented experience providing services for the target population;

(d) An administrative capacity to ensure quality of services in accordance with state and federal requirements;

(e) A financial management capacity and system that provides documentation of services and costs;

(f) Capacity to document and maintain client case records in accordance with state and federal requirements, including requirement for recordkeeping on OAR 410-138-0007 and 410-120-1360; confidentiality requirements in ORS 192.518–192.524, 179.505 and 411.320; and HIPAA Privacy requirements applicable to case management services;

(g) A sufficient number of staff to meet the case management service needs of the target population;

(h) Demonstrated ability to meet all state and federal laws governing the participation of providers in the state Medicaid program; and

(i) Enrolled as a TCM provider with the Authority and meeting the requirements set forth in the provider enrollment agreement.

(10) TCM Asthma/Healthy Homes Program case managers shall possess the following additional qualifications:

(a) A current active Oregon registered nurse (RN) license; or

(b) A registered environmental health specialist; or

(c) An asthma educator certified by the National Asthma Education and Prevention Program; or

(d) A community health worker certified by the Stanford Chronic Disease Self-Management Program; or

(e) A case manager working under the supervision of a licensed registered nurse or a registered environmental specialist.

(11) The TCM case managers for the Public Health Nurse Home Visiting, Babies First!, CaCoon, and Nurse-Family Partnership program:

(a) May be an employee of a local county health department or other public or private agency contracted by a Local Public Health Authority;

(b) Shall be a licensed registered nurse with experience in community health, public health, or child health nursing; and

(c) May be a community health worker, family advocate, or promotor working under the supervision of a licensed registered nurse. The minimum qualifications of the Community Health Workers, Family Advocates, or Promotoras are as follows:

(A) High School Graduate or GED with additional course work in human growth and development, health occupations, or health education; and

(B) Two years' experience in public health, mental health, or alcohol drug treatment settings; or

(C) Any satisfactory combination of experience and training that demonstrates the ability to perform case management duties;

(D) The case manager shall work under the policies, procedures, and protocols of the state MCH Program.

(12) Additional qualifications for TCM EI/ECSE provider organizations include the following:

(a) TCM EI/ECSE providers shall meet the criteria to administer the provision of EI and ECSE within selected service areas designated by the Oregon Department of Education, qualifying such programs for state reimbursement under EI/ECSE Programs (OAR 581-015-2700 through 581-015-2910);

(b) Shall be contractors with the Oregon Department of Education in the provision of EI/ECSE services or sub-contractors with such a contractor, and shall meet the following qualifications;

(c) Demonstrated case management experience in conjunction with service coordination under OAR 581-015-2840 specified on a child's

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Individualized Family Service Plan (IFSP) for coordinating and linking such community resources as required by the target population; and

(d) Capacity to document and maintain individual case records in accordance with confidentiality requirements in the Individuals with Disabilities Education Act, ORS 192.518–192.524, 179.505, and 411.320, and HIPAA Privacy requirements in 45 CFR 160 and 164, if applicable.

(13) Qualifications for TCM EI/ECSE Supervisors of EI/ECSE service coordinators of targeted case management services shall:

(a) Possess a minimum of a master's degree in early childhood special education or a related field, and have three years of experience with infants, toddlers, young children, and families;

(b) Hold a Teacher Standard and Practices Commission (TSPC) administrative endorsement or within 12 months of employment, complete authorization as an Early Childhood Supervisor under OAR 581-015-2910; and

(c) Have a professional development plan based on the content of the EI/ECSE competencies.

(14) Qualifications of EI and ECSE Specialists performing case management/Targeted Case Management services shall:

(a) Possess a minimum of a baccalaureate degree in early childhood, special education or a related field;

(b) Have a professional development plan based on the content of the EI/ECSE competencies; and

(c) Hold one of the following credentials:

(A) TSPC licensure or endorsement in EI/ECSE;

(B) TSPC licensure or endorsement in related field; or

(C) Within 12 months of employment, authorization as an Early Childhood Specialist under OAR 581-15-2905.

(15) Qualifications of EI and ECSE Related services personnel shall possess a minimum of a baccalaureate degree and a valid license necessary to practice in Oregon. Related services personnel who also provide service coordination as outlined in OAR 581-015-2840 shall have:

(a) TSPC licensure in their area of discipline; or

(b) State licensure in their area of discipline; and

(c) A professional development plan based on the content of the EI/ECSE competencies;

(d) The Individuals with Disabilities Education Act (IDEA);

(e) The nature and scope of services available under the Oregon EI/ECSE programs.

(16) In addition to the above, all shall be employees of the ODE, its contractors or subcontractors; and shall have demonstrated knowledge and understanding about:

(a) The ODE EI/ECSE programs OAR 581-015-2700 through 581-015-2910, including these rules and the applicable State Medicaid Plan Amendment;

(b) Case Management experience in conjunction with service coordination under OAR 581-015-2840 for coordinating and linking such community resources as required by the target population to assist clients in gaining access to needed medical, social, educational, developmental and other appropriate services in coordination with the eligible child's IFSP;

(c) The Individuals with Disabilities Education Act (IDEA);

(d) The nature and scope of services available under the Oregon EI/ECSE program, including the TCM services, and the system of payments for services and other pertinent information.

(17) TCM HIV providers shall have the financial management capacity and system that provides documentation of services and costs and is able to generate quarterly service utilization reports that can be used to monitor services rendered against claims submitted and paid. The service utilization reporting requirements are as follows:

(a) Report on the number of unduplicated clients receiving services during the reporting period;

(b) Report on the number of full time equivalent (FTE) case managers providing services during the reporting period; and

(c) Report on the number of distinct case management activities performed during the reporting period (Triage Assessments, Comprehensive Assessments, Re-Assessments, Care Plan Development, Referral and Related Services, and Monitoring Follow-Up) along with the total number of 15-minute increments associated with each activity category.

(18) TCM HIV case managers shall possess the following education and qualifications:

(a) A current active Oregon registered nurse (RN) license or Bachelor of Social Work, or other related health or human services degree from an accredited college or university; and

(b) Documented evidence of completing the Authority's HIV Care and Treatment designated HIV Targeted Case Manager training, and shall

participate in the Authority's on-going training for HIV targeted case managers. The training may either be provided by the Authority, or be approved by the Authority and provided by the TCM provider organization.

(19) The TCM Substance Abusing Pregnant Women and Substance Abusing Parents with Children Under Age 18 case manager shall;

(a) Possess a combination of education and experience necessary to support case planning and monitoring. The case manager shall be able to demonstrate an understanding of issues relating to substance abuse and community supports;

(b) Demonstrate continuous sobriety under a nonresidential or independent living condition for the immediate past two years;

(c) Meet at least one of the following qualifications:

(A) Be a licensed Medical Provider, Qualified Mental Health Professional, or Qualified Mental Health Associate; or

(B) Possess certification as an Alcohol and Drug Counselor (CADC) level I, II, or III; or

(C) Complete a Peer Services Training Program following a curriculum approved by the Authority's Addictions and Mental Health Division and be:

(i) A self-identified person currently or formerly receiving mental health services; or

(ii) A self-identified person in recovery from a substance use disorder, who meets the abstinence requirements for recovering staff in alcohol and other drug treatment programs; or

(iii) A family member of an individual who is a current or former recipient of addictions or mental health services;

(d) Work under the supervision of a Clinical Supervisor. The Clinical Supervisor shall:

(A) Meet the requirements in Oregon administrative rule for alcohol and other drug treatment programs;

(B) Be certified or licensed by a health or allied provider agency to provide addiction treatment; and

(C) Possess one of the following qualifications:

(i) Five years of paid full-time experience in the field of alcohol and other drug counseling; or

(ii) A Bachelor's degree and four years of paid full-time experience in the social services field with a minimum of two years of direct alcohol and other drug counseling experience; or

(iii) A Master's degree and three years of paid full-time experience in the social services field with a minimum of two years of direct alcohol and other drug counseling experience;

(e) Satisfy continuing education requirements as specified by the agency providing clinical supervision specific to alcohol and other drug treatment; and

(f) Work in compliance with Medicaid policies, procedures, and protocols.

(20) A Federally Recognized Tribal Governments TCM provider shall be an organization certified as meeting the following criteria:

(a) A minimum of three years' experience of successful work with Native American children, families, and elders involving a demonstrated capacity to provide all core elements of tribal case management, including: assessment, case planning, case plan implementation, case plan coordination, and case plan reassessment;

(b) A minimum of three years case management experience in coordinating and linking community medical, social, educational or other resources as required by the target population;

(c) Administrative capacity to ensure quality of services in accordance with tribal, state, and federal requirements; and

(d) Evidence that the TCM organization is a federally recognized tribe located in the State of Oregon.

(21) The following are qualifications of Tribal Case Managers within provider organizations:

(a) Completion of training in a case management curriculum;

(b) Basic knowledge of behavior management techniques, family dynamics, child development, family counseling techniques, emotional and behavioral disorders, and issues around aging;

(c) Skill in interviewing to gather data and complete needs assessment, in preparation of narratives/reports, in development of service plans, and in individual and group communication;

(d) Ability to learn and work with state, federal and tribal rules, laws and guidelines relating to Native American child, adult and elder welfare and to gain knowledge about community resources and link tribal members with those resources;

(e) Knowledge and understanding of these rules and the applicable State Medicaid Plan Amendment.

Stat. Auth.: ORS 413.042 & 414.065

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Stats. Implemented: ORS 414.065

Hist.: HR 20-1992, f. & cert. ef. 7-1-92; HR 37-1994, f. 12-30-94, cert. ef. 1-1-95; OMAP 50-2004, f. 9-9-04, cert. ef. 10-1-04; DMAP 22-2010, f. 6-30-10, cert. ef. 7-1-10; DMAP 41-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 76-2016, f. 12-29-16, cert. ef. 1-1-17

410-138-0080

Targeted Case Management Program Billing Policy

(1) Reimbursement is based on cost-based rate methodology and subject to all rules and laws pertaining to federal financial participation. The Authority's acceptance of cost data provided by provider organizations for the purpose of establishing rates paid for TCM services does not imply or validate the accuracy of the cost data provided.

(2) The cost-based rate shall be derived by considering the following expenditures directly attributable to TCM staff:

- (a) TCM staff salaries and other personnel expenses;
- (b) Supervisory salaries and other personnel expenses;
- (c) Administrative support salaries and other personnel expenses;
- (d) Services and supply expenses;
- (e) Various overhead expenditures, if not already considered in the indirect rate.

(3) The Division shall accept a claim up to 12 months from the date of service. See provider rules OAR 943-120-0340, (Claim and PHP Encounter Submission), and 410-120-1300, (Timely Submission of Claims).

(4) Providers shall only bill for allowable activities in the TCM programs that assist individuals eligible under the Medicaid State Plan to gain access to needed medical, social, educational, housing, environmental, and other services.

(5) The Division may not allow duplicate payments to other public agencies or private entities under other program authorities for TCM services under the eligible client's care plan. Medical services shall be provided and billed separately from case management services. The Authority shall recover duplicate payments.

(6) The Division may not reimburse for TCM services if the services are case management services funded by Title IV-E or Title XX of the Social Security Act, federal or state funded parole and probation, or juvenile justice programs. These services shall be billed separately.

(7) In general, the Medicaid program is the payer of last resort and a provider is required to bill other resources before submitting the claim to Medicaid. This requirement means that other payment sources, including other federal or state funding sources, shall be used before the Authority may be billed for covered TCM services. However, the following exceptions apply to the requirement to pursue third party resources:

(a) For TCM Early Intervention /Early Childhood School Education (EI/ECSE) services provided under the Individuals with Disabilities Education Act (IDEA), 1903(c) of the Social Security Act and 34 CFR 300.154 Methods of Ensuring Services make Medicaid/Children's Health Insurance Program (CHIP) primary payer before Oregon Department of Education (ODE) or the Educational Agency (EA), for a covered TCM EI/ECSE service provided to a Medicaid-eligible child receiving Service Coordination/Case Management pursuant to the Medicaid-eligible child's Individualized Family Service Plan (IFSP), the services are documented as required under the TCM rules, and subject to the applicable reimbursement rate;

(b) If TCM EI/ECSE services are provided under Title V of the Social Security Act Maternal and Child Health Services Block Grant, Medicaid-covered TCM services provided by a Title V grantee are paid by Medicaid before the Title V funds;

(c) CMS recognizes that while public education agencies are required to provide IDEA services at no cost to eligible children, Medicaid reimbursement is available for these services because section 1903(c) of the Social Security Act requires Medicaid to be primary to the U.S. Department of Education for payment of covered services that may also be considered special education, related services, or early intervention services, or services provided under IDEA.

(8) Any place of service is valid.

(9) Prior authorization is not required.

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 20-1992, f. & cert. ef. 7-1-92; HR 37-1994, f. 12-30-94, cert. ef. 1-1-95; OMAP 61-2004, f. 9-10-04, cert. ef. 10-1-04; DMAP 28-2008(Temp), f. 6-30-08, cert. ef. 7-1-08 thru 12-28-08; DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08; DMAP 22-2010, f. 6-30-10, cert. ef. 7-1-10; DMAP 41-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 76-2016, f. 12-29-16, cert. ef. 1-1-17

410-138-0390

Targeted Case Management Retroactive Payments

(1) Providers may submit claims retroactively for services provided to the targeted populations described in OAR 410-138-0020(2)(a)-(f) if the claims meet the following criteria:

(a) Services were provided less than 12 months prior to the date of first claim submission, and were provided on or after the date indicated in the rule listed above, and were allowable services in accordance with OAR 410-138-0007;

(b) The maximum number of units billed does not exceed the maximum allowed under each TCM program.

(c) The case manager was appropriately licensed or certified, and met all current requirements for case managers at the time the service was provided, as described in the provider requirements rule OAR 410-138-0060 appropriate for the TCM program;

(d) Documentation regarding provider qualifications and the services that the provider retroactively claims shall have been available at the time the services were performed;

(2) The Division may not allow duplicate payments to be made to the same or different providers for the same service for the same client, nor will payment be allowed for services for which third parties are liable to pay (see also OAR 410-138-0005).

(3) Reimbursement is subject to all rules and laws pertaining to federal financial participation.

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065

Hist.: DMAP 34-2009(Temp), f. & cert. ef. 11-16-09 thru 5-1-10; DMAP 43-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 22-2010, f. 6-30-10, cert. ef. 7-1-10; DMAP 41-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 48-2012(Temp), f. & cert. ef. 10-31-12 thru 4-28-13; DMAP 21-2013, f. & cert. ef. 4-26-13; DMAP 76-2016, f. 12-29-16, cert. ef. 1-1-17

410-138-0420

Targeted Case Management Asthma/Healthy Home — Risk Criteria

(1) This administrative rule will be implemented contingent on CMS approval for the TCM Asthma/Healthy Home Program. This rule is to be used in conjunction with the Division's General Rules (chapter 410, division 120) and other Targeted Case Management Program rules OAR 410-138-0000 through 410-138-0009.

(2) The target group is Medicaid eligible children with poorly controlled asthma or a history of environmentally induced respiratory distress, which can result in a life threatening asthma exacerbation or exacerbation of respiratory distress.

(3) Risk factors for the target group could include, but are not limited to:

- (a) Unscheduled visits for emergency or urgent care;
- (b) One or more in-patient stays;
- (c) History of intubation or Intensive Care Unit care;
- (d) A medication ratio of control medications to rescue medications of less than or equal to .33 indicating less than desirable control of asthma;
- (e) Environmental or psychosocial concerns raised by medical home;
- (f) School day loss greater than two school days per year;
- (g) Inability to participate in sports or other activities due to asthma;
- (h) Homelessness;
- (i) Inadequate housing, heating or sanitation.

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065

Hist.: DMAP 22-2010, f. 6-30-10, cert. ef. 7-1-10; DMAP 41-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 76-2016, f. 12-29-16, cert. ef. 1-1-17

Rule Caption: Adding Definition of Psychiatric Emergency Services and Its Reimbursement Method to General and Hospital Rules

Adm. Order No.: DMAP 77-2016

Filed with Sec. of State: 12-29-2016

Certified to be Effective: 1-1-17

Notice Publication Date: 12-1-2016

Rules Amended: 410-125-0085, 410-125-0360, 410-120-0000

Rules Repealed: 410-125-0085(T), 410-125-0360(T), 410-120-0000(T)

Subject: The Division needs to adopt these temporary rules so that Psychiatric Emergency Services (PES) facilities that are preparing to establish themselves as a PES provider can use these rules to guide their preparations in time for a January 1, 2017, go-live date.

Rules Coordinator: Sandy Cafourek — (503) 945-6430

ADMINISTRATIVE RULES

410-125-0085

Outpatient Services

(1) Outpatient services that may require prior authorization (PA) include (see the individual program in the Authority's Health Systems Division (Division)) Oregon Administrative Rules:

- (a) Physical Therapy (chapter 410, division 131);
- (b) Occupational Therapy (chapter 410, division 131);
- (c) Speech Therapy (chapter 410, division 129);
- (d) Audiology (chapter 410, division 129);
- (e) Hearing Aids (chapter 410, division 129);
- (f) Dental Procedures (chapter 410, division 123);
- (g) Drugs (chapter 410, division 121);
- (h) Apnea monitors, services, and supplies (chapter 410, division 122);

(i) Home Parenteral/Enteral Therapy (chapter 410, division 148);

(j) Durable Medical Equipment and Medical supplies (chapter 410, division 122);

(k) Certain hospital services.

(2) The National Drug Code (NDC) must be included on the electronic (837I) and paper (UB 04) claims for physician administered drug codes required by the Deficit Reduction Act of 2005.

(3) Outpatient surgical procedures:

(a) For Coordinated Care Organization (CCO) members: Contact the CCO. The CCO may have different PA requirements than the Division. Some services are not covered under CCO contracts and require PA from the Division, or the Division's Dental Services program analyst;

(b) For Medicare clients enrolled in a CCO: These services must be authorized by the CCO even if Medicare is the primary payer. Without this authorization, the provider may not be paid beyond any Medicare payments (see also OAR 410-125-0103);

(c) For fee-for-service clients on the OHP Plus benefit package:

(A) Surgical procedures listed in OAR 410-125-0080 require PA when performed in an outpatient or day surgery setting, unless they are urgent or emergent;

(B) Contact the Division for PA (unless indicated otherwise in OAR 410-125-0080).

(d) Out-of-State services: Outpatient services provided by hospitals located less than 75 miles from the border of Oregon do not require PA unless specified in the Division's Hospital Services Program rules. All non-urgent or non-emergent services provided by hospitals located more than 75 miles from the border of Oregon require PA. For clients enrolled in a CCO, contact the CCO for authorization. For clients not enrolled in a health plan, contact the Division's Provider Clinical Support Unit.

(4) Psychiatric Emergency Services (PES):

(a) Psychiatric emergency services as defined by OAR 309-023-0110 delivered in a PES facility as described in OAR 309-023-0120 shall be reimbursed for a maximum of 20 hours per admittance;

(b) Psychiatric emergency services shall be reimbursed with a bundled, hourly rate using a fee-for-service rate methodology that is based on rates paid for similar services, using similar providers at a similar level-of-care.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.065

Hist.: HR 42-1991, f. & cert. ef. 10-1-91; HR 39-1992, f. 12-31-92, cert. ef. 1-1-93; HR 36-1993, f. & cert. ef. 12-1-93; HR 5-1994, f. & cert. ef. 2-1-94; HR 4-1995, f. & cert. ef. 3-1-95; OMAP 34-1999, f. & cert. ef. 10-1-99; OMAP 70-2004, f. 9-15-04, cert. ef. 10-1-04; DMAP 39-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 32-2010, f. 12-15-10, cert. ef. 1-1-11; DMAP 37-2011, f. 12-13-11, cert. ef. 1-1-12; DMAP 75-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14; DMAP 23-2014, f. & cert. ef. 4-4-14; DMAP 63-2016(Temp), f. & cert. ef. 11-10-16 thru 5-8-17; DMAP 77-2016, f. 12-29-16, cert. ef. 1-1-17

410-125-0360

Definitions and Billing Requirements

(1) Total days on an inpatient claim must equal the number of accommodation days. Do not count the day of discharge when calculating the number of accommodation days.

(2) Inpatient services are reimbursed based on the admission date and discharge diagnosis.

(3) Inpatient services are services to patients who typically are admitted to the hospital before midnight and listed on the following day's census, with the following exceptions:

(a) A patient admitted and transferred to another acute care hospital on the same day is considered an inpatient;

(b) A patient who expires on the day of admission is an inpatient; and

(c) Births.

(4) Outpatient services:

(a) Outpatient services are services to patients who are treated and released the same day;

(b) Outpatient services also include services provided prior to midnight and continuing into the next day if the patient was admitted for ambulatory surgery, admitted to a birthing center, a treatment or observation room, or a short term stay bed;

(c) Outpatient observation services are services provided by a hospital, including the use of a bed and periodic monitoring by hospital nursing or other staff for the purpose of evaluation of a patient's medical condition. A maximum of 48 hours of outpatient observation shall be reimbursed. An outpatient observation stay that exceeds 48 hours shall be billed as inpatient; and

(d) Outpatient observation services do not include the following:

(A) Services provided for the convenience of the patient, patient's family or physician but that are not medically necessary;

(B) Standard recovery period; and

(C) Routine preparation services and recovery for diagnostic services provided in a hospital outpatient department.

(5) Outpatient and inpatient services provided on the same day: If a patient receives services in the emergency room or in any outpatient setting and is admitted to an acute care bed in the same hospital on the same day, combine the emergency room and other outpatient charges related to that admission with the inpatient charges. Bill on a single UB-04 for both inpatient and outpatient services provided under these circumstances:

(a) If on the day of discharge, the client uses outpatient services at the same hospital, these shall be billed on the UB-04 along with other inpatient charges, regardless of the type of service provided or the diagnosis of the client. Prescription medications provided to a patient being discharged from the hospital may be billed separately as outpatient Take Home Drugs if the patient receives more than a three-day supply;

(b) Inpatient and outpatient services provided to a client on the same day by two different hospitals shall be reimbursed separately. Each hospital shall bill for the services provided by that hospital;

(c) Inpatient and psychiatric emergency services (PES) as defined in OAR 309-023-0110 provided to the patient on the same day, whether in the same hospital or two different hospitals, shall be reimbursed separately.

(6) Outpatient procedures that result in an inpatient admission: If, during the course of an outpatient procedure, an emergency develops requiring an inpatient stay, place a "1" in the Type of Admission field. The principal diagnosis should be the condition or complication that caused the admission. Bill charges for the outpatient and inpatient services together.

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

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.065

Hist.: AFS 14-1980, f. 3-27-80, ef. 4-1-80; AFS 30-1982, f. 4-26-82 & AFS 51-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the AFS branch offices located in North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 37-1983 (Temp), f. & ef. 7-15-83; AFS 1-1984, f. & ef. 1-9-84; AFS 45-1984, f. & ef. 10-1-84; AFS 48-1984(Temp), f. 11-30-84, ef. 12-1-84; AFS 29-1985, f. 5-22-85, ef. 5-29-85; AFS 52-1985, f. 9-3-85, ef. 10-1-85; AFS 38-1986, f. 4-29-86, ef. 6-1-86; AFS 46-1987, f. & ef. 10-1-87; AFS 49-1989(Temp), f. 8-24-89, cert. ef. 9-1-89; AFS 72-1989, f. & cert. ef. 12-1-89, Renumbered from 461-015-0055; HR 21-1990, f. & cert. ef. 7-9-90, Renumbered from 461-015-0330, 461-015-0340 & 461-015-0380; HR 31-1990(Temp), f. & cert. ef. 9-11-90; HR 2-1991, f. & cert. ef. 1-4-91; HR 42-1991, f. & cert. ef. 10-1-91, Renumbered from 410-125-0380 & 410-125-0460; HR 22-1993 (Temp), f. & cert. ef. 9-1-93; HR 36-1993, f. & cert. ef. 12-1-93; HR 4-1995, f. & cert. ef. 3-1-95; OMAP 34-1999, f. & cert. ef. 10-1-99; OMAP 70-2004, f. 9-15-04, cert. ef. 10-1-04; DMAP 19-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 32-2010, f. 12-15-10, cert. ef. 1-1-11; DMAP 63-2016(Temp), f. & cert. ef. 11-10-16 thru 5-8-17; DMAP 77-2016, f. 12-29-16, cert. ef. 1-1-17

410-120-0000

Acronyms and Definitions

Identification of acronyms and definitions within this rule specifically pertain to their use within the Oregon Health Authority (Authority), Health Systems Division (Division) administrative rules, applicable to the medical assistance program. This rule does not include an exhaustive list of Division acronyms and definitions. For more information, see Oregon Health Plan (OHP) program OAR 410-141-0000 Acronyms and Definitions; 410-200-0015 General Definitions; and any appropriate governing acronyms and definitions in the Department of Human Services (Department) chapter 411 or 413 administrative rules; or contact the Division.

(1) "Abuse" means provider practices that are inconsistent with sound fiscal, business, or medical practices and result in an unnecessary cost to the Authority or in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care. It also includes recipient practices that result in unnecessary cost to the Authority.

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(2) "Action" means a termination, suspension, or reduction of eligibility or covered services. For the definition as it is related to a CCO member, refer to OAR 410-141-0000.

(3) "Acupuncturist" means a person licensed to practice acupuncture by the relevant state licensing board.

(4) "Acupuncture Services" means services provided by a licensed acupuncturist within the scope of practice as defined under state law.

(5) "Acute" means a condition, diagnosis, or illness with a sudden onset and that is of short duration.

(6) "Acquisition Cost" means, unless specified otherwise in individual program administrative rules, the net invoice price of the item, supply, or equipment plus any shipping or postage for the item.

(7) "Addictions and Mental Health Division" means the Division within the Authority's Health Systems Division that administers mental health and addiction programs and services.

(8) "Adequate Record Keeping" means documentation that supports the level of service billed. See 410-120-1360, Requirements for Financial, Clinical, and Other Records, and the individual provider rules.

(9) "Administrative Medical Examinations and Reports" means examinations, evaluations, and reports, including copies of medical records requested on the OHP 729 form through the local Department branch office or requested or approved by the Authority to establish client eligibility for a medical assistance program or for casework planning.

(10) "Advance Directive" means an individual's instructions to an appointed person specifying actions to take in the event that the individual is no longer able to make decisions due to illness or incapacity.

(11) "Adverse Event" means an undesirable and unintentional, though not necessarily unexpected, result of medical treatment.

(12) "Aging and People with Disabilities (APD)" means the division in the Department of Human Services (Department) that administers programs for seniors and people with disabilities. This division was formerly named "Seniors and People with Disabilities (SPD)."

(13) "All-Inclusive Rate" or "Bundled Rate" means the nursing facility rate established for a facility. This rate includes all services, supplies, drugs, and equipment as described in OAR 411-070-0085 and in the Division's Pharmaceutical Services program administrative rules and the Home Enteral/Parenteral Nutrition and IV Services program administrative rules, except as specified in OAR 410-120-1340 Payment.

(14) "Allied Agency" means local and regional governmental agency and regional authority that contracts with the Authority or Department to provide the delivery of services to covered individuals (e.g., local mental health authority, community mental health program, Oregon Youth Authority, Department of Corrections, local health departments, schools, education service districts, developmental disability service programs, area agencies on aging (AAAs), federally recognized American Indian tribes).

(15) "Alternative Care Settings" means sites or groups of practitioners that provide care to members under contract with a PHP or CCO, including urgent care centers, hospice, birthing centers, out-placed medical teams in community or mobile health care facilities, long-term care facilities, and outpatient surgical centers.

(16) "Ambulance" means a specially equipped and licensed vehicle for transporting sick or injured persons that meets the licensing standards of the Authority or the licensing standards of the state in which the ambulance provider is located.

(17) "Ambulatory Payment Classification" means a reimbursement method that categorizes outpatient visits into groups according to the clinical characteristics, the typical resource use, and the costs associated with the diagnoses and the procedures performed. The groups are called Ambulatory Payment Classifications (APCs).

(18) "Ambulatory Surgical Center (ASC)" means a facility licensed as an ASC by the Authority.

(19) "American Indian/Alaska Native (AI/AN)" means a member of a federally recognized Indian tribe, band, or group, and an Eskimo or Aleut or other Alaska native enrolled by the Secretary of the Interior pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. 1601, or a person who is considered by the Secretary of the Interior to be an Indian for any purpose.

(20) "American Indian/Alaska Native (AI/AN) Clinic" means a clinic recognized under Indian Health Services (IHS) law or by the Memorandum of Agreement between IHS and the Centers for Medicare and Medicaid Services (CMS).

(21) "Ancillary Services" means services supportive of or necessary for providing a primary service, such as anesthesiology, which is an ancillary service necessary for a surgical procedure.

(22) "Anesthesia Services" means administration of anesthetic agents to cause loss of sensation to the body or body part.

(23) "Appeal" means a request for review of an action.

(24) "Area Agency on Aging (AAA)" means the designated entity with which the Department contracts to meet the requirements of the Older Americans Act and ORS Chapter 410 in planning and providing services to the elderly or elderly and disabled population.

(25) "Atypical Provider" means an entity able to enroll as a billing provider (BP) or rendering provider for medical assistance programs related non-health care services but that does not meet the definition of health care provider for National Provider Identification (NPI) purposes.

(26) "Audiologist" means a person licensed to practice audiology by the State Board of Examiners for Speech Pathology and Audiology.

(27) "Audiology" means the application of principles, methods, and procedures of measurement, testing, appraisal, prediction, consultation, counseling, and instruction related to hearing and hearing impairment for the purpose of modifying communicative disorders involving speech, language, auditory function, including auditory training, speech reading and hearing aid evaluation, or other behavior related to hearing impairment.

(28) "Automated Voice Response (AVR)" means a computer system that provides information on clients' current eligibility status from the Division by computerized phone response.

(29) "Behavioral Health" means mental health, mental illness, addiction disorders, and substance use disorders.

(30) "Behavioral Health Assessment" means a qualified mental health professional's determination of a member's need for mental health services.

(31) "Behavioral Health Case Management" means services provide to members who need assistance to ensure access to mental health benefits and services from local, regional, or state allied agencies or other service providers.

(32) "Behavioral Health Evaluation" means a psychiatric or psychological assessment used to determine the need for mental health or substance use disorder services.

(33) "Benefit Package" means the package of covered health care services for which the client is eligible.

(34) "Billing Agent or Billing Service" means third party or organization that contracts with a provider to perform designated services in order to facilitate an Electronic Data Interchange (EDI) transaction on behalf of the provider.

(35) "Billing Provider (BP)" means a person, agent, business, corporation, clinic, group, institution, or other entity who submits claims to or receives payment from the Division on behalf of a rendering provider and has been delegated the authority to obligate or act on behalf of the rendering provider.

(36) "Buying Up" means the practice of obtaining client payment in addition to the Division or managed care plan payment to obtain a non-covered service or item. (See 410-120-1350 Buying Up.)

(37) "By Report (BR)": means services designated, as BR requires operative or clinical and other pertinent information to be submitted with the billing as a basis for payment determination. This information must include an adequate description of the nature and extent of need for the procedure. Information such as complexity of symptoms, final diagnosis, pertinent physical findings, diagnostic and therapeutic procedures, concurrent problems, and follow-up care will facilitate evaluation.

(38) "Case Management Services" means services provided to ensure that CCO members obtain health services necessary to maintain physical, mental, and emotional development and oral health. Case management services include a comprehensive, ongoing assessment of medical, mental health, substance use disorder or dental needs plus the development and implementation of a plan to obtain or make referrals for needed medical, mental, chemical dependency, or dental services, referring members to community services and supports that may include referrals to Allied Agencies.

(39) "Certified Traditional Health Worker" means an individual who has successfully completed a training program or doula training as required by OAR 410-180-0305, known to the Centers of Medicare and Medicaid as non-traditional health worker.

(40) "Child Welfare (CW)" means a division within the Department responsible for administering child welfare programs, including child abuse investigations and intervention, foster care, adoptions, and child safety.

(41) "Children's Health Insurance Program (CHIP)" means a federal and state funded portion of the Oregon Health Plan (OHP) established by Title XXI of the Social Security Act and administered by the Authority.

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(42) “Chiropractor” means a person licensed to practice chiropractic by the relevant state licensing board.

(43) “Chiropractic Services” means services provided by a licensed chiropractor within the scope of practice as defined under state law and federal regulation.

(44) “Citizen/Alien-Waived Emergency Medical (CAWEM)” means aliens granted lawful temporary resident status or lawful permanent resident status under the Immigration and Nationality Act are eligible only for emergency services and limited service for pregnant women. Emergency services for CAWEM are defined in OAR 410-120-1210(4)(d).

(45) “Claimant” means a person who has requested a hearing.

(46) “Client” means an individual found eligible to receive OHP health services.

(47) “Clinical Nurse Specialist” means a registered nurse who has been approved and certified by the Board of Nursing to provide health care in an expanded specialty role.

(48) “Clinical Social Worker” means a person licensed to practice clinical social work pursuant to state law.

(49) “Clinical Record” means the medical, dental, or mental health records of a client or member.

(50) “Co-morbid Condition” means a medical condition or diagnosis coexisting with one or more other current and existing conditions or diagnoses in the same patient.

(51) “Comfort Care” means medical services or items that give comfort or pain relief to an individual who has a terminal illness, including the combination of medical and related services designed to make it possible for an individual with terminal illness to die with dignity and respect and with as much comfort as is possible given the nature of the illness.

(52) “Community Health Worker” means an individual who:

(a) Has expertise or experience in public health;

(b) Works in an urban or rural community either for pay or as a volunteer in association with a local health care system;

(c) To the extent practicable, shares ethnicity, language, socioeconomic status, and life experiences with the residents of the community where the worker serves;

(d) Assists members of the community to improve their health and increases the capacity of the community to meet the health care needs of its residents and achieve wellness;

(e) Advocates for the individual patient and community health needs, building individual and community capacity to advocate for their health;

(f) Provides health education and information that is culturally appropriate to the individuals being served;

(g) Assists community residents in receiving the care they need;

(h) May give peer counseling and guidance on health behaviors; and

(i) May provide direct services such as first aid or blood pressure screening.

(53) “Community Mental Health Program (CMHP)” means the organization of all services for individuals with mental or emotional disorders operated by, or contractually affiliated with, a local Mental Health Authority operated in a specific geographic area of the state under an inter-governmental agreement or direct contract with the Authority.

(54) “Condition/Treatment Pair” means diagnoses described in the International Classification of Diseases Clinical Modifications, 10th edition (ICD-10-CM); the Diagnostic and Statistical Manual of Mental Disorders, 5th edition (DSM-V); and treatments described in the Current Procedural Terminology (CPT); or American Dental Association Codes (CDT) or the Authority Behavioral Health Fee Schedule, that, when paired by the Health Evidence Review Commission, constitute the line items in the Prioritized List of Health Services. Condition/treatment pairs may contain many diagnoses and treatments.

(55) “Contested Case Hearing” means a proceeding before the Authority under the Administrative Procedures Act when any of the following contests an action:

(a) A client or member or their representative;

(b) A PHP or CCO member’s provider; or

(c) A PHP or CCO.

(56) “Contiguous Area” means the area up to 75 miles outside the border of the State of Oregon.

(57) “Contiguous Area Provider” means a provider practicing in a contiguous area.

(58) “Continuing Treatment Benefit” means a benefit for clients who meet criteria for having services covered that were either in a course of treatment or scheduled for treatment the day immediately before the date the client’s benefit package changed to one that does not cover the treatment.

(59) “Coordinated Care Organization (CCO)” as defined in OAR 410-141-0000.

(60) “Co-Payments” means the portion of a claim or medical, dental, or pharmaceutical expense that a client must pay out of their own pocket to a provider or a facility for each service. It is usually a fixed amount that is paid at the time service is rendered. (See 410-120-1230 Client Copayment.)

(61) “Cost Effective” means the lowest cost health service or item that, in the judgment of Authority staff or its contracted agencies, meets the medical needs of the client.

(62) “Covered Services” means medically appropriate health services described in ORS Chapter 414 and applicable administrative rules that the legislature funds, based on the Prioritized List of Health Services.

(63) “Current Dental Terminology (CDT)” means a listing of descriptive terms identifying dental procedure codes used by the American Dental Association.

(64) “Current Procedural Terminology (CPT)” means the physicians’ CPT is a listing of descriptive terms and identifying codes for reporting medical services and procedures performed by physicians and other health care providers.

(65) “Date of Receipt of a Claim” means the date on which the Authority receives a claim as indicated by the Internal Control Number (ICN) assigned to a claim. Date of receipt is shown as the Julian date in the 5th through 7th position of the ICN.

(66) “Date of Service” means the date on which the client receives medical services or items, unless otherwise specified in the appropriate provider rules. For items that are mailed or shipped by the provider, the date of service is the date on which the order was received, the date on which the item was fabricated, or the date on which the item was mailed or shipped.

(67) “Declaration for Mental Health Treatment” means a written statement of an individual’s decisions concerning his or her mental health treatment. The individual makes the declaration when they are able to understand and make decisions related to treatment that is honored when the individual is unable to make such decisions.

(68) “Dental Emergency Services” means dental services provided for severe tooth pain, unusual swelling of the face or gums, or an avulsed tooth.

(69) “Dental Services” means services provided within the scope of practice as defined under state law by or under the supervision of a dentist or dental hygienist.

(70) “Dentist” means a person licensed to practice dentistry pursuant to state law of the state in which he or she practices dentistry or a person licensed to practice dentistry pursuant to federal law for the purpose of practicing dentistry as an employee of the federal government.

(71) “Denturist” means a person licensed to practice denture technology pursuant to state law.

(72) “Denturist Services” means services provided within the scope of practice as defined under state law by or under the personal supervision of a denturist.

(73) “Dental Hygienist” means a person licensed to practice hygiene under the direction of a licensed professional within the scope of practice pursuant to state law.

(74) “Dental Hygienist with an Expanded Practice Permit” means a person licensed to practice dental hygiene services as authorized by the Board of Dentistry with an Expanded Practice Dental Hygienist Permit (EPDHP) pursuant to state law.

(75) “Dentally Appropriate” means services that are required for prevention, diagnosis, or treatment of a dental condition and that are:

(a) Consistent with the symptoms of a dental condition or treatment of a dental condition;

(b) Appropriate with regard to standards of good dental practice and generally recognized by the relevant scientific community and professional standards of care as effective;

(c) Not solely for the convenience of the client or a provider of the service;

(d) The most cost effective of the alternative levels of dental services that can be safely provided to a client.

(76) “Department of Human Services (Department or DHS)” means the agency established in ORS Chapter 409, including such divisions, programs and offices as may be established therein.

(77) “Department Representative” means a person who represents the Department and presents the position of the Department in a hearing.

(78) “Diagnosis Code” means as identified in the International Classification of Diseases, 10th revision, Clinical Modification (ICD-10-CM). The primary diagnosis code is shown in all billing claims, unless

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specifically excluded in individual provider rules. Where they exist, diagnosis codes shall be shown to the degree of specificity outlined in OAR 410-120-1280, Billing.

(79) "Diagnosis Related Group (DRG)" means a system of classification of diagnoses and procedures based on the ICD-10-CM.

(80) "Diagnostic Services" mean those services required to diagnose a condition, including but not limited to: radiology, ultrasound, other diagnostic imaging, electrocardiograms, laboratory and pathology examinations, and physician or other professional diagnostic or evaluative services.

(81) "Division (Division)" means the Health Systems Division within the Authority. The Division is responsible for coordinating the medical assistance programs within the State of Oregon including the Oregon Health Plan (OHP) Medicaid demonstration, the State Children's Health Insurance Program (SCHIP-Title XXI), and several other programs.

(82) "Durable Medical Equipment, Prosthetics, Orthotics and Medical Supplies (DMEPOS)" means equipment that can stand repeated use and is primarily and customarily used to serve a medical purpose. Examples include wheelchairs, respirators, crutches, and custom built orthopedic braces. Medical supplies are non-reusable items used in the treatment of illness or injury. Examples of medical supplies include diapers, syringes, gauze bandages, and tubing.

(83) "Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Services (aka, Medichex)" mean the Title XIX program of EPSDT services for eligible clients under age 21. It is a comprehensive child health program to assure the availability and accessibility of required medically appropriate health care services and to help Authority clients and their parents or guardians effectively use them.

(84) "Electronic Data Interchange (EDI)" means the exchange of business documents from application to application in a federally mandated format or, if no federal standard has been promulgated, using bulk transmission processes and other formats as the Authority designates for EDI transactions. For purposes of rules 943-120-0100 through 943-120-0200, EDI does not include electronic transmission by web portal.

(85) "EDI Submitter" means an individual or an entity authorized to establish an electronic media connection with the Authority to conduct an EDI transaction. An EDI submitter may be a trading partner or an agent of a trading partner.

(86) "Electronic Verification System (EVS)" means eligibility information that has met the legal and technical specifications of the Authority in order to offer eligibility information to enrolled providers of the Division.

(87) "Emergency Department" means the part of a licensed hospital facility open 24 hours a day to provide care for anyone in need of emergency treatment.

(88) "Emergency Medical Condition" means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson who possesses an average knowledge of health and medicine could reasonably expect the absence of immediate medical attention to result in placing the health of the individual (or with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part. An emergency medical condition is determined based on the presenting symptoms (not the final diagnosis) as perceived by a prudent layperson (rather than a health care professional) and includes cases in which the absence of immediate medical attention would not in fact have had the adverse results described in the previous sentence. (This definition does not apply to clients with CAWEM benefit package. CAWEM emergency services are governed by OAR 410-120-1210(4)(d)(C).

(89) "Emergency Medical Transportation" means transportation necessary for a client with an emergency medical condition as defined in this rule and requires a skilled medical professional such as an Emergency Medical Technician (EMT) and immediate transport to a site, usually a hospital, where appropriate emergency medical service is available.

(90) "Emergency Services" means health services from a qualified provider necessary to evaluate or stabilize an emergency medical condition, including inpatient and outpatient treatment that may be necessary to assure within reasonable medical probability that the patient's condition is not likely to materially deteriorate from or during a client's discharge from a facility or transfer to another facility.

(91) "Evidence-Based Medicine" means the conscientious, explicit, and judicious use of current best evidence in making decisions about the care of individual patients. The practice of evidence-based medicine means integrating individual clinical expertise with the best available external clinical evidence from systematic research. By individual clinical expertise

we mean the proficiency and judgment that individual clinicians acquire through clinical experience and clinical practice. Increased expertise is reflected in many ways, but especially in more effective and efficient diagnosis and in the more thoughtful identification and compassionate use of individual patients' predicaments, rights, and preferences in making clinical decisions about their care. By best available external clinical evidence we mean clinically relevant research, often from the basic sciences of medicine, but especially from patient-centered clinical research into the accuracy and precision of diagnostic tests (including the clinical examination), the power of prognostic markers, and the efficacy and safety of therapeutic, rehabilitative, and preventive regimens. External clinical evidence both invalidates previously accepted diagnostic tests and treatments and replaces them with new ones that are more powerful, more accurate, more efficacious, and safer. (Source: BMJ 1996; 312:71-72 (13 January)).

(92) "False Claim" means a claim that a provider knowingly submits or causes to be submitted that contains inaccurate, misleading, or omitted information and such inaccurate, misleading, or omitted information would result, or has resulted, in an overpayment.

(93) "Family Planning Services" means services for clients of child bearing age (including minors who can be considered to be sexually active) who desire such services and that are intended to prevent pregnancy or otherwise limit family size.

(94) "Federally Qualified Health Center (FQHC)" means a federal designation for a medical entity that receives grants under Section 329, 330, or 340 of the Public Health Service Act or a facility designated as an FQHC by Centers for Medicare and Medicaid (CMS) upon recommendation of the U.S. Public Health Service.

(95) "Fee-for-Service Provider" means a health care provider who is not reimbursed under the terms of an Authority contract with a Coordinated Care Organization or Prepaid Health Plan (PHP). A medical provider participating in a PHP or a CCO may be considered a fee-for-service provider when treating clients who are not enrolled in a PHP or a CCO.

(96) "Fraud" means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to him or some other person. It includes any act that constitutes fraud under applicable federal or state law.

(97) "Fully Dual Eligible" means for the purposes of Medicare Part D coverage (42 CFR 423.772), Medicare clients who are also eligible for Medicaid, meeting the income and other eligibility criteria adopted by the Department for full medical assistance coverage.

(98) "General Assistance (GA)" means medical assistance administered and funded 100 percent with State of Oregon funds through OHP.

(99) "Health Care Interpreter" Certified or Qualified as defined in ORS 413.550.

(100) "Health Care Professionals" means individuals with current and appropriate licensure, certification, or accreditation in a medical, mental health, or dental profession who provide health services, assessments, and screenings for clients within their scope of practice, licensure, or certification.

(101) "Healthcare Common Procedure Coding System (HCPCS)" means a method for reporting health care professional services, procedures, and supplies. HCPCS consists of the Level I — American Medical Association's Physician's Current Procedural Terminology (CPT), Level II — National codes, and Level III — Local codes. The Division uses HCPCS codes; however, the Division uses Current Dental Terminology (CDT) codes for the reporting of dental care services and procedures.

(102) "Health Evidence Review Commission" means a commission that, among other duties, develops and maintains a list of health services ranked by priority from the most to the least important representing the comparative benefits of each service to the population served.

(103) "Health Insurance Portability and Accountability Act (HIPAA) of 1996 (HIPAA)" means the federal law (Public Law 104-191, August 21, 1996) with the legislative objective to assure health insurance portability, reduce health care fraud and abuse, enforce standards for health information, and guarantee security and privacy of health information.

(104) "Health Maintenance Organization (HMO)" means a public or private health care organization that is a federally qualified HMO under Section 1310 of the U.S. Public Health Services Act. HMOs provide health care services on a capitated, contractual basis.

(105) "Health Plan New/non-categorical client (HPN)" means an individual who is 19 years of age or older, is not pregnant, is not receiving Medicaid through another program, and who must meet all eligibility requirements to become an OHP client.

(106) "Hearing Aid Dealer" means a person licensed by the Board of Hearing Aid Dealers to sell, lease, or rent hearing aids in conjunction with

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the evaluation or measurement of human hearing and the recommendation, selection, or adaptation of hearing aids.

(107) "Home Enteral Nutrition" means services provided in the client's place of residence to an individual who requires nutrition supplied by tube into the gastrointestinal tract as described in the Home Enteral/Parenteral Nutrition and IV Services program provider rules.

(108) "Home Health Agency" means a public or private agency or organization that has been certified by Medicare as a Medicare home health agency and that is licensed by the Authority as a home health agency in Oregon and meets the capitalization requirements as outlined in the Balanced Budget Act (BBA) of 1997.

(109) "Home Health Services" means part-time or intermittent skilled nursing services, other therapeutic services (physical therapy, occupational therapy, speech therapy), and home health aide services made available on a visiting basis in a place of residence used as the client's home.

(110) "Home Intravenous Services" means services provided in the client's place of residence to an individual who requires that medication (antibiotics, analgesics, chemotherapy, hydrational fluids, or other intravenous medications) be administered intravenously as described in the Home Enteral/Parenteral Nutrition and IV Services program administrative rules.

(111) "Home Parenteral Nutrition" means services provided in the client's residence to an individual who is unable to absorb nutrients via the gastrointestinal tract, or for other medical reasons, requires nutrition be supplied parenterally as described in the Home Enteral/Parenteral Nutrition and IV Services program administrative rules.

(112) "Hospice" means a public agency or private organization or subdivision of either that is primarily engaged in providing care to terminally ill individuals and is certified by the federal Centers for Medicare and Medicaid Services as a program of hospice services meeting current standards for Medicare and Medicaid reimbursement and Medicare Conditions of Participation and is currently licensed by the Oregon Health Authority (Authority), Public Health Division.

(113) "Hospital" means a facility licensed by the Office of Public Health Systems as a general hospital that meets requirements for participation in OHP under Title XVIII of the Social Security Act. The Division does not consider facilities certified by CMS as religious non-medical facilities as hospitals for reimbursement purposes. Out-of-state hospitals will be considered hospitals for reimbursement purposes if they are licensed as a short term acute care or general hospital by the appropriate licensing authority within that state and if they are enrolled as a provider of hospital services with the Medicaid agency within that state.

(114) "Hospital-Based Professional Services" means professional services provided by licensed practitioners or staff based on a contractual or employee/employer relationship and reported as a cost on the Hospital Statement of Reasonable Cost report for Medicare and the Calculation of Reasonable Cost (division 42) report for the Division.

(115) "Hospital Dentistry" means dental services normally done in a dental office setting, but due to specific client need (as detailed in OAR chapter 410 division 123) are provided in an ambulatory surgical center or inpatient or outpatient hospital setting under general anesthesia (or IV conscious sedation, if appropriate).

(116) "Hospital Laboratory" means a laboratory providing professional technical laboratory services as outlined under laboratory services in a hospital setting as either an inpatient or outpatient hospital service whose costs are reported on the hospital's cost report to Medicare and to the Division.

(117) "Indian Health Care Provider" means an Indian health program or an urban Indian organization.

(118) "Indian Health Program" means any Indian Health Service (IHS) facility, any federally recognized tribe or tribal organization, or any FQHC with a 638 designation.

(119) "Indian Health Service (IHS)" means an operating division (OPDIV) within the U.S. Department of Health and Human Services (HHS) responsible for providing medical and public health services to members of federally recognized tribes and Alaska Natives.

(120) "Indigent" means for the purposes of access to the Intoxicated Driver Program Fund (ORS 813.602), individuals without health insurance coverage, public or private, who meet standards for indigence adopted by the federal government as defined in 813.602(5).

(121) "Individual Adjustment Request Form (OHP 1036)" means a form used to resolve an incorrect payment on a previously paid claim, including underpayments or overpayments.

(122) "Inpatient Hospital Services" means services that are furnished in a hospital for the care and treatment of an inpatient. (See Division

Hospital Services program administrative rules in chapter 410, division 125 for inpatient covered services.)

(123) "Institutional Level of Income Standards (ILIS)" means three times the amount SSI pays monthly to a person who has no other income and who is living alone in the community. This is the standard used for Medicaid eligible individuals to calculate eligibility for long-term nursing care in a nursing facility, Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID), and individuals on ICF/IID waivers or eligibility for services under Aging and People with Disabilities (APD) Home and Community Based Services program.

(124) "Institutionalized" means a patient admitted to a nursing facility or hospital for the purpose of receiving nursing or hospital care for a period of 30 days or more.

(125) "International Classification of Diseases, 10th Revision, Clinical Modification (ICD-10-CM) (including volumes 1, 2, and 3, as revised annually)" means a book of diagnosis codes used for billing purposes when treating and requesting reimbursement for treatment of diseases.

(126) "Laboratory" means a facility licensed under ORS 438 and certified by CMS, Department of Health and Human Services (DHHS), as qualified to participate under Medicare and to provide laboratory services (as defined in this rule) within or apart from a hospital. An entity is considered to be a laboratory if the entity derives materials from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or impairment of or the assessment of the health of human beings. If an entity performs even one laboratory test, including waived tests for these purposes, it is considered to be a laboratory under the Clinical Laboratory Improvement Act (CLIA).

(127) "Laboratory Services" means those professional and technical diagnostic analyses of blood, urine, and tissue ordered by a physician or other licensed practitioner of the healing arts within his or her scope of practice as defined under state law and provided to a patient by or under the direction of a physician or appropriate licensed practitioner in an office or similar facility, hospital, or independent laboratory.

(128) "Licensed Direct Entry Midwife" means a practitioner who has acquired the requisite qualifications to be registered or legally licensed to practice midwifery by the Public Health Division.

(129) "Liability Insurance" means insurance that provides payment based on legal liability for injuries or illness. It includes, but is not limited to, automobile liability insurance, uninsured and underinsured motorist insurance, homeowner's liability insurance, malpractice insurance, product liability insurance, Worker's Compensation, and general casualty insurance. It also includes payments under state wrongful death statutes that provide payment for medical damages.

(130) "Long-Term Acute Care (LTAC) Hospital" means a facility that provides specialty care designed for patients with serious medical problems that require intense, special treatment for an extended period of time.

(131) "Managed Care Organization (MCO)" means a contracted health delivery system providing capitated or prepaid health services, also known as a Prepaid Health Plan (PHP). An MCO is responsible for providing, arranging, and making reimbursement arrangements for covered services as governed by state and federal law. An MCO may be a Chemical Dependency Organization (CDO), Dental Care Organization (DCO), Mental Health Organization (MHO), or Physician Care Organization (PCO).

(132) "Maternity Case Management" means a program available to pregnant clients. The purpose of maternity case management is to extend prenatal services to include non-medical services that address social, economic, and nutritional factors. For more information refer to the Division's Medical-Surgical Services program administrative rules.

(133) "Medicaid" means a joint federal and state funded program for medical assistance established by Title XIX of the Social Security Act as amended and administered in Oregon by the Authority.

(134) "Medical Assistance Eligibility Confirmation" means verification through the Electronic Verification System (EVS), AVR, Secure Web site or Electronic Data Interchange (EDI), or an authorized Department or Authority representative.

(135) "Medical Assistance Program" means a program for payment of health services provided to eligible Oregonians, including Medicaid and CHIP services under the OHP Medicaid Demonstration Project and Medicaid and CHIP services under the State Plan.

(136) "Medical Care Identification" means the card commonly called the "medical card" or medical ID issued to clients (called the Oregon Health ID starting Aug. 1, 2012).

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(137) “Medical Services” means care and treatment provided by a licensed medical provider directed at preventing, diagnosing, treating, or correcting a medical problem.

(138) “Medical Transportation” means transportation to or from covered medical services.

(139) “Medically Appropriate” means services and medical supplies that are required for prevention, diagnosis, or treatment of a health condition that encompasses physical or mental conditions or injuries and that are:

(a) Consistent with the symptoms of a health condition or treatment of a health condition;

(b) Appropriate with regard to standards of good health practice and generally recognized by the relevant scientific community, evidence-based medicine, and professional standards of care as effective;

(c) Not solely for the convenience of an OHP client or a provider of the service or medical supplies; and

(d) The most cost effective of the alternative levels of medical services or medical supplies that can be safely provided to a Division client or CCO member in the Division or CCO’s judgment.

(140) “Medicare” means a federally administered program offering health insurance benefits for persons aged 65 or older and certain other aged or disabled persons. This program includes:

(a) Hospital Insurance (Part A) for inpatient services in a hospital or skilled nursing facility, home health care, and hospice care; and

(b) Medical Insurance (Part B) for physicians’ services, outpatient hospital services, home health care, end-stage renal dialysis, and other medical services and supplies;

(c) Prescription drug coverage (Part D) means covered Part D drugs that include prescription drugs, biological products, insulin as described in specified paragraphs of section 1927(k) of the Social Security Act, and vaccines licensed under section 351 of the Public Health Service Act. It also includes medical supplies associated with the injection of insulin. Part D covered drugs prohibit Medicaid Title XIX Federal Financial Participation (FFP). For limitations, see the Division’s Pharmaceutical Services program administrative rules in chapter 410, division 121.

(141) “Medicare Advantage” means an organization approved by CMS to offer Medicare health benefits plans to Medicare beneficiaries.

(142) “Medicheck for Children and Teens” means services also known as Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services. The Title XIX program of EPSDT services is for eligible clients under age 21. It is a comprehensive child health program to assure the availability and accessibility of required medically appropriate health care services and to help Authority clients and their parents or guardians effectively use them.

(143) “Member” means an OHP client enrolled with a pre-paid health plan or coordinated care organization.

(144) “National Correct Coding Initiative (NCCI)” means the Centers for Medicare and Medicaid Services (CMS) developed the National Correct Coding Initiative (NCCI) to promote national correct coding methodologies and to control improper coding leading to inappropriate payment.

(145) “National Drug Code or (NDC)” means a universal number that identifies a drug. The NDC number consists of 11 digits in a 5-4-2 format. The Food and Drug Administration assigns the first five digits to identify the manufacturer of the drug. The manufacturer assigns the remaining digits to identify the specific product and package size. Some packages will display less than 11 digits, but the number assumes leading zeroes.

(146) “National Provider Identification (NPI)” means federally directed provider number mandated for use on HIPAA covered transactions; individuals, provider organizations, and subparts of provider organizations that meet the definition of health care provider (45 CFR 160.103) and who conduct HIPAA covered transactions electronically are eligible to apply for an NPI. Medicare covered entities are required to apply for an NPI.

(147) “Naturopathic physician” means a person licensed to practice naturopathic medicine by the Oregon Board of Naturopathic Medicine.

(148) “Naturopathic Services” means services provided within the scope of practice as defined under state law and by rules of the Oregon Board of Naturopathic Medicine.

(149) “Non-covered Services” means services or items for which the Authority is not responsible for payment or reimbursement. Non-covered services are identified in:

(a) OAR 410-120-1200 Excluded Services and Limitations; and

(b) 410-120-1210 Medical Assistance Benefit Packages and Delivery System;

(c) 410-141-0480 OHP Benefit Package of Covered Services;

(d) 410-141-0520 Prioritized List of Health Services; and

(e) Any other applicable Division administrative rules.

(150) “Non-Emergent Medical Transportation Services (NEMT)” means transportation to or from a source of covered service, that does not involve a sudden, unexpected occurrence which creates a medical crisis requiring emergency medical services as defined in OAR 410-120-0000(76) and requiring immediate transportation to a site, usually a hospital, where appropriate emergency medical care is available.

(151) “Non-Paid Provider” means a provider who is issued a provider number for purposes of data collection or non-claims-use of the Provider Web Portal (e.g., eligibility verification).

(152) “Nurse Anesthetist, C.R.N.A.” means a registered nurse licensed in the State of Oregon as a CRNA who is currently certified by the National Board of Certification and Recertification for Nurse Anesthetists.

(153) “Nurse Practitioner” means a person licensed as a registered nurse and certified by the Board of Nursing to practice as a nurse practitioner pursuant to state law.

(154) “Nurse Practitioner Services” means services provided within the scope of practice of a nurse practitioner as defined under state law and by rules of the Board of Nursing.

(155) “Nursing Facility” means a facility licensed and certified by the Department and defined in OAR 411-070-0005.

(156) “Nursing Services” means health care services provided to a patient by a registered professional nurse or a licensed practical nurse under the direction of a licensed professional within the scope of practice as defined by state law.

(157) “Nutritional Counseling” means counseling that takes place as part of the treatment of a person with a specific condition, deficiency, or disease such as diabetes, hypercholesterolemia, or phenylketonuria.

(158) “Occupational Therapist” means a person licensed by the State Board of Examiners for Occupational Therapy.

(159) “Occupational Therapy” means the functional evaluation and treatment of individuals whose ability to adapt or cope with the task of living is threatened or impaired by developmental deficiencies, physical injury or illness, the aging process, or psychological disability. The treatment utilizes task-oriented activities to prevent or correct physical and emotional difficulties or minimize the disabling effect of these deficiencies on the life of the individual.

(160) “Ombudsman Services” means advocacy services provided by the Authority to clients whenever the client is reasonably concerned about access to, quality of, or limitations on the health services provided.

(161) “Oregon Health ID” means a card the size of a business card that lists the client name, client ID (prime number), and the date it was issued.

(162) “Oregon Health Plan (OHP)” means the Medicaid and Children’s Health Insurance (CHIP) Demonstration Project that expands Medicaid and CHIP eligibility beyond populations traditionally eligible for Medicaid to other low-income populations and Medicaid and CHIP services under the State Plan

(163) “Optometric Services” means services provided within the scope of practice of optometrists as defined under state law.

(164) “Optometrist” means a person licensed to practice optometry pursuant to state law.

(165) “Oregon Health Authority (Authority)” means the agency established in ORS Chapter 413 that administers the funds for Titles XIX and XXI of the Social Security Act. It is the single state agency for the administration of the medical assistance program under ORS chapter 414. For purposes of these rules, the agencies under the authority of the Oregon Health Authority are the Public Health Division, Health Systems Division, External Relations, Health Policy and Analytics, Fiscal and Operations, Health System Division, Office of Equity and Inclusion, and the Oregon State Hospital.

(166) “Oregon Youth Authority (OYA)” means the state department charged with the management and administration of youth correction facilities, state parole and probation services, and other functions related to state programs for youth corrections.

(167) “Out-of-State Providers” means any provider located outside the borders of the State of Oregon:

(a) Contiguous area providers are those located no more than 75 miles from the border of the State of Oregon;

(b) Non-contiguous area providers are those located more than 75 miles from the borders of the State of Oregon.

(168) “Outpatient Hospital Services” means services that are furnished in a hospital for the care and treatment of an outpatient. For information on outpatient-covered services, see the Division’s Hospital Services administrative rules found in chapter 410, division 125.

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(169) "Overdue Claim" means a valid claim that is not paid within 45 days of the date it was received.

(170) "Overpayment" means a payment made by the Authority to a provider in excess of the correct Authority payment amount for a service. Overpayments are subject to repayment to the Authority.

(171) "Overuse" means use of medical goods or services at levels determined by Authority medical staff or medical consultants to be medically unnecessary or potentially harmful.

(172) "Paid Provider" means a provider who is issued a provider number for purposes of submitting medical assistance program claims for payment by the Authority.

(173) "Panel" means the Hearing Officer Panel established by section 3, chapter 849, Oregon Laws 1999.

(174) "Payment Authorization" means authorization granted by the responsible agency, office, or organization for payment prior or subsequent to the delivery of services, as described in these General Rules and the appropriate program rules. See the individual program rules for services requiring authorization.

(175) "Peer Review Organization (PRO)" means an entity of health care practitioners of services contracted by the state to review services ordered or furnished by other practitioners in the same professional field.

(176) "Peer Support Specialist" has the meaning given that term in OAR 410-180-0305.

(177) "Peer Wellness Specialist" means an individual who is responsible for assessing mental health service and support needs of the individual's peers through community outreach, assisting individuals with access to available services and resources, addressing barriers to services and providing education and information about available resources and mental health issues in order to reduce stigmas and discrimination toward consumers of mental health services and to provide direct services to assist individuals in creating and maintaining recovery, health, and wellness.

(178) "Person Centered Care" means care that reflects the individual patient's strengths and preferences, reflects the clinical needs of the patient as identified through an individualized assessment, is based upon the patient's goals, and will assist the patient in achieving the goals.

(179) "Personal Health Navigator" means an individual who provides information, assistance, tools, and support to enable a patient to make the best health care decisions in the patient's particular circumstances and in light of the patient's needs, lifestyle, combination of conditions, and desired outcome.

(180) "Pharmaceutical Services" means services provided by a pharmacist, including medications dispensed in a pharmacy upon an order of a licensed practitioner prescribing within his or her scope of practice.

(181) "Pharmacist" means a person licensed to practice pharmacy pursuant to state law.

(182) "Physical Capacity Evaluation" means an objective, directly observed measurement of a person's ability to perform a variety of physical tasks combined with subjective analysis of abilities of the person.

(183) "Physical Therapist" means a person licensed by the relevant state licensing authority to practice physical therapy.

(184) "Physical Therapy" means treatment comprising exercise, massage, heat or cold, air, light, water, electricity, or sound for the purpose of correcting or alleviating any physical or mental disability, or the performance of tests as an aid to the assessment, diagnosis, or treatment of a human being. Physical therapy may not include radiology or electrotherapy.

(185) "Physician" means a person licensed to practice medicine pursuant to state law of the state in which he or she practices medicine or a person licensed to practice medicine pursuant to federal law for the purpose of practicing medicine under a contract with the federal government. A physician may be an individual licensed under ORS 677 or ORS 685.

(186) "Physician Assistant" means a person licensed as a physician assistant in accordance with ORS 677. Physician assistants provide medical services under the direction and supervision of an Oregon licensed physician according to a practice description approved by the Board of Medical Examiners.

(187) "Physician Services" means services provided within the scope of practice as defined under state law by or under the personal supervision of a physician.

(188) "Podiatric Services" means services provided within the scope of practice of podiatrists as defined under state law.

(189) "Podiatrist" means a person licensed to practice podiatric medicine pursuant to state law.

(190) "Post-Payment Review" means review of billings or other medical information for accuracy, medical appropriateness, level of service, or for other reasons subsequent to payment of the claim.

(191) "Practitioner" means a person licensed pursuant to state law to engage in the provision of health care services within the scope of the practitioner's license or certification.

(192) "Prepaid Health Plan (PHP)" means a managed health, dental, chemical dependency, or mental health organization that contracts with the Authority on a case managed, prepaid, capitated basis under OHP. PHPs may be a Chemical Dependency Organization (CDO), Dental Care Organization (DCO), Mental Health Organization (MHO), or Physician Care Organization (PCO)

(193) "Primary Care Dentist (PCD)" means a dental practitioner who is responsible for supervising and coordinating initial and primary dental care within their scope of practice for their members.

(194) "Primary Care Provider (PCP)" means any enrolled medical assistance provider who has responsibility for supervising, coordinating, and providing initial and primary care within their scope of practice for identified clients. PCPs initiate referrals for care outside their scope of practice, consultations, and specialist care and assure the continuity of medically appropriate client care. A Federally qualified PCP means a physician with a specialty or subspecialty in family medicine, general internal medicine, or pediatric medicine as defined in OAR 410-130-0005.

(195) "Prior Authorization (PA)" means payment authorization for specified medical services or items given by Authority staff or its contracted agencies prior to provision of the service. A physician referral is not a PA.

(196) "Prioritized List of Health Services" means the listing of conditions and treatment pairs developed by the Health Evidence Review Commission for the purpose of administering OHP.

(197) "Private Duty Nursing Services" means nursing services provided within the scope of license by a registered nurse or a licensed practical nurse under the general direction of the patient's physician to an individual who is not in a health care facility.

(198) "Provider" means an individual, facility, institution, corporate entity, or other organization that supplies health services or items, also termed a rendering provider, or bills, obligates, and receives reimbursement on behalf of a rendering provider of services, also termed a billing provider (BP). The term provider refers to both rendering providers and BP unless otherwise specified.

(199) "Provider Organization" means a group practice, facility, or organization that is:

(a) An employer of a provider, if the provider is required as a condition of employment to turn over fees to the employer; or

(b) The facility in which the service is provided, if the provider has a contract under which the facility submits claims; or

(c) A foundation, plan, or similar organization operating an organized health care delivery system, if the provider has a contract under which the organization submits the claim; and

(d) Such group practice, facility, or organization is enrolled with the Authority, and payments are made to the group practice, facility, or organization;

(e) An agent if such entity solely submits billings on behalf of providers and payments are made to each provider. (See Subparts of Provider Organization.)

(200) "Psychiatric Emergency Services (PES)" means medical and behavioral health services provided to individuals experiencing an acute disturbance of thought, mood, behavior, or social relationship that requires an immediate intervention as defined by the patient, family, or the community to prevent harm to the patient or others.

(201) "Public Health Clinic" means a clinic operated by a county government.

(202) "Public Rates" means the charge for services and items that providers, including hospitals and nursing facilities, made to the general public for the same service on the same date as that provided to Authority clients.

(203) "Qualified Medicare Beneficiary (QMB)" means a Medicare beneficiary as defined by the Social Security Act and its amendments.

(204) "Qualified Medicare and Medicaid Beneficiary (QMM)" means a Medicare beneficiary who is also eligible for Division coverage.

(205) "Quality Improvement" means the efforts to improve the level of performance of a key process or processes in health services or health care.

(206) "Quality Improvement Organization (QIO)" means an entity that has a contract with CMS under Part B of Title XI to perform utilization and quality control review of the health care furnished, or to be furnished, to Medicare and Medicaid clients; formerly known as a Peer Review Organization.

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(207) “Radiological Services” means those professional and technical radiological and other imaging services for the purpose of diagnosis and treatment ordered by a physician or other licensed practitioner of the healing arts within the scope of practice as defined under state law and provided to a patient by or under the direction of a physician or appropriate licensed practitioner in an office or similar facility, hospital, or independent radiological facility.

(208) “Recipient” means a person who is currently eligible for medical assistance (also known as a client).

(209) “Recreational Therapy” means recreational or other activities that are diversional in nature (includes, but is not limited to, social or recreational activities or outlets).

(210) “Recoupment” means an accounts receivable system that collects money owed by the provider to the Authority by withholding all or a portion of a provider’s future payments.

(211) “Referral” means the transfer of total or specified care of a client from one provider to another. As used by the Authority, the term referral also includes a request for a consultation or evaluation or a request or approval of specific services. In the case of clients whose medical care is contracted through a Prepaid Health Plan (PHP), or managed by a Primary Care Physician, a referral is required before non-emergency care is covered by the PHP or the Authority.

(212) “Remittance Advice (RA)” means the automated notice a provider receives explaining payments or other claim actions. It is the only notice sent to providers regarding claim actions.

(213) “Rendering provider” means an individual, facility, institution, corporate entity, or other organization that supplies health services or items, also termed a provider, or bills, obligates, and receives reimbursement on behalf of a provider of services, also termed a billing provider (BP). The term rendering provider refers to both providers and BP unless otherwise specified.

(214) “Request for Hearing” means a clear expression in writing by an individual or representative that the person wishes to appeal a Department or Authority decision or action and wishes to have the decision considered by a higher authority.

(215) “Representative” means an individual who can make OHP-related decisions for a client who is not able to make such decisions themselves.

(216) “Retroactive Medical Eligibility” means eligibility for medical assistance granted to a client retroactive to a date prior to the client’s application for medical assistance.

(217) “Ride” means non-emergent medical transportation services for a client either to or from a location where covered services are provided. “Ride” does not include client-reimbursed medical transportation or emergency medical transportation in an ambulance.

(218) “Rural” means a geographic area that is ten or more map miles from a population center of 30,000 people or less.

(219) “Sanction” means an action against providers taken by the Authority in cases of fraud, misuse, or abuse of Division requirements.

(220) “School Based Health Service” means a health service required by an Individualized Education Plan (IEP) during a child’s education program that addresses physical or mental disabilities as recommended by a physician or other licensed practitioner.

(221) “Self-Sufficiency” means the division in the Department of Human Services (Department) that administers programs for adults and families.

(222) “Service Agreement” means an agreement between the Authority and a specified provider to provide identified services for a specified rate. Service agreements may be limited to services required for the special needs of an identified client. Service agreements do not preclude the requirement for a provider to enroll as a provider.

(223) “Sliding Fee Schedule” means a fee schedule with varying rates established by a provider of health care to make services available to indigent and low-income individuals. The sliding-fee schedule is based on ability to pay.

(224) “Social Worker” means a person licensed by the Board of Clinical Social Workers to practice clinical social work.

(225) “Speech-Language Pathologist” means a person licensed by the Oregon Board of Examiners for Speech Pathology.

(226) “Speech-Language Pathology Services” means the application of principles, methods, and procedure for the measuring, evaluating, predicting, counseling, or instruction related to the development and disorders of speech, voice, or language for the purpose of preventing, habilitating, rehabilitating, or modifying such disorders in individuals or groups of individuals.

(227) “State Facility” means a hospital or training center operated by the State of Oregon that provides long-term medical or psychiatric care.

(228) “Subparts (of a Provider Organization)” means for NPI application, subparts of a health care provider organization would meet the definition of health care provider (45 CFR 160.103) if it were a separate legal entity and if it conducted HIPAA-covered transactions electronically or has an entity do so on its behalf and could be components of an organization or separate physical locations of an organization.

(229) “Subrogation” means right of the state to stand in place of the client in the collection of third party resources (TPR).

(230) “Substance Use Disorder (SUD) Services” means assessment, treatment, and rehabilitation on a regularly scheduled basis or in response to crisis for alcohol or other drug abuse for dependent members and their family members or significant others, consistent with Level I, Level II, or Level III of the American Society of Addiction Medicine Patient Placement Criteria 2-Revision (ASAM PPC-2R). SUD is an interchangeable term with Chemical Dependency (CD), Alcohol and other Drug (AOD), and Alcohol and Drug (A & D).

(231) “Supplemental Security Income (SSI)” means a program available to certain aged and disabled persons that is administered by the Social Security Administration through the Social Security office.

(232) “Surgical Assistant” means a person performing required assistance in surgery as permitted by rules of the State Board of Medical Examiners.

(233) “Suspension” means a sanction prohibiting a provider’s participation in the medical assistance programs by deactivation of the provider’s Authority-assigned billing number for a specified period of time. No payments, Title XIX, or State Funds will be made for services provided during the suspension. The number will be reactivated automatically after the suspension period has elapsed.

(234) “Targeted Case Management (TCM)” means activities that will assist the client in a target group in gaining access to needed medical, social, educational, and other services. This includes locating, coordinating, and monitoring necessary and appropriate services. TCM services are often provided by allied agency providers.

(235) “Termination” means a sanction prohibiting a provider’s participation in the Division’s programs by canceling the provider’s Authority-assigned billing number and agreement. No payments, Title XIX, or state funds will be made for services provided after the date of termination. Termination is permanent unless:

(a) The exceptions cited in 42 CFR 1001.221 are met; or

(b) Otherwise stated by the Authority at the time of termination.

(236) “Third Party Liability (TPL), Third Party Resource (TPR), or Third party payer” means a medical or financial resource that, under law, is available and applicable to pay for medical services and items for an Authority client.

(237) “Transportation” means medical transportation.

(238) “Service Authorization Request” means a member’s initial or continuing request for the provision of a service including member requests made by their provider or the member’s authorized representative.

(239) “Type A Hospital” means a hospital identified by the Office of Rural Health as a Type A hospital.

(240) “Type B AAA” means an AAA administered by a unit or combination of units of general purpose local government for overseeing Medicaid, financial and adult protective services, and regulatory programs for the elderly or the elderly and disabled.

(241) “Type B AAA Unit” means a Type B AAA funded by Oregon Project Independence (OPI), Title III—Older Americans Act, and Title XIX of the Social Security Act.

(242) “Type B Hospital” means a hospital identified by the Office of Rural Health as a Type B hospital.

(243) “Urban” means a geographic area that is less than ten map miles from a population center of 30,000 people or more.

(244) “Urgent Care Services” means health services that are medically appropriate and immediately required to prevent serious deterioration of a client’s health that are a result of unforeseen illness or injury.

(245) “Usual Charge (UC)” means the lesser of the following unless prohibited from billing by federal statute or regulation:

(a) The provider’s charge per unit of service for the majority of non-medical assistance users of the same service based on the preceding month’s charges;

(b) The provider’s lowest charge per unit of service on the same date that is advertised, quoted, or posted. The lesser of these applies regardless of the payment source or means of payment;

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(c) Where the provider has established a written sliding fee scale based upon income for individuals and families with income equal to or less than 200 percent of the federal poverty level, the fees paid by these individuals and families are not considered in determining the usual charge. Any amounts charged to third party resources (TPR) are to be considered.

(246) "Utilization Review (UR)" means the process of reviewing, evaluating, and assuring appropriate use of medical resources and services. The review encompasses quality, quantity, and appropriateness of medical care to achieve the most effective and economic use of health care services.

(247) "Valid Claim" means an invoice received by the Division or the appropriate Authority or Department office for payment of covered health care services rendered to an eligible client that:

(a) Can be processed without obtaining additional information from the provider of the goods or services or from a TPR; and

(b) Has been received within the time limitations prescribed in these General Rules (OAR 410 division 120).

(248) "Valid Preauthorization" means a document the Authority, a PHP, or CCO receives requesting a health service for a member who would be eligible for the service at the time of the service, and the document contains:

(a) A beginning and ending date not exceeding twelve months, except for cases of PHP or CCO enrollment where four months may apply; and

(b) All data fields required for processing the request or payment of the service including the appropriate billing codes.

(249) "Vision Services" means provision of corrective eyewear, including ophthalmological or optometric examinations for determination of visual acuity and vision therapy and devices.

(250) "Volunteer" (for the purposes of NEMT) means an individual selected, trained and under the supervision of the Department who is providing services on behalf of the Department in a non-paid capacity except for incidental expense reimbursement under the Department Volunteer Program authorized by ORS 409.360.

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065

Hist.: AFS 5-1981, f. 1-23-81, ef. 3-1-81; AFS 33-1981, f. 6-23-81, ef. 7-1-81; AFS 47-1982, f. 4-30-82; AFS 52-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the branch offices of North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 57-1982, f. 6-28-82, ef. 7-1-82; AFS 81-1982, f. 8-30-82, ef. 9-1-82; AFS 4-1984, f. & ef. 2-1-84; AFS 12-1984, f. 3-16-84, ef. 4-1-84; AFS 13-1984(Temp), f. & ef. 4-2-84; AFS 37-1984, f. 8-30-84, ef. 9-1-84; AFS 24-1985, f. 4-24-85, ef. 6-1-85; AFS 13-1987, f. 3-31-87, ef. 4-1-87; AFS 7-1988, f. & cert. ef. 2-1-88; AFS 69-1988, f. & cert. ef. 12-5-88; HR 2-1990, f. 2-12-90, cert. ef. 3-1-90, Renumbered from 461-013-0005; HR 25-1991(Temp), f. & cert. ef. 7-1-91; HR 41-1991, f. & cert. ef. 10-1-91; HR 32-1993, f. & cert. ef. 11-1-93; HR 2-1994, f. & cert. ef. 2-1-94; HR 31-1994, f. & cert. ef. 11-1-94; HR 40-1994, f. 12-30-94, cert. ef. 1-1-95; HR 5-1997, f. 1-31-97, cert. ef. 2-1-97; HR 21-1997, f. & cert. ef. 10-1-97; OMAP 20-1998, f. & cert. ef. 7-1-98; OMAP 10-1999, f. & cert. ef. 4-1-99; OMAP 31-1999, f. & cert. ef. 10-1-99; OMAP 11-2000, f. & cert. ef. 6-23-00; OMAP 35-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 42-2002, f. & cert. ef. 10-1-02; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 62-2003, f. 9-8-03, cert. ef. 10-1-03; OMAP 67-2004, f. 9-14-04, cert. ef. 10-1-04; OMAP 10-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; OMAP 65-2005, f. 11-30-05, cert. ef. 1-1-06; OMAP 15-2006, f. 6-12-06, cert. ef. 7-1-06; OMAP 45-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 24-2007, f. 12-11-07 cert. ef. 1-1-08; DMAP 34-2008, f. 11-26-08, cert. ef. 12-11-08; DMAP 13-2009, f. 6-12-09, cert. ef. 7-1-09; DMAP 11-2011, f. 6-29-11, cert. ef. 7-1-11; DMAP 36-2011, f. 12-13-11, cert. ef. 1-1-12; DMAP 11-2012(Temp), f. & cert. ef. 3-16-12 thru 9-11-12; DMAP 28-2012, f. 6-21-12, cert. ef. 7-1-12; DMAP 49-2012, f. 10-31-12, cert. ef. 11-1-12; DMAP 37-2013(Temp), f. 6-27-13, cert. ef. 7-1-13 thru 12-24-13; DMAP 71-2013, f. & cert. ef. 12-27-13; DMAP 57-2014, f. 9-26-14, cert. ef. 10-1-14; DMAP 5-2015, f. & cert. ef. 2-10-15; DMAP 29-2015, f. & cert. ef. 5-29-15; DMAP 55-2015, f. 9-22-15, cert. ef. 10-1-15; DMAP 30-2016, f. 6-29-16, cert. ef. 7-1-16; DMAP 31-2016, f. 6-29-16, cert. ef. 7-1-16; DMAP 63-2016(Temp), f. & cert. ef. 11-10-16 thru 5-8-17; DMAP 77-2016, f. 12-29-16, cert. ef. 1-1-17

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Rule Caption: Client Copayment

Adm. Order No.: DMAP 78-2016

Filed with Sec. of State: 12-29-2016

Certified to be Effective: 1-1-17

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Rules Amended: 410-120-1230

Subject: The Oregon Health Authority needs to revise OAR 410-120-1230 Client Copayment in order to reflect that effective with dates of service on or after January 1, 2017, copayments will not be assessed for Medicaid services. Under the ACA, states are required to meet some federal Marketplace requirements for recipients receiving benefits as a part of the expansion population. One of these requirements is to cover and to waive all cost sharing for certain preventive services. The Authority determined that it will waive cost sharing for all services, not just preventive.

Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-120-1230

Client Co-payment

(1) Effective January 1, 2017, Oregon Health Plan (OHP) Plus clients are not responsible for paying an OHP Plus co-payment.

(2) For dates of service prior to January 1, 2017, OHP Plus clients are responsible for paying a co-payment for some services. This co-payment shall be paid directly to the provider. A co-payment applies regardless of location of services rendered, i.e., provider's office or client's residence.

(3) The following services are exempt from co-payment:

(a) Emergency medical services as defined in OAR 410-120-0000;

(b) Family planning services and supplies;

(c) Prescription drug products for nicotine replacement therapy (NRT);

(d) Prescription drugs ordered through the Division's Mail Order (a.k.a., Home-Delivery) Pharmacy program;

(e) Services to treat "health care-acquired conditions" (HCAC) and "other provider preventable conditions" (OPPC) services as defined in OAR 410-125-0450.

(4) The following clients are exempt from co-payments:

(a) Pregnant women;

(b) Children under age 19;

(c) Young adults in substitute care and in the former Foster Care Youth Medical program;

(d) Clients receiving services under the Medicaid-funded home and community-based services program;

(e) Inpatients in a hospital, nursing facility, or Intermediate Care Facility for Intellectually or Developmentally Disabled (ICF/IDD);

(f) American Indian/Alaska Native (AI/AN) clients who are members of a federally recognized Indian tribe or receive services through Indian Health Services (IHS), a tribal organization, or services provided at an Urban Tribal Health Clinic as provided under Public Law 93-638;

(g) Individuals receiving hospice care;

(h) Individuals eligible for the Breast and Cervical Cancer program.

(5) For services provided prior to January 1, 2017:

(a) Co-payment for services is due and payable at the time the service is provided unless exempted in sections (2) and (3) above. Services to a client may not be denied solely because of an inability to pay an applicable co-payment. This does not relieve the client of the responsibility to pay the applicable co-payment, nor does it prevent the provider from attempting to collect any applicable co-payments from the client. The co-payment is a legal debt and is due and payable to the provider of service;

(b) Except for prescription drugs, one co-payment is assessed per provider/per visit/per day unless otherwise specified in other Division's program administrative rules;

(c) Fee-for-service co-payment requirements:

(A) The provider may not deduct the co-payment amount from the usual and customary billed amount submitted on the claim. Except as provided in section (3) and (4) of this rule, the Division shall deduct the co-payment from the amount the Division pays to the provider (whether or not the provider collects the co-payment from the client);

(B) If the Division's payment is less than the required co-payment, then the co-payment amount is equal to the Division's lesser required payment, unless the client or services are exempt according to exclusions listed in section (3) and (4) above. The client's co-payment shall constitute payment-in-full;

(C) Unless specified otherwise in individual program rules and to the extent permitted under 42 CFR 1001.951-1001.952, the Division does not require providers to bill or collect a co-payment from the Medicaid client. The provider may choose not to bill or collect a co-payment from a Medicaid client; however, the Division shall still deduct the co-payment amount from the Medicaid reimbursement made to the provider.

(d) CCO or PHP co-payment requirements:

(A) Unless specified otherwise in individual program rules and to the extent permitted under 42 CFR 447.58 and 447.60, the Division does not require CCOs or PHPs to bill or collect a co-payment from the Medicaid client. The CCO or PHP may choose not to bill or collect a co-payment from a Medicaid client; however, the Division shall still deduct the co-payment amount from the Medicaid reimbursement made to the CCO or PHP;

(B) When a CCO or PHP is operating within the scope of the safe harbor regulation outlined in 42 CFR 1001.952(l), a CCO or PHP may elect to assess a co-payment on some of the services outlined in Table 120-1230-1 but not all. The CCO or PHP must assure they are working within the provisions of 42 CFR 1003.102(b)(13). [Table not included. See ED. NOTE.]

(6) Services that require co-payments are listed in Table 120-1230-1. [Table not included. See ED. NOTE.]

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(7) Table 120-1230-1. [Table not included. See ED. NOTE.]
[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 413.042
Stat. Implemented: ORS 414.025, 414.065
Hist.: OMAP 73-2002, f. 12-24-02, cert. ef. 1-1-03; OMAP 73-2003, f. & cert. ef. 10-1-03; OMAP 39-2004(Temp), f. 6-14-04 cert. ef. 6-19-04 thru 11-30-04; OMAP 49-2004, f. 7-28-04 cert. ef. 8-1-04; OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; OMAP 15-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 5-2008, f. 2-28-08, cert. ef. 3-1-08; DMAP 38-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 39-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 49-2012, f. 10-31-12, cert. ef. 11-1-12; DMAP 75-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14; DMAP 23-2014, f. & cert. ef. 4-4-14; DMAP 57-2014, f. 9-26-14, cert. ef. 10-1-14; DMAP 52-2016, f. 8-26-16, cert. ef. 9-1-16; DMAP 78-2016, f. 12-29-16, cert. ef. 1-1-17

Rule Caption: Amending Prior Authorization Approval Criteria Guide

Adm. Order No.: DMAP 79-2016(Temp)

Filed with Sec. of State: 12-29-2016

Certified to be Effective: 1-1-17 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 1, 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 recommended 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. & 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. 8-25-15 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

Rule Caption: Amending PDL September 29, 2016, DUR/P&T Action

Adm. Order No.: DMAP 80-2016(Temp)

Filed with Sec. of State: 12-30-2016

Certified to be Effective: 1-1-17 thru 6-29-17

ADMINISTRATIVE RULES

Notice Publication Date:

Rules Amended: 410-121-0030

Subject: The Pharmaceutical Services program administrative rules (division 121) govern Division payments for services provided to certain clients. The Division needs to amend 410-121-0030 per the Drug Use Review (DUR) Pharmacy & Therapeutics (P&T) Committee's recommendations made during the September 29, 2016, meeting. The Authority needs to implement changes to the Preferred Drug List to ensure the safe and appropriate use of cost effective prescription drugs for the Oregon Health Plan's fee-for-service recipients.

410-121-0030:

Preferred:

Epipen™

Epipen Jr.™

Zepatier™

Epclusa™

Savaysa™

Granix™

Aristada™

Non-Preferred:

Musinex™

Imitrex™

Solvaldi™

Lantus™

Lantus Solostar™

Saizen™

Norditropin Flexpro™

Ganasa™

Tovias™

Vigamox™

Travatan Z™

Daytrana™

Combivent Respimat™

Proair HFA™

Proventil HFA™

Pulmicort Flexhaler™

Flovent Diskus™

Flovent HFA™

Symbicort™

Tracleer™

Renagel™

Strattera™

Clerical - Various clerical changes were made to system class, drug and form names.

Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-121-0030

Practitioner-Managed Prescription Drug Plan

(1) The Practitioner-Managed Prescription Drug Plan (PMPDP) is a plan that ensures that OHP fee-for-service clients have access to the most effective prescription drugs appropriate for their clinical conditions at the best possible price:

(a) Licensed health care practitioners, who are informed by the latest peer reviewed research, make decisions concerning the clinical effectiveness of the prescription drugs;

(b) Licensed health care practitioners also consider the client's health condition, personal characteristics, and the client's gender, race, or ethnicity.

(2) PMPDP Preferred Drug List (PDL):

(a) The PDL is the primary tool the Division uses to inform licensed health care practitioners about the results of the latest peer-reviewed research and cost effectiveness of prescription drugs;

(b) The PDL contains a list of prescription drugs that the Division, in consultation with the Drug Use Review (DUR)/Pharmacy & Therapeutics Committee (P&T), has determined represent the most effective drugs available at the best possible price;

(c) The PDL shall include drugs that are Medicaid reimbursable and the Food and Drug Administration (FDA) has determined to be safe and effective.

(3) PMPDP PDL Selection Process:

(a) The Division shall utilize the recommendations made by the P&T that result from an evidence-based evaluation process as the basis for selecting the most effective drugs;

(b) The Division shall ensure the drugs selected in section (3)(a) that are available for the best possible price and shall consider any input from the P&T about other FDA-approved drugs in the same class that are available for a lesser relative price. The Division shall determine relative price using the methodology described in section (4);

(c) The Division shall evaluate selected drugs for the drug classes periodically:

(A) The Division may evaluate more frequently if new safety information or the release of new drugs in a class or other information makes an evaluation advisable;

(B) New drugs in classes already evaluated for the PDL shall be non-preferred until the new drug has been reviewed by the P&T;

(C) The Division shall make all revisions to the PDL using the rule-making process and shall publish the changes on the Division's Pharmaceutical Services provider rules website.

(4) Relative cost and best possible price determination:

(a) The Division shall determine the relative cost of all drugs in each selected class that are Medicaid reimbursable and that the FDA has determined to be safe and effective;

(b) The Division may also consider dosing issues, patterns of use, and compliance issues. The Division shall weigh these factors with any advice provided by the P&T in reaching a final decision.

(5) Pharmacy providers shall dispense prescriptions in the generic form unless:

(a) The practitioner requests otherwise pursuant to OAR 410-121-0155;

(b) The Division notifies the pharmacy that the cost of the brand name particular drug, after receiving discounted prices and rebates, is equal to or less than the cost of the generic version of the drug.

(6) The exception process for obtaining non-preferred physical health drugs that are not on the PDL drugs shall be as follows:

(a) If the prescribing practitioner in their professional judgment wishes to prescribe a physical health drug not on the PDL, they may request an exception subject to the requirements of OAR 410-121-0040;

(b) The prescribing practitioner must request an exception for physical health drugs not listed in the PDL subject to the requirements of OAR 410-121-0060;

(c) Exceptions shall be granted when:

(A) The prescriber in their professional judgment determines the non-preferred drug is medically appropriate after consulting with the Division or the Oregon Pharmacy Call Center; or

(B) Where the prescriber requests an exception subject to the requirement of section (6)(b) and fails to receive a report of PA status within 24 hours, subject to OAR 410-121-0060.

(7) Table 121-0030-1, PMPDP PDL dated January 1, 2017, is adopted and incorporated by reference and is found at: www.orpdl.org.

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

Stat. Auth.: ORS 413.032, 413.042, 414.065, 414.325, 414.330 to 414.414, 414.312 & 414.316

Stats. Implemented: ORS 414.065; 414.325, 414.334, 414.361, 414.369, 414.371, 414.353 & 414.354

Hist.: OMAP 25-2002, f. 6-14-02 cert. ef. 7-1-02; OMAP 31-2002, f. & cert. ef. 8-1-02; OMAP 36-2002, f. 8-30-02, cert. ef. 9-1-02; OMAP 29-2003, f. 3-31-03 cert. ef. 4-1-03; OMAP 35-2003, f. & cert. ef. 5-1-03; OMAP 47-2003, f. & cert. ef. 7-1-03; OMAP 57-2003, f. 9-5-03, cert. ef. 10-1-03; OMAP 70-2003(Temp), f. 9-15-03, cert. ef. 10-1-03 thru 3-15-04; OMAP 82-2003, f. 10-31-03, cert. ef. 11-1-03; OMAP 9-2004, f. 2-27-04, cert. ef. 3-1-04; OMAP 29-2004, f. 4-23-04 cert. ef. 5-1-04; OMAP 34-2004, f. 5-26-04 cert. ef. 6-1-04; OMAP 45-2004, f. 7-22-04 cert. ef. 8-1-04; OMAP 81-2004, f. 10-29-04 cert. ef. 11-1-04; OMAP 89-2004, f. 11-24-04 cert. ef. 12-1-04; OMAP 19-2005, f. 3-21-05, cert. ef. 4-1-05; OMAP 32-2005, f. 6-21-05, cert. ef. 7-1-05; OMAP 58-2005, f. 10-27-05, cert. ef. 11-1-05; OMAP 16-2006, f. 6-12-06, cert. ef. 7-1-06; OMAP 32-2006, f. 8-31-06, cert. ef. 9-1-06; OMAP 48-2006, f. 12-28-06, cert. ef. 1-1-07; DMAP 4-2007, f. 6-14-07, cert. ef. 7-1-07; DMAP 16-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 36-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 39-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 17-2010, f. 6-15-10, cert. ef. 7-1-10; DMAP 40-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 2-2011(Temp), f. & cert. ef. 3-1-11 thru 8-20-11; DMAP 19-2011, f. 7-15-11, cert. ef. 7-17-11; 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 26-2012, f. & cert. ef. 5-14-12; 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 1-2014(Temp), f. & cert. ef. 1-10-14 thru 7-9-14; DMAP 15-2014, f. & cert. ef. 3-21-14 thru 9-17-14; DMAP 28-2014(Temp), f. & cert. ef. 5-2-14 thru 6-30-14; DMAP 37-2014, f. & cert. ef. 6-30-14; DMAP 47-2014(Temp), f. & cert. ef. 7-15-14 thru 1-11-15; DMAP 52-2014(Temp), f. & cert. ef. 9-16-14 thru 1-11-15; DMAP 64-2014(Temp), f. 10-24-14, cert. ef. 10-29-14 thru 12-30-14; DMAP 77-2014, f. & cert. ef. 12-12-14; DMAP 78-2014(Temp), f. & cert. ef. 12-12-14 thru 6-9-15; DMAP 88-2014(Temp), f. 12-31-14, cert. ef. 1-1-15 thru 6-29-15; DMAP 10-

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2015(Temp), f. & cert. ef. 3-3-15 thru 8-29-15; DMAP 26-2015(Temp), f. 4-17-15, cert. ef. 4-18-15 thru 6-26-15; DMAP 35-2015, f. 6-25-15, cert. ef. 6-26-15; DMAP 37-2015(Temp), f. & cert. ef. 7-1-15 thru 12-27-15; DMAP 57-2015(Temp), f. 9-30-15, cert. ef. 10-1-15 thru 12-27-15; DMAP 64-2015(Temp), f. & cert. ef. 11-3-15 thru 12-27-15; DMAP 66-2015(Temp), f. & cert. ef. 11-6-15 thru 12-27-15; DMAP 79-2015, f. 12-22-15, cert. ef. 12-27-15; DMAP 84-2015(Temp), f. 12-23-15, cert. ef. 1-1-16 thru 6-28-16; DMAP 18-2016(Temp), f. 4-28-16, cert. ef. 5-1-16 thru 6-28-16; DMAP 27-2016, f. 6-24-16, cert. ef. 6-28-16; DMAP 43-2016(Temp), f. & cert. ef. 7-1-16 thru 12-27-16; DMAP 57-2016(Temp), f. 9-30-16, cert. ef. 10-1-16 thru 3-29-17; DMAP 69-2016, f. & cert. ef. 12-1-16; DMAP 80-2016(Temp), f. 12-30-16, cert. ef. 1-1-17 thru 6-29-17

Rule Caption: Amending Rules to Comply with Amended CFRs, Gender Identity and Provider Enrollee Communications

Adm. Order No.: DMAP 1-2017

Filed with Sec. of State: 1-12-2017

Certified to be Effective: 1-13-17

Notice Publication Date: 11-1-2016

Rules Amended: 410-141-3015, 410-141-3145, 410-141-3260, 410-141-3300

Rules Repealed: 410-141-3015(T), 410-141-3145(T), 410-141-3260(T), 410-141-3300(T)

Subject: These rules provide direction and clarification to the Coordinated Care Organizations and Prepaid Health Plans in order to be compliant with the newly revised Code of Federal Regulations that became effective within sixty days of publication, May 5, 2016. These rules need to be amended to reflect current federal changes related to provider enrollee communications requirements and the addition of gender identity to the certification criteria.

Rules Coordinator: Sandy Cafourek — (503) 945-6430

410-141-3015

Certification Criteria for Coordinated Care Organizations

(1) Applicants shall submit applications to the Authority describing their capacity and plans for meeting the goals and requirements established for the Oregon Integrated and Coordinated Health Care Delivery System including being prepared to enroll all eligible individuals within the CCO's proposed service area. The Authority shall use the RFA procurement process described in OAR 410-141-3010.

(2) In addition to the requirements for CCOs expressed in the laws establishing Health System Transformation, the Authority interprets the qualifications and expectations for CCO certification within the context of the Oregon Health Policy Board's report, Coordinated Care Organizations Implementation Proposal: HB 3650 Health System Transformation (Jan. 24, 2012).

(3) Applicants shall describe their demonstrated experience and capacity for:

(a) Managing financial risk and establishing financial reserves;

(b) Meeting the following minimum financial requirements:

(A) Maintaining restricted reserves of \$250,000 plus an amount equal to 50 percent of the entity's total actual or projected liabilities above \$250,000;

(B) Maintaining a net worth in an amount equal to at least 5 percent of the average combined revenue in the prior two quarters of the participating health care entities.

(c) Operating within a fixed global budget;

(d) Developing and implementing alternative payment methodologies that are based on health care quality and improved health outcomes;

(e) Coordinating the delivery of physical health care, mental health and Substance Use Disorder (SUD) services, oral health care, and covered long-term care services;

(f) Engaging community members and health care providers in improving the health of the community and addressing regional, cultural, socioeconomic, and racial disparities in health care that exist among the entity's enrollees and in the entity's community.

(4) In selecting one or more CCOs to serve a geographic area, the Authority shall:

(a) For members and potential members, optimize access to care and choice of providers;

(b) For providers, optimize choice in contracting with CCOs; and

(c) Allow more than one CCO to serve the geographic area if necessary to optimize access and choice under this subsection.

(5) Evaluation of CCO applications shall account for the developmental nature of the CCO system. The Authority recognizes that CCOs and partner organizations will need time to develop capacity, relationships, systems, and experience to fully realize the goals envisioned by the Oregon Integrated and Coordinated Health Care Delivery System. The Authority

shall thoroughly review how the application describes community involvement in the governance of the CCO and the CCO's strategic plan for developing its community health assessment and community health improvement plan:

(a) In all cases, CCOs shall have plans in place to meet the criteria laid out in these rules and the application process and to make sufficient progress in implementing plans and realizing the goals established in contract;

(b) Each criterion will be listed followed by the elements that shall be addressed during the initial certification described in this rule without limiting the information that is requested in the RFA concerning these criteria.

(6) Each CCO shall have a governance structure that meets the requirements of ORS 414.625. The applicant shall:

(a) Clearly describe how it meets governance structure criteria from ORS 414.625, how the governance structure makeup reflects community needs and supports the goals of health care transformation, how the criteria is used to select governance structure members, and how it will assure transparency in governance;

(b) Identify key leaders who are responsible for successful implementation and sustainable operation of the CCO;

(c) Describe how its governance structure will reflect the needs of members with severe and persistent mental illnesses and members receiving DHS Medicaid-funded, long-term care services and supports.

(7) Each CCO shall convene a community advisory council (CAC) that meets the requirements of ORS 414.625. The applicant shall clearly describe how it meets the requirements for selection and implementation of a CAC consistent with ORS 414.625, how the CAC will be administered to achieve the goals of community involvement, and the development, adoption, and updating of the community health assessment and community health improvement plan.

(8) CCOs shall partner with their local public health authority, hospital system, type B AAA, APD field office, and local mental health authority to develop a shared community health assessment that includes a focus on health disparities in the community:

(a) Since community health assessments will evolve over time as relationships develop and CCOs learn what information is most useful, initial CCO applicants may not have time to conduct a comprehensive community assessment before becoming certified;

(b) The applicant shall describe how it will develop its health assessment, meaningfully and systematically engaging representatives of critical populations and community stakeholders and its community advisory council to create a health improvement plan for addressing community need that builds on community resources and skills and emphasizes innovation.

(9) The CCO shall describe its strategy to adopt and implement a community health improvement plan consistent with OAR 410-141-3145.

(10) Dental care organizations: On or before July 1, 2014, each CCO shall have a contractual relationship with any DCO in its service area.

(11) CCOs shall have agreements in place with publicly funded providers to allow payment for point-of-contact services including immunizations, sexually transmitted diseases and other communicable diseases, family planning, and HIV/AIDS prevention services. Applicants shall confirm that these agreements have been developed unless good cause can be shown:

(a) CCOs shall also have agreements in place with the local mental health authority consistent with ORS 414.153. Applicants shall confirm that these agreements have been developed unless good cause can be shown;

(b) The Authority shall review CCO applications to ensure that statutory requirements regarding county agreements are met unless good cause is shown why an agreement is not feasible.

(12) CCOs shall provide integrated, person-centered care and services designed to provide choice, independence, and dignity:

(a) The applicant shall describe its strategy to assure that each member receives integrated, person-centered care and services designed to provide choice, independence, and dignity;

(b) The applicant shall describe its strategy for providing members the right care at the right place and the right time and to integrate and coordinate care across the delivery system.

(13) CCOs shall develop mechanisms to monitor and protect against underutilization of services and inappropriate denials, provide access to qualified advocates, and promote education and engagement to help members be active partners in their own care. Applicants shall:

(a) Describe their planned or established policies and procedures that protect member rights including access to qualified peer wellness special-

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ists, personal health navigators, and qualified community health workers where appropriate;

(b) Describe planned or established mechanisms for a complaint, grievance, and appeals resolution process, including how that process shall be communicated to members and providers.

(14) CCOs shall operate in a manner that encourages patient engagement, activation, and accountability for the member's own health. Applicants shall describe how they plan to:

(a) Actively engage members in the design and, where applicable, implementation of their treatment and care plans;

(b) Ensure that member choices are reflected in the development of treatment plans, and member dignity is respected.

(15) CCOs shall assure that members have a choice of providers within the CCO's network, including providers of culturally and linguistically appropriate services and their providers participating in the CCO and shall:

(a) Work together to develop best practices for care and service delivery to reduce waste and improve health and well-being of all members;

(b) Are educated about the integrated approach and how to access and communicate within the integrated system about a member's treatment plan and health history;

(c) Emphasize prevention, healthy lifestyle choices, evidence-based practices, shared decision-making, and communication;

(d) Are permitted to participate in the networks of multiple CCOs;

(e) Include providers of specialty care;

(f) Are selected by the CCO using universal application and credentialing procedures, objective quality information, and are removed if the providers fail to meet objective quality standards;

(g) Describe how they will work with their providers to develop the partnerships necessary to allow for access to and coordination with medical, mental health and Substance Use Disorder (SUD) service providers, and dental care when the CCO includes a dental care organization and facilitate access to community social and support services including DHS Medicaid-funded long-term care services, mental health crisis services, and culturally and linguistically appropriate services;

(h) Describe their planned or established tools for provider use to assist in the education of members about care coordination and the responsibilities of both parties in the process of communication.

(16) CCOs shall assure that each member has a consistent and stable relationship with a care team that is responsible for providing preventive and primary care and for comprehensive care management in all settings. The applicant shall demonstrate how it will support the flow of information, identify a lead provider or care team to confer with all providers responsible for a member's care, and use a standardized patient follow-up approach.

(17) CCOs shall address the supportive and therapeutic needs of each member in a holistic fashion using patient-centered primary care homes and individualized care:

(a) Applicants shall describe their model of care or other models that support patient-centered primary care, adhere to ORS 414.625 requirements regarding individualized care plans particularly for members with intensive care coordination needs, and screen for all other issues including mental health;

(b) Applicants shall describe how its implementation of individualized care plans reflects member or family and caregiver preferences and goals to ensure engagement and satisfaction.

(18) CCOs shall assure that members receive comprehensive transitional health care including appropriate follow-up care when entering or leaving an acute care facility or long-term care setting. Applicants shall:

(a) Describe their strategy for improved transitions in care so that members receive comprehensive transitional care, and members' experience of care and outcomes are improved;

(b) Demonstrate how hospitals and specialty services will be accountable to achieve successful transitions of care and establish service agreements that include the role of patient-centered primary care homes;

(c) Describe their arrangements, including memorandum of understanding, with Type B Area Agencies on Aging or the Department's offices of Aging and People with Disabilities concerning care coordination and transition strategies for members.

(19) CCOs shall provide members with assistance in navigating the health care delivery system and accessing community and social support services and statewide resources including the use of certified or qualified health care interpreters, community health workers, and personal health navigators. The applicant shall describe its planned policies for informing members about access to personal health navigators, peer wellness specialists where appropriate, and community health workers.

(20) Services and supports shall be geographically located as close to where members reside as possible and are, when available, offered in non-traditional settings that are accessible to families, diverse communities, and underserved populations. Applicants shall describe:

(a) Delivery system elements that respond to member needs for access to coordinated care services and supports;

(b) Planned or established policies for the delivery of coordinated health care services for members in long-term care settings;

(c) Planned or established policies for the delivery of coordinated health care services for members in residential treatment settings or long term psychiatric care settings.

(21) Each CCO shall prioritize working with members who have high health care needs, multiple chronic conditions, mental illness, or Substance Use Disorder (SUD) services including members with severe and persistent mental illness covered under the State's 1915(i) State Plan Amendment. The CCO shall involve those members in accessing and managing appropriate preventive, health, remedial, and supportive care and services to reduce the use of avoidable emergency department visits and hospital admissions. The applicant shall describe how it will:

(a) Use individualized care plans to address the supportive and therapeutic needs of each member, particularly those with intensive care coordination needs;

(b) Reflect member or family and caregiver preferences and goals to ensure engagement and satisfaction.

(22) Each CCO shall participate in the learning collaborative described in ORS 442.210. Applicants shall confirm their intent to participate.

(23) Each CCO shall implement to the maximum extent feasible patient-centered primary care homes including developing capacity for services in settings that are accessible to families, diverse communities, and underserved populations:

(a) The applicant shall describe its plan to develop and expand capacity to use patient-centered primary care homes to ensure that members receive integrated, person-centered care and services and that members are fully informed partners in transitioning to this model of care;

(b) The applicant shall require its other health and services providers to communicate and coordinate care with patient-centered primary care homes in a timely manner using health information technology.

(24) CCOs' health care services shall focus on achieving health equity and eliminating health disparities. Applicants shall:

(a) Describe their strategy for ensuring health equity (including interpretation and cultural competence) and elimination of avoidable gaps in health care quality and outcomes, as measured by gender identity, race, ethnicity, language, disability, sexual orientation, age, mental health and addictions status, geography, and other cultural and socioeconomic factors;

(b) Engage in a process that identifies health disparities associated with race, ethnicity, language, health literacy, age, disability (including mental illness and substance use disorders), gender identity, sexual orientation, geography, or other factors through community health assessment;

(c) Collect and maintain race, ethnicity, and primary language data for all members on an ongoing basis in accordance with standards jointly established by the Authority and the Division.

(25) CCOs are encouraged to use alternative payment methodologies consistent with ORS 414.653. The applicant shall describe its plan to move toward and begin to implement alternative payment methods alone or in combination with delivery system changes to achieve better care, controlled costs, and better health for members.

(26) Each CCO shall use health information technology (HIT) to link services and care providers across the continuum of care to the greatest extent practicable. The applicant shall describe:

(a) Its initial and anticipated levels of electronic health record adoption and health information exchange infrastructure and capacity for collecting and sharing patient information electronically and its HIT improvement plan for meeting transformation expectations;

(b) Its plan to ensure that each network provider participates in a health information organization (HIO) or is registered with a statewide or local direct-enabled health information service provider.

(27) Each CCO shall report on outcome and quality measures identified by the Authority under ORS 414.638 and participate in the All Payer All Claims (APAC) data reporting system. The applicant shall provide assurances that:

(a) It has the capacity to report and demonstrate an acceptable level of performance with respect to Authority-identified metrics;

(b) It will submit APAC data in a timely manner according to program specifications.

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(28) Each CCO shall be transparent in reporting progress and outcomes. Applicants shall:

(a) Describe how it will assure transparency in governance;

(b) Agree to provide timely access to certain financial, outcomes, quality, and efficiency metrics that will be transparent and publicly reported and available on the Internet.

(29) Each CCO shall use best practices in the management of finances, contracts, claims processing, payment functions, and provider networks. The applicant shall describe:

(a) Its planned or established policies for ensuring best practices in areas identified by ORS 414.625;

(b) Whether the CCO will use a clinical advisory panel (CAP) or other means to ensure clinical best practices;

(c) Plans for an internal quality improvement committee that develops and operates under an annual quality strategy and work plan that incorporates implementation of system improvements and an internal utilization review oversight committee that monitors utilization against practice guidelines and treatment planning protocols and policies.

(30) Each CCO shall demonstrate sound fiscal practices and financial solvency and shall possess and maintain resources needed to meet their obligations:

(a) Initially, the financial applicant shall submit required financial information that allows the DCBS Insurance Division on behalf of the Authority to confirm financial solvency and assess fiscal soundness;

(b) The applicant shall provide information relating to assets and financial and risk management capabilities.

(31) Each CCO may provide coordinated care services within a global budget. Applicants shall submit budget cost information consistent with its proposal for providing coordinated care services within the global budget.

(32) A CCO shall operate, administer, and provide for integrated and coordinated care services within the requirements of the medical assistance program in accordance with the terms of the contract and rule. The applicant shall provide assurances about compliance with requirements applicable to the administration of the medical assistance program.

(33) Each CCO shall provide covered Medicaid services, other than DHS Medicaid-funded long-term care services, to members who are dually eligible for Medicare and Medicaid. The applicant may participate in the CMS Medicare/Medicaid Alignment Demonstration if the Authority obtains necessary federal approvals.

Stat. Auth.: ORS 413.042, 414.615, 414.625, 414.635 & 414.651

Stats. Implemented: ORS 414.610 - 414.685

Hist.: DMAP 16-2012(Temp), f. & cert. ef. 3-26-12 thru 9-21-12; DMAP 37-2012, f. & cert. ef. 8-1-12; DMAP 45-2014, f. 7-15-14, cert. ef. 8-1-14; DMAP 44-2016(Temp), f. & cert. ef. 7-6-16 thru 1-1-17; DMAP 75-2016, f. 12-29-16, cert. ef. 1-1-17; DMAP 1-2017, f. 1-12-17, cert. ef. 1-13-17

410-141-3145

Community Health Assessment and Community Health Improvement Plans

(1) Pursuant to ORS 414.627 to the extent practicable, CCOs shall partner with their local public health authority, local mental health authority, and hospital systems to develop a shared Community Health Assessment (CHA) process including conducting the assessment and development of the resulting Community Health Improvement Plan (CHP).

(2) CCOs shall work with the Authority to identify the components of the CHA. CCOs are encouraged to partner with their local public health authority, hospital system, type B Area Agency on Aging, APD field office and local mental health authority, the Early Learning Council, the Youth Development Council, and school health providers in the region using existing resources when available and avoiding duplication where practicable.

(3) In developing and maintaining a health assessment, CCOs shall meaningfully and systematically engage representatives of critical populations and community stakeholders to create a plan for addressing community health needs that build on community resources and skills and emphasizes innovation including, but not limited to, the following:

(a) Emphasis on disproportionate, unmet, health-related need;

(b) Emphasis on primary prevention;

(c) Building a seamless continuum of care;

(d) Building community capacity;

(e) Emphasis on collaborative governance of community benefit.

(4) The CCO requirements for conducting a CHA and CHP will be met for purposes of ORS 414.627 if they substantially meet the community health needs assessment requirement of the federal Patient Protection and Affordable Care Act, 2010 Section 9007, and the Public Health

Accreditation Board CHA and CHP requirements for local health departments and the AAA and local mental health authority in the process.

(5) The CCO's CAC shall oversee the CHA and adopt a plan to serve as a strategic population health and health care system service plan for the community served by the CCO. The Council shall annually publish a report on the progress of the CHP.

(6) The CHP adopted by the Council shall describe the scope of the activities, services, and responsibilities that the CCO shall consider upon implementation. The activities, services, and responsibilities defined in the CHP may include, but are not limited to:

(a) Analysis and development of public and private resources, capacities, and metrics based on ongoing community health assessment activities and population health priorities;

(b) Health policy;

(c) System design;

(d) Outcome and quality improvement;

(e) Integration of service delivery;

(f) Workforce development; and

(g) Public Health Accreditation Board standards for CHPs.

(7) CCOs and their participating providers shall work together to develop best practices of culturally and linguistically appropriate care and service delivery to eliminate health disparities and improve member health and well-being.

(8) CCOs and their CAC shall collaborate with the Authority's Office of Equity and Inclusion to develop meaningful baseline data on health disparities. CCOs shall include in the CHA identification and prioritization of health disparities among CCOs' diverse communities, including those defined by race, ethnicity, language, health literacy, age, disability, gender identity, sexual orientation, behavioral health status, geography, or other factors in their service areas such as type of living setting including, but not limited to, home independent support living, adult foster home, or homeless. CCOs shall collect and maintain data on race, ethnicity, and primary language for all members on an ongoing basis in accordance with standards established by the Authority. CCOs shall also include representatives of populations experiencing health disparities in CHA and CHP prioritization. CCOs shall track and report on any quality measure by these demographic factors and shall develop, implement, and evaluate strategies to improve health equity among members. CCOs shall make this information available by posting on the web.

(9) To the extent practicable, CCOs shall:

(a) Base the CHP on research including research into adverse childhood experiences;

(b) Evaluate the adequacy of the existing school-based health center (SBHC) network to meet the specific pediatric and adolescent health care needs in the community and make recommendations to improve the SBHC system;

(c) Improve the integration of all services provided to meet the needs of children, adolescents, and families;

(d) Address primary care, behavioral and oral health, promotion of health and prevention, and early intervention in the treatment of children and adolescents;

(e) With the development of its CHP SBHCs, school nurses, school mental health providers, and individuals representing child and adolescent health services shall be included.

(10) CCOs shall develop and review and update its CHA and plan at least every five years to ensure the provision of all medically appropriate covered coordinated care services including urgent care and emergency services, preventive, community support, and ancillary services in those categories of services included in CCO contracts or agreements with the Authority.

(11) CCOs shall communicate these policies and procedures to providers, regularly monitor providers' compliance, and take any corrective action necessary to ensure compliance. CCOs shall document all monitoring and corrective action activities.

(12) If there is more than one CCO in a community, the CCOs and their community partners may work together to develop one shared CHA and one shared CHP.

Stat. Auth.: ORS 413.042, 414.615, 414.625, 414.635 & 414.651

Stats. Implemented: ORS 414.610 - 414.685

Hist.: DMAP 16-2012(Temp), f. & cert. ef. 3-26-12 thru 9-21-12; DMAP 37-2012, f. & cert. ef. 8-1-12; DMAP 45-2014, f. 7-15-14, cert. ef. 8-1-14; DMAP 44-2016(Temp), f. & cert. ef. 7-6-16 thru 1-1-17; DMAP 75-2016, f. 12-29-16, cert. ef. 1-1-17; DMAP 1-2017, f. 1-12-17, cert. ef. 1-13-17

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410-141-3260

Grievance System: Grievances, Appeals and Contested Case Hearings

(1) This rule applies to requirements related to the grievance system, which includes appeals, contested case hearings, and grievances. For purposes of this rule and OAR 410-141-3261 through 410-141-3264, references to member means a member, member's representative and the representative of a deceased member's estate.

(2) The CCO must establish and have a Division approved process and written procedures for the following:

(a) Member rights to appeal and request a CCO's review of an action;

(b) Member rights to request a contested case hearing on a CCO action under the Administrative Procedures Act; and

(c) Member rights to file a grievance for any matter other than an appeal or contested case hearing;

(d) An explanation of how CCOs shall accept, process and respond to appeals, hearing requests and grievances;

(e) Compliance with grievance system requirements as part of the state quality strategy and to monitor and enforce consumer rights and protections within the Oregon Integrated and Coordinated Health Care Delivery System and ensure consistent response to complaints of violations of consumer right and protections.

(3) Upon receipt of a grievance or appeal, the CCO must:

(a) Acknowledge receipt to the member;

(b) Give the grievance or appeal to staff with the authority to act upon the matter;

(c) Obtain documentation of all relevant facts concerning the issues;

(d) Ensure staff making decisions on the grievance or appeal are:

(A) Not involved in any previous level of review or decision-making;

and

(B) Health care professionals as defined in OAR 410-120-0000 with appropriate clinical expertise in treating the member's condition or disease if the grievance or appeal involves clinical issues or if the member requests an expedited review.

(4) The CCO must analyze all grievances, appeals and hearings in the context of quality improvement activity pursuant to OAR 410-141-3200 and 410-141-3260.

(5) CCOs must keep all healthcare information concerning a member's request confidential, consistent with appropriate use or disclosure as the terms treatment, payment or CCO health care operations are defined in 45 CFR 164.501.

(6) The following pertains to release of a member's information:

(a) The CCO and any provider whose authorizations, treatments, services, items, quality of care or requests for payment are involved in the grievance, appeal or hearing may use this information without the member's signed release for purposes of:

(A) Resolving the matter; or

(B) Maintaining the grievance or appeals log.

(b) If the CCO needs to communicate with other individuals or entities not listed in subsection (a) to respond to the matter, the CCO must obtain the member's signed release and retain the release in the member's record.

(7) The CCO must provide members with any reasonable assistance in completing forms and taking other procedural steps related to filing grievances, appeals or hearing requests. Reasonable assistance includes, but is not limited to:

(a) Assistance from qualified community health workers, qualified peer wellness specialists or personal health navigators to participate in processes affecting the member's care and services;

(b) Free interpreter services;

(c) Toll-free phone numbers that have adequate TTY/TTD and interpreter capabilities; and

(d) Reasonable accommodation or policy and procedure modifications as required by any disability of the member.

(8) The CCO and its participating providers may not:

(a) Discourage a member from using any aspect of the grievance, appeal or hearing process;

(b) Encourage the withdrawal of a grievance, appeal or hearing request already filed; or

(c) Use the filing or resolution of a grievance, appeal or hearing request as a reason to retaliate against a member or to request member disenrollment.

(9) In all CCO administrative offices and in those physical, behavioral and oral health offices where the CCO has delegated response to the appeal, hearing request or grievance, the CCO must have the following forms available:

(a) OHP Complaint Form (OHP 3001);

(b) Appeal forms;

(c) Hearing request form (DHS 443) and Notice of Hearing Rights (DMAP 3030); or

(d) The Division of Medical Assistance Programs Service Denial Appeal and Hearing Request form (DMAP 3302) or approved facsimile.

(10) A member's provider:

(a) Acting on behalf of and with written consent of the member may file an appeal;

(b) May not act as the member's authorized representative for requesting a hearing or filing a grievance.

(11) The CCO and its participating providers must cooperate with the Department of Human Services Governor's Advocacy Office, the Authority's Ombudsman and hearing representatives in all activities related to member appeals, hearing requests and grievances including providing all requested written materials.

(12) If the CCO delegates the grievance and appeal process to a subcontractor, the CCO must:

(a) Ensure the subcontractor meets the requirements consistent with this rule and OAR 410-141-3261 through 410-141-3264;

(b) Monitor the subcontractor's performance on an ongoing basis;

(c) Perform a formal compliance review at least once a year to assess performance, deficiencies or areas for improvement; and

(d) Ensure the subcontractor takes corrective action for any identified areas of deficiencies that need improvement.

(13) CCO's must maintain yearly logs of all appeals and grievances for seven calendar years with the following requirements:

(a) The logs must contain the following information pertaining to each member's appeal or grievance:

(A) The member's name, ID number, and date the member filed the grievance or appeal;

(B) Documentation of the CCO's review, resolution or disposition of the matter, including the reason for the decision and the date of the resolution or disposition;

(C) Notations of oral and written communications with the member; and

(D) Notations about appeals and grievances the member decides to resolve in another way if the CCO is aware of this.

(b) For each calendar year, the logs must contain the following aggregate information:

(A) The number of actions; and

(B) A categorization of the reasons for and resolutions or dispositions of appeals and grievances.

(14) The CCO must review the log monthly for completeness and accuracy, which includes but is not limited to timeliness of documentation and compliance with procedures.

(15) A member or a member's provider may request an expedited resolution of an appeal or a contested case hearing if the member or provider believes taking the standard time of resolution could seriously jeopardize the member's:

(a) Life, health, mental health or dental health; or

(b) Ability to attain, maintain or regain maximum function.

(16) A member who may be entitled to continuing benefits may request and receive continuing benefits in the same manner and same amount while an appeal or contested case hearing is pending:

(a) To be entitled to continuing benefits, the member must complete a hearing request or request for appeal requesting continuing benefits no later than:

(A) The tenth day following the date of the notice or the notice of appeal resolution; and

(B) The effective date of the action proposed in the notice, if applicable.

(b) In determining timeliness under section (3)(a) of this rule, delay for good cause, as defined in OAR 137-002-0528, is not counted;

(c) The benefits must be continued until:

(A) A final appeal resolution resolves the appeal unless the member requests a hearing with continuing benefits no later than ten days following the date of the notice of appeal resolution;

(B) A final order resolves the contested case;

(C) The time period or service limits of a previously authorized service have been met; or

(D) The member withdraws the request for hearing.

(17) The CCO shall review and report to the Authority complaints that raise issues related to racial or ethnic background, gender identity, sexual orientation, socioeconomic status, culturally or linguistically appropriate

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service requests, disability status and other identity factors for consideration in improving services for health equity.

(18) If a CCO receives a complaint or grievance related to a member's entitlement of continuing benefits in the same manner and same amount during the transition of transferring from one CCO to another CCO for reasons defined in OAR 410-141-3080 (15) the CCO shall log the complaint/grievance and work with the receiving/sending CCO to ensure continuity of care during the transition.

Stat. Auth.: ORS 413.032, 414.615, 414.625, 414.635, 414.651

Stats. Implemented: ORS 414.610 – 414.685

Hist.: DMAP 16-2012(Temp), f. & cert. ef. 3-26-12 thru 9-21-12; DMAP 37-2012, f. & cert. ef. 8-1-12; DMAP 54-2012(Temp), f. & cert. ef. 11-1-2 thru 4-29-13; DMAP 22-2013, f. & cert. ef. 4-26-13; DMAP 60-2013, f. & cert. ef. 10-31-13; DMAP 33-2014, f. 5-30-14, cert. ef. 7-1-14; DMAP 44-2016(Temp), f. & cert. ef. 7-6-16 thru 1-1-17; DMAP 75-2016, f. 12-29-16, cert. ef. 1-1-17; DMAP 1-2017, f. 1-12-17, cert. ef. 1-13-17

410-141-3300

Coordinated Care Organization (CCO) Member Education and Information Requirements

(1) For the purpose of this rule, the following definitions apply:

(a) "Alternate Format" means any alternate approach to presenting print information to an individual with a disability. The Americans with Disabilities Act (ADA) groups the standard alternate formats: braille, large (18 point) print, audio narration, oral presentation, and electronic file along with other aids and services for other disabilities, including sign language interpretation and sighted guide;

(b) "Alternate Format Statement Insert" means an insert developed by the Oregon Health Authority that includes instructions on how to receive an alternate format or oral interpretation of materials translated into the state's top sixteen preferred written languages as identified by OHP enrollees. CCOs shall insert their contact information into the template.

(c) "Health Literacy" means the degree to which individuals have the capacity to obtain, process, and understand basic health information needed to make appropriate health decisions regarding services needed to prevent or treat illness.

(d) "Prevalent Non-English Language" means: All non-English languages that are identified as the preferred written language by the lesser of either:

(A) 5 percent of the CCO's total OHP enrollment; or

(B) 1,000 of the CCO's members.

(2) CCOs may engage in activities for existing members related to outreach, health promotion, and health education. The Division shall approve, prior to distribution, any written communication by the CCO or its subcontractors and providers that:

(a) Is intended solely for members; and

(b) Pertains to requirements for obtaining coordinated care services at service area sites or benefits.

(3) CCOs may communicate with providers, caseworkers, community agencies, and other interested parties for informational purposes. The intent of these communications should be informational only and not to entice or solicit membership. Communication methodologies may include but are not limited to brochures, pamphlets, newsletters, posters, fliers, websites, health fairs, or sponsorship of health-related events. CCOs shall address health literacy issues by preparing these documents at a low-literacy reading level, incorporating graphics and utilizing alternate formats.

(4) The creation of name recognition because of the CCO's health promotion or education activities shall not constitute an attempt by the CCO to influence a client's enrollment.

(5) A CCO or its subcontractor's communications that express participation in or support for a CCO by its founding organizations or its subcontractors shall not constitute an attempt to compel or entice a client's enrollment.

(6) The following shall not constitute marketing or an attempt by the CCO to influence client enrollment:

(a) Communication to notify dual-eligible members of opportunities to align CCO provided benefits with a Medicare Advantage or Special Needs Plan;

(b) Improving coordination of care;

(c) Communicating with providers serving dual-eligible members about unique care coordination needs; or

(d) Streamlining communications to the dually-enrolled member to improve coordination of benefits.

(7) CCOs shall have a mechanism to help members understand the requirements and benefits of the CCO's integrated and coordinated care plan. The mechanisms developed shall be culturally and linguistically appropriate.

(8) CCOs shall have written procedures, criteria, and an ongoing process of member education and information sharing that includes member orientation, member handbook, and health education. As a CCO transitions to fully coordinating a member's care, the CCO is responsible only for including information about the care they are coordinating. CCOs shall update their educational material as they add coordinated services. Member education shall:

(a) Include information about the coordinated care approach and how to navigate the coordinated health care system, including where applicable for dual-eligible individuals, the process for coordinating Medicaid and Medicare benefits;

(b) Clearly explain how members may receive assistance from advocates, including certified health care interpreters, community health workers, peer wellness specialists, and personal health navigators and include information to members that interpreter services at provider offices are free to CCO members as stated in 42 CFR 438.10(4).

(9) Within 14 calendar days or a reasonable timeframe of a CCO's receiving notice of a member's enrollment, CCOs shall mail a welcome packet to new members and to members returning to the CCO twelve months or more after previous enrollment. The packet shall include, at a minimum, a welcome letter, a member handbook, and information on how to access a provider directory, including a list of any in-network retail and mail-order pharmacies.

(10) Provider directories shall include notation of the following: names including names of in-network retail and mail-order pharmacies, locations, telephone numbers including TTY, office hours, accessibility for members with disabilities, non-English languages spoken by current contracted providers in the enrollee's service area, and direction on how members can access information on providers that are not accepting new patients.

(11) For those who are existing members, a CCO shall notify members annually of the availability of a member handbook and provider directory and how to access those materials. CCOs shall send hard copies upon request.

(12) CCOs shall facilitate materials as follows:

(a) Translate the following written materials into the prevalent non-English languages served by the CCO:

(A) Welcome Packets that include welcome letters and member handbooks; and

(B) Notices of medical benefit changes.

(b) Alternate format statement inserts with:

(A) Communications regarding member enrollment; and

(B) Notice of Action to deny, reduce, or stop a benefit.

(c) Accommodate requests of the member to translate written materials into prevalent non-English languages served by the CCO;

(d) Make oral interpretation services available free of charge to each potential member and member. This applies to all non-English languages, not just prevalent non-English languages;

(e) Notify enrollees:

(A) That oral interpretation is available free of charge for any language, and written information is available in prevalent non-English languages and alternate formats; and

(B) How to access those services.

(f) Make available materials in alternate formats by request. Alternate formats include but are not limited to audio recording, close-captioned videos, large type, and braille.

(13) A CCO shall electronically provide to the Division for approval each version of the printed welcome packet that includes a welcome letter, member handbook, and information on how to access a provider directory. At a minimum, the member handbook shall contain the following:

(a) Revision date;

(b) Tag lines in English and other prevalent non-English languages, as defined in this rule, spoken by populations of members. The tag lines shall be located at the beginning of the document for the ease of the member and describe how members may access free sign and oral interpreters, as well as translations and materials in other formats. Alternate formats may include but are not limited to audio recordings, close-captioned videos, large (18 point) type, and braille.

(c) CCO's office location, mailing address, web address if applicable, office hours, and telephone numbers including TTY;

(d) Availability and access to coordinated care services through a patient-centered primary care home or other primary care team with the member as a partner in care management. Explain how to choose a PCP, how to make an appointment, and how to change PCPs and the CCO's policy on changing PCPs;

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(e) How to access information on contracted providers currently accepting new members and any restrictions on the member's freedom of choice among participating providers;

(f) What participating or non-participating provider services the member may self-refer;

(g) Policies on referrals for specialty care, including prior authorization requirements and how to request a referral;

(h) Explanation of intensive care coordination services and how members with the following special health care needs can access intensive care coordination services: Those who are aged, blind, or disabled or who have complex medical needs, high health needs, multiple chronic conditions, mental illness, or chemical dependency.

(i) Information about the coordinated care approach, how to navigate the coordinated care health care system as applicable to dual-eligible individuals, and the process for coordinating Medicaid and Medicare benefits;

(j) How and where members are to access urgent care services and advice, including how to access these services and advice when away from home;

(k) How and when members are to use emergency services, both locally and when away from home, including examples of emergencies;

(L) Information on contracted hospitals in the member's service area;

(m) Information on post-stabilization care after a member is stabilized in order to maintain, improve, or resolve the member's condition;

(n) Information on the CCO's grievance and appeals processes and the Division's contested case hearing procedures, including:

(A) Information about assistance in filling out forms and completing the grievance process available from the CCO to the member as outlined in OAR 410-141-3260;

(B) Information about the member's right to continued benefits during the grievance process as provided in OAR 410-141-3263.

(o) Information on the member's rights and responsibilities, including the availability of the OHP Ombudsman;

(p) Information on charges for non-covered services, and the member's possible responsibility for charges if they go outside of the CCO for non-emergent care; including information specific to deductibles, and coinsurance for dually-enrolled qualified Medicare beneficiaries;

(q) Information about when providers may bill clients for services and what to do if they receive a bill, including information specific to payment responsibilities for dually-enrolled qualified Medicare beneficiaries;

(r) The transitional procedures for new members to obtain prescriptions, supplies, and other necessary items and services in the first month of enrollment if they are unable to meet with a PCP or PCD, other prescribing provider, or obtain new orders during that period; including specific communications for members who are becoming new Medicare enrollees;

(s) Information on advance directive policies including:

(A) Member rights under federal and Oregon law to make decisions concerning their medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate advance directives;

(B) The CCO's policies for implementation of those rights, including a statement of any limitation regarding the implementation of advanced directives as a matter of conscience.

(t) Whether or not the CCO uses provider incentives to reduce cost by limiting services;

(u) The member's right to request and obtain copies of their clinical records, whether they may be charged a reasonable copying fee and that they may request the record be amended or corrected;

(v) How and when members are to obtain ambulance services;

(w) Resources for help with transportation to appointments with providers;

(x) Explanation of the covered and non-covered coordinated care services in sufficient detail to ensure that members understand the benefits to which they are entitled;

(y) How to access in-network retail and mail-order pharmacies;

(z) How members are to obtain prescriptions including information on the process for obtaining non-formulary and over-the-counter drugs;

(aa) The CCO's confidentiality policy;

(bb) How and where members are to access any benefits that are available under OHP but are not covered under the CCO's contract, including any cost sharing;

(cc) When and how members can voluntarily and involuntarily disenroll from CCOs and change CCOs;

(dd) CCOs shall, at a minimum, annually review their member handbook for accuracy and update it with new and corrected information to reflect OHP program changes and the CCO's internal changes. If changes

affect the member's ability to use services or benefits, the CCO shall offer the updated member handbook to all members;

(ee) The "Oregon Health Plan Client Handbook" is in addition to the CCO's member handbook, and a CCO may not use it to substitute for any component of the CCO's member handbook.

(14) Member health education shall include:

(a) Information on specific health care procedures, instruction in self-management of health care, promotion and maintenance of optimal health care status, patient self-care, and disease and accident prevention. CCO providers or other individuals or programs approved by the CCO may provide health education. CCOs shall endeavor to provide health education in a culturally sensitive and linguistically appropriate manner in order to communicate most effectively with individuals from non-dominant cultures;

(b) Information specifying that CCOs may not prohibit, or otherwise restrict, a provider acting within the lawful scope of practice from advising or advocating on behalf of a member who is his or her patient, for the following:

(A) The member's health status, medical care, or treatment options, including any alternative treatment that may be self-administered;

(B) Any information the member needs to decide among all relevant treatment options;

(C) The risks, benefits, and consequences of treatment or non-treatment.

(c) CCOs shall ensure development and maintenance of an individualized health educational plan for members whom their provider has identified as requiring specific educational intervention. The Division may assist in developing materials that address specifically identified health education problems to the population in need;

(d) Explanation of intensive care coordination services and how to access intensive care coordination through outreach to members with special health care needs who are aged, blind, or disabled, or who have complex medical needs or high health care needs, multiple chronic conditions, mental illness, or chemical dependency;

(e) The appropriate use of the delivery system, including proactive and effective education of members on how to access emergency services and urgent care services appropriately;

(f) CCOs shall provide written notice to affected members of any significant changes in program or service sites that affect the member's ability to access care or services from CCO's participating providers. The CCO shall provide, translated as appropriate, the notice at least 30 calendar days before the effective date of that change, or as soon as possible if the participating provider has not given the CCO sufficient notification to meet the 30-day notice requirement. The Division shall review and approve the materials within two working days.

(15) Informational materials that CCOs develop for members shall meet the language requirements identified in this rule and be culturally and linguistically sensitive to members with disabilities or reading limitations, including members whose primary language is not English:

(a) CCOs shall provide free interpreters for all of their members with hearing impairments and limited English proficiency who request them. This also applies to family members and caregivers with hearing impairments or limited English proficiency who need to understand the member's condition and care:

(A) CCOs shall translate materials into all languages as identified in this rule. Written and spoken language preferences are indicated on the OHP application form and reported to plans in 834 enrollment updates. CCOs shall honor requests made by other sources such as members, family members, or caregivers for language accommodation, translating to the member's language needs as requested;

(B) CCOs shall provide written translations of informational materials including their welcome packet, consisting of at least a welcome letter and a member handbook in all languages as specified in this rule and as identified by members either through the OHP application or other means as their preferred written language.

(b) Form correspondence may be sent to members, including, but not limited to, enrollment information and notices of action to deny or stop a benefit, accompanied by alternate format statement inserts as specified in section (12) of this rule. If sent in English to members who prefer a different language, the tag lines, placed in the alternate format statement insert shall have instructions on how to receive an oral or written translation of the material.

(16) CCOs shall provide an identification card to members, unless waived by the Division, that contains simple, readable, and usable information on how to access care in an urgent or emergency situation. The cards are solely for the convenience of the CCO, members, and providers.

Stat. Auth.: ORS 413.042, 414.615, 414.625, 414.635 & 414.651

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Stats. Implemented: ORS 414.610 - 414.685
Hist.: DMAP 16-2012(Temp), f. & cert. ef. 3-26-12 thru 9-21-12; DMAP 37-2012, f. & cert. ef. 8-1-12; DMAP 16-2015, f. 3-31-15, cert. ef. 4-1-15; DMAP 21-2015, f. 4-14-15, cert. ef. 4-15-15; DMAP 24-2015, f. & cert. ef. 4-15-15; DMAP 44-2016(Temp), f. & cert. ef. 7-6-16 thru 1-1-17; DMAP 74-2016, f. 12-29-16, cert. ef. 1-1-17; DMAP 75-2016, f. 12-29-16, cert. ef. 1-1-17; DMAP 1-2017, f. 1-12-17, cert. ef. 1-13-17

Rule Caption: Reverting Rules Filed 12/29/16 to Last Filed Version

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Rules Amended: 410-138-0000, 410-138-0005, 410-138-0007, 410-138-0009, 410-138-0020, 410-138-0040, 410-138-0060, 410-138-0080, 410-138-0390, 410-138-0420

Subject: The Authority needs to file these temporary rules because the Authority did not receive CMS approval prior to January 1, 2017, for Expanding Services in the State Plan for Babies First! CaCoon expansion services effective January 1, 2017. The Authority is reverting the rule changes that were filed 12/29/16 to the version prior to the filing of these rules.

Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-138-0000

Targeted Case Management Definitions

The following definitions apply to OAR 410-138-0000 through 410-138-0420:

(1) Assessment means the act of gathering information and reviewing historical and existing records of an eligible client in a target group to determine the need for medical, educational, social, or other services. To perform a complete assessment, the case manager shall gather information from family members, medical providers, social workers, and educators, if necessary.

(2) Care Plan means a Targeted Case Management (TCM) Care Plan that is a multidisciplinary plan that contains a set of goals and actions required to address the medical, social, educational, and other service needs of the eligible client based on the information collected through an assessment or periodic reassessment.

(3) Case Management means services furnished by a case manager to assist individuals eligible under the Medicaid State plan in gaining access to and effectively using needed medical, social, educational, and other services (such as housing or transportation) in accordance with 42 CFR 441.18. See also definition for Targeted Case Management.

(4) Centers for Medicare and Medicaid Services (CMS) means the federal agency under the U.S. Department of Health and Human Services that provides the federal funding for Medicaid and Children's Health Insurance Program (CHIP).

(5) Department means the Department of Human Services (Department).

(6) Division means the Division of Medical Assistance Programs.

(7) Duplicate payment means more than one payment made for the same services to meet the same need for the same client at the same point in time.

(8) Early intervention (EI) means services for preschool children with disabilities from birth until three years of age, including Indian children and children who are homeless and their families.

(9) Early childhood special education (ECSE) means free, specially designed instruction to meet the unique needs of a preschool child with a disability, three years of age until the age of eligibility for public school, including instruction in physical education, speech-language services, travel training, and orientation and mobility services. Instruction is provided in any of the following settings: home, hospitals, institutions, special schools, classrooms, and community childcare or preschool settings.

(10) Early Intervention/Early Childhood Special Education (EI/ECSE) services means services provided to a preschool child with disabilities, eligible under the Individuals with Disabilities Education Act (IDEA), from birth until they are eligible to attend public school, pursuant to the eligible child's Individualized Family Service Plan (IFSP).

(11) EI/ECSE Case manager (i.e., service coordinator) means an employee of the EI/ECSE contracting or subcontracting agency meeting the personnel standards requirements in OAR 581-015-2900. The EI/ECSE case manager serves as a single point-of-contact and is responsible for coordinating all services across agency lines for the purpose of assisting an eligible client to obtain needed medical, social, educational, developmental

and other appropriate services (such as housing or transportation) identified in the eligible client's care plan in coordination with the client's IFSP.

(12) EI/ECSE TCM Program means a service under the State plan and includes case management services furnished to eligible EI/ECSE preschool children age 0-5 with disabilities, assisting them to gain access to needed medical, social, educational, developmental and other appropriate services (such as housing or transportation) in coordination with their IFSP. EI/ECSE TCM providers must meet the criteria for the provision of special education programs approved by the State Superintendent of Public Instruction qualifying such programs for State reimbursement under OAR 581-015-2710 EI/ECSE and must be contractors with the Oregon Department of Education in the provision of EI/ECSE services or be subcontractors with such a contractor. Medicaid reimbursement for EI/ECSE TCM services is available only to eligible clients in the target group and does not restrict an eligible client's free choice of providers.

(13) Eligible client means an individual who is found eligible for Medicaid or the Children's Health Insurance Program (CHIP) by the Oregon Health Authority (Authority) and eligible for case management services (including TCM services) as defined in the Medicaid State plan at the time the services are furnished.

(14) Federal Financial Participation (FFP) means the portion paid by the federal government to states for their share of expenditures for providing Medicaid services. FFP was created as part of the Title XIX, Social Security Act of 1965. There are two objectives that permit claims under FFP. They are:

(a) To assist individuals eligible for Medicaid to enroll in the Medicaid program; and

(b) To assist individuals on Medicaid to access Medicaid providers and services. The second objective involves TCM.

(15) Federal Medical Assistance Percentage (FMAP) means the percentage of federal matching dollars available to a state to provide Medicaid services. The FMAP is calculated annually based on a three-year average of state per capita personal income compared to the national average. The formula is designed to provide a higher federal matching rate to states with lower per capita income. No state receives less than 50 percent or more than 83 percent.

(16) Individualized Family Service Plan (IFSP) means a written plan of early childhood special education, related services, early intervention services, and other services developed in accordance with criteria established by the State Board of Education for each child eligible for services. (See OAR 581-015-2700 to 581-015-2910, Early Intervention and Early Childhood Special Education Programs.)

(17) Medical Assistance Program means a program administered by the Division that provides and pays for health services for eligible Oregonians. The Medical Assistance Program includes TCM services provided to clients eligible under the Oregon Health Plan (OHP) Title XIX, and the Children's Health Insurance Program (CHIP) Title XXI.

(18) Monitoring means ongoing face-to-face or other contact to conduct follow-up activities with the participating eligible client or the client's health care decision makers, family members, providers or other entities or individuals when the purpose of the contact is directly related to managing the eligible client's care to ensure the care plan is effectively implemented.

(19) Oregon Health Plan (OHP) means the Medicaid program in Oregon that is known as the OHP and governed by a series of laws passed by the Oregon Legislature with the intention of providing universal access to healthcare to Oregonians. OHP is also governed by many federal laws.

(20) Reassessment means periodically re-evaluating the eligible client to determine whether or not medical, social, educational, or other services continue to be adequate to meet the goals and objectives identified in the care plan. Reassessment decisions include those to continue, change, or terminate TCM services. A reassessment must be conducted at least annually or more frequently if changes occur in an eligible client's condition; or when resources are inadequate or the service delivery system is non-responsive to meet the client's identified service needs.

(21) Referral means performing activities such as scheduling appointments that link the eligible client with medical, social, or educational providers, or other programs and services, and follow-up and documentation of services obtained.

(22) Targeted Case Management (TCM) Services means case management services furnished to a specific target group of eligible clients under the Medicaid State plan to gain access to needed medical, social, educational, and other services (such as housing or transportation).

(23) Unit of Government means a city, a county, a special purpose district, or other governmental unit in the State.

Stat. Auth.: ORS 413.042 & 414.065
Stats. Implemented: ORS 414.065

ADMINISTRATIVE RULES

Hist.: HR 20-1992, f. & cert. ef. 7-1-92; OMAP 61-2004, f. 9-10-04, cert. ef. 10-1-04; DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08; DMAP 22-2010, f. 6-30-10, cert. ef. 7-1-10; DMAP 41-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 75-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14; DMAP 23-2014, f. & cert. ef. 4-4-14; DMAP 76-2016, f. 12-29-16, cert. ef. 1-1-17; DMAP 2-2017(Temp), f. & cert. ef. 1-13-17 thru 7-11-17

410-138-0005

Payment for Targeted Case Management Services Eligible for Federal Financial Participation

(1) This rule is to be used in conjunction with Targeted Case Management (TCM) rules 410-138-0000 through 410-138-0009 and 410-138-0390, and the Division of Medical Assistance Programs' (Division) General Rules (chapter 410, division 120).

(2) The TCM services rules are designed to assist the TCM provider organization in matching state and federal funds for TCM services defined by Section 1915(g) of the Social Security Act, 42 USC § 1396n(g).

(3) Payment will be made to the TCM provider enrolled with the Oregon Health Authority (Authority) as a unit of government provider meeting the requirements set forth in the provider enrollment agreement.

(4) Signing the provider enrollment agreement sets forth the relationship between the State of Oregon, the Authority and the TCM provider and constitutes agreement by the TCM provider to comply with all applicable Authority rules, and federal and state laws and regulations.

(5) The TCM provider will bill according to administrative rules in chapter 410, division 138 and the TCM supplemental information. Payments will be made using the Medicaid Management Information System (MMIS) and the TCM provider will retain the full payment for covered services provided. The TCM provider must have a Trading Partner Agreement with the Authority prior to submission of electronic transactions.

(6) TCM authorized under these rules is a cost-sharing (Federal Financial Participation (FFP) matching) program in which the TCM provider as a public entity, unit of government, is responsible for paying the non-federal matching share of the amount of the TCM claims, calculated using the Federal Medical Assistance Percentage (FMAP) rates in effect during the quarter when the TCM claims will be paid:

(a) The TCM provider's non-federal matching share means the public funds share of the Medicaid payment amount. Pursuant to the Social Security Act, 42 CFR 433.51, public funds may be considered as the state's share in claiming federal financial participation, if the public funds meet the following conditions:

(A) The public funds are transferred to the Authority from public entities that are units of government;

(B) The public funds are not federal funds or they are federal funds authorized by federal law to be used to match other federal funds; and

(C) All sources of funds must be allowable under the Social Security Act 42 CFR 433 Subpart B;

(b) The unit of government TCM provider must pay the non-federal matching share to the Authority in accordance with OAR 410-120-0035.

(7) Before the Authority pays for TCM claims, the Authority must receive the corresponding local match payment as described in this rule. Failure to timely pay the non-federal matching funds to the Authority will delay payment and may require the TCM provider to resubmit the claims.

(8) The Authority will not be financially responsible for payment of any claim that the Centers for Medicare and Medicaid Services (CMS) disallows under the Medicaid program. If the Authority has previously paid the TCM provider for any claim, which CMS disallows, the TCM provider must reimburse the Authority the amount of the claim that the Authority has paid to the TCM provider, less any amount previously paid by the unit of government TCM provider to the Authority for the non-federal match portion for that claim.

(9) Providers can only bill Medicaid for allowable activities in the TCM program, that assist individuals eligible under the Medicaid State plan to gain access to needed medical, social, educational, and other services. One or more of the following allowable activities must occur before billing:

(a) Assessment;

(b) Development of a care plan;

(c) Referral (including follow up); and

(d) Monitoring (including follow up).

(10) TCM claims must not duplicate payments made to:

(a) Public agencies or private entities for any other case management activities or direct services provided under the State Plan or the Oregon Health Plan (OHP), through fee for service, managed care, or other contractual arrangement, that meet the same need for the same client at the same point in time;

(b) A TCM provider by program authorities under different funding authority than the Oregon Health Plan, including but not limited to other public health funding;

(c) A TCM provider for administrative expenditures reimbursed under agreement with the Authority or any other program or funding source.

(11) Medicaid is only liable for the cost of otherwise allowable case management services if there are no other third parties liable to pay. However, while schools are legally liable to provide IDEA-related health services at no cost to eligible children, Medicaid reimbursement is available for these services because section 1903(c) of the Act requires Medicaid to be primary to the U.S. Department of Education for payment for covered Medicaid services furnished to a child with a disability. These services may include health services included in a child's Individualized Education Program (IEP) or Individual Family Service Plan (IFSP) under the IDEA. Payment for those services that are included in the IEP or IFSP would not be available when those services are not covered Medicaid services.

(12) The Authority's acceptance of cost data provided by provider organizations for the purpose of establishing rates paid for TCM services does not imply or validate the accuracy of the cost data provided.

(13) Reimbursement is subject to all rules and laws pertaining to federal financial participation.

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065

Hist.: DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08; DMAP 22-2010, f. 6-30-10, cert. ef. 7-1-10; DMAP 41-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 76-2016, f. 12-29-16, cert. ef. 1-1-17; DMAP 2-2017(Temp), f. & cert. ef. 1-13-17 thru 7-11-17

410-138-0007

Targeted Case Management — Covered Services

(1) Targeted case management (TCM) services shall be furnished only to assist individuals eligible under the Medicaid State plan in gaining access to and effectively using needed medical, social, educational, and other services (such as housing or transportation) in accordance with 42 CFR 441.18.

(2) TCM services billed to Medicaid must be for allowable activities and include one or more of the following components:

(a) Assessment of an eligible client in the target group to determine the need for medical, educational, social, or other services as follows:

(A) Taking client history;

(B) Identifying the needs of the client, and completing related documentation;

(C) Gathering information from other sources, such as family members, medical providers, social workers, and educators, if necessary, to form a complete assessment of the eligible client;

(D) Periodically reassessing a client to determine if the client's needs or preferences have changed. A reassessment must be conducted at least annually or more frequently if changes occur in an individual's condition;

(b) Development of a care plan based on the information collected through the assessment or periodic reassessment, specifying the goals and actions to address the medical, social, educational, and other services needed by the eligible client. This may include:

(A) Active participation of the eligible client in the target group; or

(B) Working with the eligible client or the eligible client's authorized health care decision maker and others to develop goals and identify a course of action to respond to the assessed needs of the eligible client;

(c) Referral, linking and coordination of services and related activities including but not limited to:

(A) Scheduling appointments for the eligible client in the target group to obtain needed services; and

(B) Activities that help link the eligible client with medical, social, or educational providers, or other programs and services (e.g., food vouchers, transportation, child care, or housing assistance) that address identified needs and achieve goals specified in the care plan. The case management referral activity is completed once the referral and linkage have been made;

(C) Reminding and motivating the client to adhere to the treatment and services schedules established by providers.

(d) Monitoring or ongoing face-to-face or other contact:

(A) Monitoring and follow-up activities include activities and contacts:

(i) To ensure the care plan is effectively implemented;

(ii) To help determine if the services are being furnished in accordance with the eligible client's care plan;

(iii) To determine whether the care plan adequately addresses the needs of the eligible client in the target group;

(iv) To adjust the care plan to meet changes in the needs or status of the eligible client.

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(B) Monitoring activities may include contacts with:

- (i) The participating eligible client in the target group;
- (ii) The eligible client's healthcare decision makers, family members, providers, or other entities or individuals when the purpose of the contact is directly related to the management of the eligible client's care.

(3) TCM services billed to Medicaid must be documented in individual case records for all individuals receiving case management. The documentation must include:

- (a) The name of the individual;
- (b) The dates of the case management services;
- (c) The name of the provider agency (if relevant) and the person providing the case management service;
- (d) The nature, content, units of the case management services received and whether goals specified in the care plan have been achieved;
- (e) Whether the individual has declined services in the care plan;
- (f) The need for, and occurrences of, coordination with other case managers;

(g) A timeline for obtaining needed services;

(h) A timeline for reevaluation of the plan.

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065

Hist.: DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08; DMAP 22-2010, f. 6-30-10, cert. ef. 7-1-10; DMAP 41-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 75-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14; DMAP 23-2014, f. & cert. ef. 4-4-14; DMAP 76-2016, f. 12-29-16, cert. ef. 1-1-17; DMAP 2-2017(Temp), f. & cert. ef. 1-13-17 thru 7-11-17

410-138-0009

Targeted Case Management — Services Not Covered

Targeted Case Management (TCM) services do not cover:

(1) Direct delivery of an underlying medical, educational, social, or other service to which the eligible client has been referred;

(2) Providing transportation to a service to which an eligible client is referred;

(3) Escorting an eligible client to a service;

(4) Providing child care so that an eligible client may access a service;

(5) Contacts with individuals who are not categorically eligible for Medicaid or who are categorically eligible for Medicaid but not included in the eligible target population when those contacts relate directly to the identification and management of the non-eligible or non-targeted individual's needs and care;

(6) Assisting an individual who has not yet been determined eligible for Medicaid to apply for or obtain eligibility;

(7) TCM services provided to an individual if the services are case management services funded by Title IV-E or Title XX of the Social Security Act, or federal or State funded parole and probation, or juvenile justice programs;

(8) Activities for which third parties are liable to pay.

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065

Hist.: DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08; DMAP 43-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 22-2010, f. 6-30-10, cert. ef. 7-1-10; DMAP 41-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 75-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14; DMAP 23-2014, f. & cert. ef. 4-4-14; DMAP 76-2016, f. 12-29-16, cert. ef. 1-1-17; DMAP 2-2017(Temp), f. & cert. ef. 1-13-17 thru 7-11-17

410-138-0020

Targeted Case Management Programs

(1) This rule is in effect for services rendered retroactive to July 1, 2009, except for the Asthma/Healthy Homes Program, which is retroactive to July 1, 2010.

(2) TCM programs include the following:

(a) Asthma/Healthy Homes;

(b) Babies First/CaCoon;

(c) Early Intervention/Early Childhood Special Education (EI/ECSE);

(d) Human Immunodeficiency Virus (HIV);

(e) Substance Abusing Pregnant Women and Substance Abusing Parents with Children Under Age 18; and

(f) Federally Recognized Tribal Governments.

(3) The TCM Programs are medical assistance programs operated by public health authorities, unit of government providers, or Federally Recognized Tribal Governments in Oregon who are enrolled as TCM providers with the Authority. Participation by providers is voluntary and subject to approval by the Authority and the Centers for Medicare and Medicaid Services (CMS). With the exception of the Federally Recognized Tribal Governments TCM programs, the TCM programs authorized under these rules are cost-sharing (Federal Financial Participation (FFP) matching) programs in which the TCM provider as a public entity, unit of gov-

ernment, must pay the non-federal matching share of the amount of the TCM claims. (See Oregon Administrative Rule (OAR) 410-138-0005, Payment for Targeted Case Management Services Eligible for Federal Financial Participation.)

(4) Federally Recognized Tribal Governments TCM services authorized under these rules provided to Tribal members at an Indian Health Service facility operated by the Indian Health Service, by an Indian tribe or tribal organization are reimbursed at 100 percent by Title XIX (Medicaid) and Title XXI Children's Health Insurance Program (CHIP).

(5) The Authority may not authorize services or reimbursement for direct care as part of any targeted case management activity. The following are targeted case management programs and services:

(a) The TCM Asthma/Healthy Homes program improves access to needed services for eligible clients with poorly controlled asthma or a history of environmentally induced respiratory distress. The TCM Asthma/Healthy Homes program services include management of medical and non-medical services, which address medical, social, nutritional, educational, housing, environmental, and other needs. Home visits constitute an integral part of the delivery of TCM services, provided by a TCM Asthma/Healthy Homes case manager consistent with these rules;

(b) The TCM Babies First program improves access to needed medical and non-medical services, which address medical, social, educational, and other services for at risk infants and children through four years of age. The TCM CaCoon program improves access to needed medical, psychosocial, educational, and other services for infants, children, and youth through age twenty with specific diagnoses or very high risk factors. These clients are categorical eligibles covered by Medicaid and are at risk of poor health outcomes as outlined in OAR 410-138-0040, (Risk Criteria – Babies First/CaCoon). Home visits constitute a significant part of the delivery of targeted case management services, provided by a Babies First/CaCoon case manager consistent with these rules;

(c) The TCM Early Intervention/Early Childhood Special Education (EI/ECSE) program is a medical assistance program provided by enrolled EI/ECSE providers that meet the criteria approved by the State Superintendent of Public Instruction to administer the provision of EI and ECSE. The TCM EI/ECSE program provides services to categorically eligible children with disabilities, receiving EI/ECSE services from birth until they are eligible for public school. These TCM services are available on a fee-for-service basis, within the limitations established by the Medical Assistance Program and chapter 410, division 138 rules, consistent with the requirements of the Individuals with Disabilities Education Act (IDEA). This qualifies such programs for state reimbursement under EI/ECSE programs OAR 581-015-2700 through 581-015-2910. An enrolled TCM EI/ECSE provider must be a contractor/agency designated by the Oregon Department of Education (ODE) to administer the provision of EI and ECSE within selected service areas or be a sub-contractor with such a contractor. TCM EI/ECSE program services include management of medical and non-medical services, to assist children with disabilities in gaining access to needed medical, social, educational, developmental and other appropriate services in coordination with a child's Individualized Family Service Plan (IFSP) developed and implemented pursuant to IDEA and based on information collected through the TCM assessment or periodic reassessment process;

(d) The TCM HIV program improves access to needed medical and non-medical services, which address physical, psychosocial, nutritional, educational, and other services for Medicaid categorically eligible clients with symptomatic or asymptomatic HIV disease. Home visits constitute an integral part of the delivery of targeted case management services, provided by a TCM HIV case manager consistent with these rules. Without targeted case management services, an eligible client's ability to remain safely in their home may be at risk;

(e) The TCM Substance Abusing Pregnant Women and Substance Abusing Parents with Children under age 18 program improves access to needed medical and non-medical services, which address physical, psychosocial, educational, nutritional and other services to Medicaid categorically eligible pregnant women or custodial parents with children under the age of 18 who have alcohol and/or drug addiction issues. Targeted clients are those who are not yet ready to actively engage in addiction treatment services. TCM services are provided by an enrolled TCM Substance Abusing Pregnant Women and Substance Abusing Parents with Children under age 18 provider consistent with these rules. Participation by all TCM providers is voluntary and subject to approval by the Division CMS;

(f) The TCM Federally Recognized Tribal Government program improves access to needed medical and non-medical services, which address health, psychosocial, economic, educational, nutritional and other

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services for Medicaid categorically eligible tribal members served by tribal programs, provided by an enrolled tribal TCM provider consistent with these rules. The target group includes those members receiving elder care; individuals with diabetes; children and adults with health and social service care needs, and pregnant women.

(6) Refer to the State Plan Amendments for participating counties for each TCM program. The State Plan Amendments are located at <http://www.oregon.gov/oha/healthplan/Pages/stateplan.aspx>.

(7) Provision of any TCM Program services may not restrict an eligible client's choice of providers, in accordance with 42 CFR 441.18 (a):

(a) Eligible clients must have free choice of available TCM Program service providers or other TCM service providers available to the eligible client, subject to the Social Security Act, 42 USC 1396n and 42 CFR 441.18(b);

(b) Eligible clients must have free choice of the providers of other medical care within their benefit package of covered services.

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065

Hist: HR 20-1992, f. & cert. ef. 7-1-92; OMAP 50-2004, f. 9-9-04, cert. ef. 10-1-04; DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08; DMAP 43-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 22-2010, f. 6-30-10, cert. ef. 7-1-10; DMAP 41-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 76-2016, f. 12-29-16, cert. ef. 1-1-17; DMAP 2-2017(Temp), f. & cert. ef. 1-13-17 thru 7-11-17

410-138-0040

Targeted Case Management Babies First/CaCoon Program Risk Criteria

(1) This rule is in effect for services rendered retroactive to July 1, 2009.

(2) This rule sets the medical risk factors for the TCM Babies First programs for infants and preschool children (birth through age four):

- (a) Drug exposed infant;
- (b) Alcohol exposed infant;
- (c) Infant Human Immunodeficiency Virus (HIV) Positive;
- (d) Maternal Phenylketonuria (PKU) or HIV Positive;
- (e) Intracranial hemorrhage grade I or II;
- (f) Seizures or maternal history of seizures;
- (g) Perinatal asphyxia;
- (h) Small for gestational age;
- (i) Very low birth weight (1500 grams or less);
- (j) Mechanical ventilation for 72 hours or more prior to discharge;
- (k) Neonatal hyperbilirubinemia;
- (l) Congenital infection (e.g., Toxoplasmosis, Rubella, Cytomegalovirus, Herpes Simplex Virus, Other Infections);

(m) Central Nervous System (CNS) infection;

- (n) Head trauma or near drowning;
- (o) Failure to grow;
- (p) Suspect vision impairment;
- (q) Family history of childhood onset hearing loss;
- (r) Prematurity;
- (s) Lead exposure;
- (t) Suspect hearing loss;

(3) This rule sets the social risk factors for the TCM Babies First program from birth through 4 years:

- (a) Maternal age 16 years or less;
- (b) Parents with developmental disabilities or intellectual impairment;
- (c) Parental alcohol or substance abuse;
- (d) At-risk caregiver;
- (e) Concern of parent/provider;
- (f) Parent with limited financial resources;
- (g) Parent with history of mental illness;
- (h) Parent with child welfare history;
- (i) Parent with domestic violence history;
- (j) Parent with sensory impairment or physical disability;
- (k) Other evidence-based social risk factors.

(4) The rule sets the very high risk medical factors for the TCM CaCoon program for birth through age 20:

- (a) Intraventricular hemorrhage (grade III, IV);
- (b) Periventricular leukomalacia (PVL) or chronic subduals;
- (c) Perinatal asphyxia and seizures;
- (d) Seizure disorder;
- (e) Oral-motor dysfunction requiring specialized feeding program (including gastrostomy);
- (f) Chronic lung disorder;
- (g) Suspect neuromuscular disorder.

(5) This rule sets the diagnosis for the TCM CaCoon program from birth through 20 years:

- (a) Heart disease;
- (b) Chronic orthopedic disorders;
- (c) Neuromotor disorders including cerebral palsy and brachial nerve palsy;
- (d) Cleft lip and palate and other congenital defects of the head and face;
- (e) Genetic disorders, e.g., cystic fibrosis, neurofibromatosis;
- (f) Multiple minor physical anomalies;
- (g) Metabolic disorders, e.g., PKU;
- (h) Spina bifida;
- (i) Hydrocephalus or persistent ventriculomegaly;
- (j) Microcephaly and other congenital or acquired defects of the CNS;
- (k) Hemophilia;
- (l) Organic speech disorders;
- (m) Hearing loss;
- (n) Traumatic brain injury;
- (o) Fetal alcohol spectrum disorder;
- (p) Autism, autism spectrum disorder;
- (q) Behavioral or mental health disorder with developmental delay;
- (r) Chromosome disorders;
- (s) Positive newborn blood screen;
- (t) HIV, seroconversion;
- (u) Visual Impairment;
- (v) Developmental delay; or
- (w) Other chronic conditions not listed.

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065

Hist: HR 20-1992, f. & cert. ef. 7-1-92; HR 37-1994, f. 12-30-94, cert. ef. 1-1-95; OMAP 50-2004, f. 9-9-04, cert. ef. 10-1-04; DMAP 22-2010, f. 6-30-10, cert. ef. 7-1-10; DMAP 41-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 76-2016, f. 12-29-16, cert. ef. 1-1-17; DMAP 2-2017(Temp), f. & cert. ef. 1-13-17 thru 7-11-17

410-138-0060

Targeted Case Management Program — Provider Requirements

(1) This rule is in effect for services rendered retroactive to July 1, 2009, except for the TCM Asthma/Healthy Homes Program, that is retroactive to July 1, 2010.

(2) TCM Babies First/CaCoon providers must be public health authorities with the ability to link with the Title V Statewide Maternal and Child Health Data System or provide another statewide-computerized tracking and monitoring system.

(3) TCM Asthma/Healthy Homes, Early Intervention/Early Childhood Special Education (EI/ECSE), and Human Immunodeficiency Virus (HIV) provider organizations must be unit of government providers. TCM EI/ECSE providers may also be a subcontractor of a government entity.

(4) TCM Substance Abusing Pregnant Women and Substance Abusing Parents with Children Under Age 18 provider organizations must be locally based agencies.

(5) TCM Federally Recognized Tribal Governments providers must be Indian Health Services/638 facilities.

(6) All providers must demonstrate the ability to provide all core elements of case management services including:

- (a) Comprehensive assessment, which may include triage and environmental assessment, of client needs. All providers for the TCM BabiesFirst/CaCoon program must provide comprehensive nursing assessment of client needs;
- (b) Reassessment of the client's status and needs annually or more frequently with a significant change in client's condition;
- (c) Development and periodic revision of a comprehensive care and service plan;
- (d) Referral and linking/coordination of services;
- (e) Ongoing monitoring and follow-up of referral and related services;

(f) A financial management capacity and system that provides documentation of services and costs, and provides computerized tracking and monitoring to assure adequate follow-up and avoid duplication.

(7) Except for Federally Recognized Tribal Governments providers, the TCM provider shall provide the non-federal matching share from public funds in compliance with OAR 410-138-0005.

(8) If the provider is a subcontractor of a governmental entity, the governmental entity shall make the non-federal matching share with public fund payments in compliance with OAR 410-138-0005.

(9) All program providers must demonstrate the following TCM experience and capacity:

(a) Understanding and knowledge of local and state resources and services available to the target population;

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(b) Demonstrated case management experience in coordinating and linking community resources as required by the target population;

(c) Demonstrated and documented experience providing services for the target population;

(d) An administrative capacity to ensure quality of services in accordance with state and federal requirements;

(e) A financial management capacity and system that provides documentation of services and costs;

(f) Capacity to document and maintain client case records in accordance with state and federal requirements, including requirement for recordkeeping on OAR 410-138-0007 and 410-120-1360; confidentiality requirements in ORS 192.518 – 192.524, 179.505 and 411.320; and HIPAA Privacy requirements applicable to case management services;

(g) A sufficient number of staff to meet the case management service needs of the target population;

(h) Demonstrated ability to meet all state and federal laws governing the participation of providers in the state Medicaid program; and

(i) Enrolled as a TCM provider with the Authority and meeting the requirements set forth in the provider enrollment agreement.

(10) TCM Asthma/Healthy Homes Program case managers must possess the following additional qualifications:

(a) A current active Oregon registered nurse (RN) license; or

(b) A registered environmental health specialist; or

(c) An asthma educator certified by the National Asthma Education and Prevention Program; or

(d) A community health worker certified by the Stanford Chronic Disease Self-Management Program; or

(e) A case manager working under the supervision of a licensed registered nurse or a registered environmental specialist.

(11) The TCM case managers for the Babies First/CaCoon program must be:

(a) An employee of a local county health department, or other public or private agency contracted by a local county health department;

(b) A licensed registered nurse with one year of experience in community health, public health, or child health nursing, or be a community health worker, family advocate, or promotora working under the direction of the above; and

(c) Working under the policies, procedures, and protocols of the State Title V Maternal and Child Health Program and Medicaid.

(12) Additional qualifications for TCM EI/ECSE provider organizations include the following:

(a) TCM EI/ECSE providers must meet the criteria to administer the provision of EI and ECSE within selected service areas designated by the Oregon Department of Education, qualifying such programs for state reimbursement under EI/ECSE Programs (OAR 581-015-2700 through 581-015-2910);

(b) Must be contractors with the Oregon Department of Education in the provision of EI/ECSE services or sub-contractors with such a contractor, and must meet the following qualifications;

(c) Demonstrated case management experience in conjunction with service coordination under OAR 581-015-2840 specified on a child's Individualized Family Service Plan (IFSP) for coordinating and linking such community resources as required by the target population; and

(d) Capacity to document and maintain individual case records in accordance with confidentiality requirements in the Individuals with Disabilities Education Act, ORS 192.518 – 192.524, ORS 179.505, and ORS 411.320, and HIPAA Privacy requirements in 45 CFR 160 and 164, if applicable.

(13) Qualifications for TCM EI/ECSE Supervisors of EI/ECSE service coordinators of targeted case management services must:

(a) Possess a minimum of a master's degree in early childhood special education or a related field, and have three years of experience with infants, toddlers, young children, and families;

(b) Hold a Teacher Standard and Practices Commission (TSPC) administrative endorsement or within 12 months of employment, complete authorization as an Early Childhood Supervisor under OAR 581-015-2910; and

(c) Have a professional development plan based on the content of the EI/ECSE competencies.

(14) Qualifications of EI and ECSE Specialists performing case management/Targeted Case Management services must:

(a) Possess a minimum of a baccalaureate degree in early childhood, special education or a related field;

(b) Have a professional development plan based on the content of the EI/ECSE competencies; and

(c) Hold one of the following credentials:

(A) TSPC licensure or endorsement in EI/ECSE;

(B) TSPC licensure or endorsement in related field; or

(C) Within 12 months of employment, authorization as an Early Childhood Specialist under OAR 581-15-2905.

(15) Qualifications of EI and ECSE Related services personnel must possess a minimum of a baccalaureate degree and a valid license necessary to practice in Oregon. Related services personnel who also provide service coordination as outlined in OAR 581-015-2840 must have:

(a) TSPC licensure in their area of discipline; or

(b) State licensure in their area of discipline; and

(c) A professional development plan based on the content of the EI/ECSE competencies;

(d) The Individuals with Disabilities Education Act (IDEA);

(e) The nature and scope of services available under the Oregon EI/ECSE programs.

(16) In addition to the above, all must be employees of the Oregon Department of Education (ODE), its contractors or subcontractors; and must have demonstrated knowledge and understanding about:

(a) The Oregon Department of Education EI/ECSE programs OAR 581-015-2700 through 581-015-2910, including these rules and the applicable State Medicaid Plan Amendment;

(b) Case Management experience in conjunction with service coordination under OAR 581-015-2840 for coordinating and linking such community resources as required by the target population to assist clients in gaining access to needed medical, social, educational, developmental and other appropriate services in coordination with the eligible child's IFSP;

(c) The Individuals with Disabilities Education Act (IDEA);

(d) The nature and scope of services available under the Oregon EI/ECSE program, including the TCM services, and the system of payments for services and other pertinent information.

(17) TCM HIV providers must have the financial management capacity and system that provides documentation of services and costs and is able to generate quarterly service utilization reports that can be used to monitor services rendered against claims submitted and paid. The service utilization reporting requirements are as follows:

(a) Report on the number of unduplicated clients receiving services during the reporting period;

(b) Report on the number of full time equivalent (FTE) case managers providing services during the reporting period; and

(c) Report on the number of distinct case management activities performed during the reporting period (Triage Assessments, Comprehensive Assessments, Re-Assessments, Care Plan Development, Referral and Related Services, and Monitoring Follow-Up) along with the total number of 15-minute increments associated with each activity category.

(18) TCM HIV case managers must possess the following education and qualifications:

(a) A current active Oregon registered nurse (RN) license or Bachelor of Social Work, or other related health or human services degree from an accredited college or university; and

(b) Documented evidence of completing the Authority's HIV Care and Treatment designated HIV Case Manager training, and must participate in the Authority's on-going training for HIV case managers. The training must either be provided by the Authority, or be approved by the Authority and provided by the TCM provider organization.

(19) The TCM Substance Abusing Pregnant Women and Substance Abusing Parents with Children Under Age 18 case manager must;

(a) Possess a combination of education and experience necessary to support case planning and monitoring. The case manager must be able to demonstrate an understanding of issues relating to substance abuse and community supports;

(b) Demonstrate continuous sobriety under a nonresidential or independent living condition for the immediate past two years;

(c) Meet at least one of the following qualifications:

(A) Be a licensed Medical Provider, Qualified Mental Health Professional, or Qualified Mental Health Associate; or

(B) Possess certification as an Alcohol and Drug Counselor (CADC) level I, II, or III; or

(C) Complete a Peer Services Training Program following a curriculum approved by the Authority's Addictions and Mental Health Division and be:

(i) A self-identified person currently or formerly receiving mental health services; or

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(ii) A self-identified person in recovery from a substance use disorder, who meets the abstinence requirements for recovering staff in alcohol and other drug treatment programs; or

(iii) A family member of an individual who is a current or former recipient of addictions or mental health services;

(d) Work under the supervision of a Clinical Supervisor. The Clinical Supervisor must:

(A) Meet the requirements in Oregon administrative rule for alcohol and other drug treatment programs;

(B) Be certified or licensed by a health or allied provider agency to provide addiction treatment; and

(C) Possess one of the following qualifications:

(i) Five years of paid full-time experience in the field of alcohol and other drug counseling; or

(ii) A Bachelor's degree and four years of paid full-time experience in the social services field with a minimum of two years of direct alcohol and other drug counseling experience; or

(iii) A Master's degree and three years of paid full-time experience in the social services field with a minimum of two years of direct alcohol and other drug counseling experience;

(e) Satisfy continuing education requirements as specified by the agency providing clinical supervision specific to alcohol and other drug treatment; and

(f) Work in compliance with Medicaid policies, procedures, and protocols.

(20) A Federally Recognized Tribal Governments TCM provider must be an organization certified as meeting the following criteria:

(a) A minimum of three years experience of successful work with Native American children, families, and elders involving a demonstrated capacity to provide all core elements of tribal case management, including: assessment, case planning, case plan implementation, case plan coordination, and case plan reassessment;

(b) A minimum of three years case management experience in coordinating and linking community medical, social, educational or other resources as required by the target population;

(c) Administrative capacity to ensure quality of services in accordance with tribal, state, and federal requirements; and

(d) Evidence that the TCM organization is a federally recognized tribe located in the State of Oregon.

(21) The following are qualifications of Tribal Case Managers within provider organizations:

(a) Completion of training in a case management curriculum;

(b) Basic knowledge of behavior management techniques, family dynamics, child development, family counseling techniques, emotional and behavioral disorders, and issues around aging;

(c) Skill in interviewing to gather data and complete needs assessment, in preparation of narratives/reports, in development of service plans, and in individual and group communication;

(d) Ability to learn and work with state, federal and tribal rules, laws and guidelines relating to Native American child, adult and elder welfare and to gain knowledge about community resources and link tribal members with those resources;

(e) Knowledge and understanding of these rules and the applicable State Medicaid Plan Amendment.

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 20-1992, f. & cert. ef. 7-1-92; HR 37-1994, f. 12-30-94, cert. ef. 1-1-95; OMAP 50-2004, f. 9-9-04, cert. ef. 10-1-04; DMAP 22-2010, f. 6-30-10, cert. ef. 7-1-10; DMAP 41-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 76-2016, f. 12-29-16, cert. ef. 1-1-17; DMAP 2-2017(Temp), f. & cert. ef. 1-13-17 thru 7-11-17

410-138-0080

Targeted Case Management Program Billing Policy

(1) This rule is in effect for services rendered retroactive to July 1, 2009, except for the Targeted Case Management (TCM) Asthma Healthy/Homes Program, which is effective July 1, 2010.

(2) Reimbursement is based on cost-based rate methodology and subject to all rules and laws pertaining to federal financial participation. The Authority's acceptance of cost data provided by provider organizations for the purpose of establishing rates paid for TCM services does not imply or validate the accuracy of the cost data provided.

(3) The cost-based rate will be derived by considering the following expenditures directly attributable to TCM staff:

(a) TCM staff salaries and other personnel expenses;

(b) Supervisory salaries and other personnel expenses;

(c) Administrative support salaries and other personnel expenses;

(d) Services and supply expenses;

(e) Various overhead expenditures, if not already considered in the indirect rate.

(4) The Division will accept a claim up to 12 months from the date of service. See provider rules 943-120-0340, (Claim and PHP Encounter Submission), and OAR 410-120-1300, (Timely Submission of Claims).

(5) Providers shall only bill for allowable activities in the TCM programs that assist individuals eligible under the Medicaid State Plan to gain access to needed medical, social, educational, housing, environmental, and other services.

(6) The Division may not allow duplicate payments to other public agencies or private entities under other program authorities for TCM services under the eligible client's care plan. Medical services must be provided and billed separately from case management services. The Authority shall recover duplicate payments.

(7) The Division may not reimburse for TCM services if the services are case management services funded by Title IV-E or Title XX of the Social Security Act, federal or state funded parole and probation, or juvenile justice programs. These services must be billed separately.

(8) In general, the Medicaid program is the payer of last resort and a provider is required to bill other resources before submitting the claim to Medicaid. This requirement means that other payment sources, including other federal or state funding sources, must be used before the Authority may be billed for covered TCM services. However, the following exceptions apply to the requirement to pursue third party resources:

(a) For TCM Early Intervention /Early Childhood School Education (EI/ECSE) services provided under the Individuals with Disabilities Education Act (IDEA), 1903(c) of the Social Security Act and 34CFR300.154 Methods of Ensuring Services make Medicaid/Children's Health Insurance Program (CHIP) primary payer before Oregon Department of Education (ODE) or the Educational Agency (EA), for a covered TCM EI/ECSE service provided to a Medicaid-eligible child receiving Service Coordination/Case Management pursuant to the Medicaid-eligible child's Individualized Family Service Plan (IFSP), the services are documented as required under the TCM rules, and subject to the applicable reimbursement rate;

(b) If TCM EI/ECSE services are provided under Title V of the Social Security Act Maternal and Child Health Services Block Grant, Medicaid-covered TCM services provided by a Title V grantee are paid by Medicaid before the Title V funds;

(c) CMS recognizes that while public education agencies are required to provide IDEA services at no cost to eligible children, Medicaid reimbursement is available for these services because section 1903 (c) of the Social Security Act requires Medicaid to be primary to the U.S. Department of Education for payment of covered services that may also be considered special education, related services, or early intervention services, or services provided under IDEA.

(9) Any place of service is valid.

(10) Prior authorization is not required.

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 20-1992, f. & cert. ef. 7-1-92; HR 37-1994, f. 12-30-94, cert. ef. 1-1-95; OMAP 61-2004, f. 9-10-04, cert. ef. 10-1-04; DMAP 28-2008(Temp), f. 6-30-08, cert. ef. 7-1-08 thru 12-28-08; DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08; DMAP 22-2010, f. 6-30-10, cert. ef. 7-1-10; DMAP 41-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 76-2016, f. 12-29-16, cert. ef. 1-1-17; DMAP 2-2017(Temp), f. & cert. ef. 1-13-17 thru 7-11-17

410-138-0390

Targeted Case Management Retroactive Payments

(1) Providers may submit claims retroactively for services provided to the targeted populations described in OAR 410-138-0020(2)(a)-(f) if the claims meet the following criteria:

(a) Services were provided less than 12 months prior to the date of first claim submission, and were provided on or after the date indicated in the rule listed above, and were allowable services in accordance with OAR 410-138-0007;

(b) The maximum number of units billed does not exceed the maximum allowed under each Targeted Case Management (TCM) program.

(c) The case manager was appropriately licensed or certified, and met all current requirements for case managers at the time the service was provided, as described in the provider requirements rule OAR 410-138-0060 appropriate for the TCM program;

(d) Documentation regarding provider qualifications and the services that the provider retroactively claims must have been available at the time the services were performed;

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(2) The Division may not allow duplicate payments to be made to the same or different providers for the same service for the same client, nor will payment be allowed for services for which third parties are liable to pay (see also OAR 410-138-0005).

(3) Reimbursement is subject to all rules and laws pertaining to federal financial participation.

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065

Hist.: DMAP 34-2009(Temp), f. & cert. ef. 11-16-09 thru 5-1-10; DMAP 43-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 22-2010, f. 6-30-10, cert. ef. 7-1-10; DMAP 41-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 48-2012(Temp), f. & cert. ef. 10-31-12 thru 4-28-13; DMAP 21-2013, f. & cert. ef. 4-26-13; DMAP 76-2016, f. 12-29-16, cert. ef. 1-1-17

410-138-0420

Targeted Case Management Asthma/Healthy Home — Risk Criteria

(1) This administrative rule will be implemented contingent on Centers for Medicare and Medicaid (CMS) approval for the Targeted Case Management (TCM) Asthma/Healthy Home Program. This rule is to be used in conjunction with the Division of Medical Assistance Programs' (Division) General Rules (chapter 410, division 120) and other Targeted Case Management Program rules 410-138-0000 through 410-138-0009.

(2) The target group is Medicaid eligible children with poorly controlled asthma or a history of environmentally induced respiratory distress, which can result in a life threatening asthma exacerbation or exacerbation of respiratory distress.

(3) Risk factors for the target group could include, but are not limited to:

- (a) Unscheduled visits for emergency or urgent care;
- (b) One or more in-patient stays;
- (c) History of intubation or Intensive Care Unit care;
- (d) A medication ratio of control medications to rescue medications of less than or equal to .33 indicating less than desirable control of asthma;
- (e) Environmental or psychosocial concerns raised by medical home;
- (f) School day loss greater than two school days per year;
- (g) Inability to participate in sports or other activities due to asthma;
- (h) Homelessness;
- (i) Inadequate housing, heating or sanitation.

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065

Hist.: DMAP 22-2010, f. 6-30-10, cert. ef. 7-1-10; DMAP 41-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 76-2016, f. 12-29-16, cert. ef. 1-1-17; DMAP 2-2017(Temp), f. & cert. ef. 1-13-17 thru 7-11-17

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

Rule Caption: Permanent amendments to OAR 309-011 regarding the Consumer Advisory Council.

Adm. Order No.: MHS 25-2016

Filed with Sec. of State: 12-27-2016

Certified to be Effective: 12-27-16

Notice Publication Date: 9-1-2016

Rules Adopted: 309-011-0031

Rules Amended: 309-011-0024, 309-011-0026, 309-011-0028, 309-011-0032, 309-011-0034, 309-011-0036

Subject: These rules implement ORS 430.073 related to the Oregon Health Authority's Consumer Advisory Council.

Rules Coordinator: Nola Russell—(503) 945-7652

309-011-0024

Purpose and Scope

The purpose of these rules is to implement ORS 430.073, related to the Oregon Health Authority's (OHA) Consumer Advisory Council (CAC). The scope of these rules is limited strictly to the CAC, and will clarify CAC's purpose, scope, membership, roles, and responsibilities, and those of Oregon Health Authority.

Stat. Auth.: ORS 413.042 & 430.073

Stats. Implemented: ORS 430.073

Hist.: MHS 17-2012, f. & cert. ef. 12-28-12; MHS 25-2016, f. & cert. ef. 12-27-16

309-011-0026

Definitions

(1) "Administrative Support" means the tasks provided by the Oregon Health Authority, which are detailed in OAR 309-011-0230(b) below.

(2) "Advise" means to recommend, suggest or inform.

(3) "CAC" means the Consumer Advisory Council authorized by ORS 430.073 and comprised of consumers appointed by the Director.

(4) "Consumer" means a person who has received or is currently receiving mental health or addiction services.

(5) "Director" means the OHA manager assigned as liaison between the CAC and the OHA Director, or his or her designee.

(6) "Director's Designee" means the Behavioral Health Director of the Office of Health Policy and Analytics

(7) "Majority Vote" means a decision agreed upon by the majority of the quorum present.

(8) "Oregon Health Authority Representative" means the individual(s) identified by Oregon Health Authority to provide administrative support to CAC.

(9) "Present", related to meetings, means being physically present, or connected to the meeting process via conference call or tele-conference.

(10) "Public Meeting" means those meetings open to the public and governed by ORS 192.610 through 192.690.

Stat. Auth.: ORS 413.042 & 430.073

Stats. Implemented: ORS 430.073

Hist.: MHS 17-2012, f. & cert. ef. 12-28-12; MHS 25-2016, f. & cert. ef. 12-27-16

309-011-0028

CAC Roles

(1) The role of CAC is to provide to the Director's Designee advice on the provision of adult and children's behavioral health and addictions services from the Oregon Health Authority.

(2) CAC may provide evaluation and feedback on site reviews related to adult and children's behavioral health and addictions services provided by the Oregon Health Authority.

(3) CAC shall work in cooperation with the Director's Designee or other designated OHA representatives to promote, support and communicate OHA's mission, vision and values.

(4) CAC shall adhere to public meeting laws.

(5) CAC may develop a mission statement and goals, which shall not contradict the authorizing statutes or these rules.

(6) After the first of each calendar year, the CAC shall, in consultation with the OHA Representative, develop and adopt a work plan for the ensuing twelve months.

(7) CAC may establish committees to investigate and report to CAC regarding areas of interest to CAC.

(8) CAC shall not establish OHA policies, rules, internal directives or procedures.

Stat. Auth.: ORS 413.042 & 430.073

Stats. Implemented: ORS 430.073

Hist.: MHS 17-2012, f. & cert. ef. 12-28-12; MHS 25-2016, f. & cert. ef. 12-27-16

309-011-0031

CAC Responsibilities

(1) CAC shall meet at least once every two months.

(2) A meeting may continue without a quorum participating, but authorities granted to CAC may not be exercised without a quorum.

(3) Advice to the Director's Designee shall be provided in writing when CAC has a recommendation accepted by a majority of the quorum.

(4) Advice to the Director's Designee shall be signed and dated by the chair or vice-chair.

(5) CAC in collaboration with the OHA Representative may determine the procedures related to conducting CAC business.

Stat. Auth.: ORS 413.042 & 430.073

Stats. Implemented: ORS 430.073

Hist.: MHS 25-2016, f. & cert. ef. 12-27-16

309-011-0032

Memberships: Selection and Terms

(1) Members shall be appointed by the Director's Designee, considering CAC recommendations, and shall be appointed for a three-year term following a written acceptance of the offer.

(2) CAC shall consist of between 15 and 25 consumers, and selection shall strive to represent:

(a) A broad range of ages, parents or guardians of children, youth in transition (ages 16 to 25), and adults age 55 or older;

(b) A variety of cultures and ethnicities;

(c) An approximate division of gender; and

(d) A balance of geographic areas within the state.

(3) OHA may appointment any member for up to two additional three-year terms.

(4) No person shall be excluded from serving as a member of CAC due to affiliation with any organization or institution, or based on race, ethnic origin, religious affiliation, gender, age, disability or sexual orientation.

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(5) Only the Director's Designee may remove a person from CAC.

(6) Members of CAC are entitled to compensation in an amount determined by the director and to actual and necessary travel expenses incurred by the member in the performance of the member's official duties. Claims for compensation and expenses shall be paid out in funds appropriated to the authority for purposes of the council under ORS 292.495. [2007 c.805 2; 2009 c.595 463]

Stat. Auth.: ORS 413.042 & 430.073

Stats. Implemented: ORS 430.073

Hist.: MHS 17-2012, f. & cert. ef. 12-28-12; MHS 25-2016, f. & cert. ef. 12-27-16

309-011-0034

Chair and Vice-Chair: Election and Duties

(1) The CAC shall elect by a majority of participating votes, one of its members as chair and one as vice-chair, to serve for a two year term each, with the possibility of re-election for one additional consecutive term.

(2) The chair shall have the powers and duties necessary for the performance of the office. These duties shall include, but not be limited to the following:

- (a) Facilitate CAC meetings;
- (b) Assign members to panels or committees;
- (c) Ensure the content of CAC meetings remain within the boundaries of its scope, purpose and authorities;
- (d) Identify meeting agenda items, in collaboration with the OHA representative;
- (e) Call special meetings
- (f) Sign documents from CAC addressed to the Director's Designee;
- (g) Make membership recommendations, in collaboration with the CAC and OHA representative.

(h) With approval from the OHA Representative, the Chair may represent CAC by responding to requests for information or participation pertaining to CAC.

(3) The vice-chair shall be responsible for the chair's duties in his or her absence.

(4) Early termination or resignation of the chair or vice-chair's position shall be filled by a majority vote of those present, to serve a two-year term.

Stat. Auth.: ORS 413.042 & 430.073

Stats. Implemented: ORS 430.073

Hist.: MHS 17-2012, f. & cert. ef. 12-28-12; MHS 25-2016, f. & cert. ef. 12-27-16

309-011-0036

OHA Responsibilities

(1) OHA shall provide:

(a) Necessary training and orientation to CAC members in collaboration with CAC members, including but not limited to the following subject areas:

- (A) OHA's mission, vision, goals, roles and scope of business.
- (B) CAC's purpose and scope of business;
- (C) CAC's internal protocol and practices;
- (D) Lobbying restrictions;
- (E) Conflict of interest;
- (F) Public meeting laws;
- (G) These administrative rules; and
- (H) Other administrative rules, OHA policies and procedures, internal management directives, and state and federal laws related to topics CAC is considering as part of a recommendation to the Director's Designee.

(b) Administrative support such as but not limited to:

- (A) Secure meeting spaces;
- (B) Public meeting notices in accordance with public meeting laws;
- (C) Take attendance;
- (D) Scribe, distribute and maintain records of approved minutes;
- (E) Participate in the development of CAC meeting agendas; and
- (F) Send and receive communications to and from the Director's Designee.

(2) The Director's Designee shall respond in writing within 60 days following receipt of CAC's recommendations.

Stat. Auth.: ORS 413.042 & 430.073

Stats. Implemented: ORS 430.073

Hist.: MHS 17-2012, f. & cert. ef. 12-28-12; MHS 25-2016, f. & cert. ef. 12-27-16

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Rule Caption: Temporary amendments to OAR 309-019 regarding behavioral health treatment services.

Adm. Order No.: MHS 26-2016(Temp)

Filed with Sec. of State: 12-27-2016

Certified to be Effective: 12-28-16 thru 6-23-17

Notice Publication Date:

Rules Adopted: 309-019-0151, 309-019-0152, 309-019-0226, 309-019-0241, 309-019-0242, 309-019-0270, 309-019-0275, 309-019-0280, 309-019-0285, 309-019-0290, 309-019-0295

Rules Amended: 309-019-0105, 309-019-0110, 309-019-0115, 309-019-0120, 309-019-0125, 309-019-0130, 309-019-0135, 309-019-0140, 309-019-0145, 309-019-0150, 309-019-0155, 309-019-0160, 309-019-0165, 309-019-0175, 309-019-0180, 309-019-0185, 309-019-0215, 309-019-0225, 309-019-0230, 309-019-0240, 309-019-0245

Subject: These rules prescribe minimum standards for services and supports provided by addictions and mental health providers approved by the Health Services Division of the Oregon Health Authority.

Rules Coordinator: Nola Russell—(503) 945-7652

309-019-0105

Definitions

(1) "Abuse of an adult" means the circumstances defined in 943-045-0250 through 943-045-0370 for abuse of an adult with mental illness.

(2) "Abuse of a child" means the circumstances defined in ORS 419B.005.

(3) "Addictions and Mental Health Services and Supports" means all services and supports including but not limited to, Outpatient Behavioral Health Services and Supports for Children and Adults, Intensive Treatment Services for Children, Outpatient and Residential Substance Use Disorders Treatment Services and Outpatient and Residential Problem Gambling Treatment Services.

(4) "Adolescent" means an individual from 12 through 17 years of age, or those individuals who are determined to be developmentally appropriate for youth services.

(5) "Adult" means a person 18 years of age or older, or an emancipated minor. An individual with Medicaid eligibility, who is in need of services specific to children, adolescents, or young adults in transition, must be considered a child until age 21 for the purposes of these rules. Adults who are between the ages of 18 and 21, who are considered children for purposes of these rules, must have all rights afforded to adults as specified in these rules.

(6) "Assertive Community Treatment (ACT)" means an evidence-based practice designed to provide comprehensive treatment and support services to individuals with serious and persistent mental illness. ACT is intended to serve individuals who have severe functional impairments and who have not responded to traditional psychiatric outpatient treatment. ACT services are provided by a single multi-disciplinary team, which typically includes a psychiatrist, a nurse, and at least two case managers, and are designed to meet the individual needs of each individual and to help keep the individual in the community and out of a structured service setting, such as residential and/or hospital care. ACT is characterized by (1) low client to staff ratios; (2) providing services in the community rather than in the office; (3) shared caseloads among team members; (4) 24-hour staff availability; (5) direct provision of all services by the team (rather than referring individuals to other agencies); and (6) time-unlimited services.

(7) "Assessment" means the process of obtaining sufficient information, through a face-to-face interview to determine a diagnosis and to plan individualized services and supports.

(8) "ASAM PPC" means the most current publication of the American Society of Addiction Medicine Patient Placement Criteria for the Treatment of Substance-related Disorders, which is a clinical guide used in matching individuals to appropriate levels of care, and incorporated by reference in these rules.

(9) "Authority" means the Oregon Health Authority.

(10) "Behavioral Health Treatment" means mental health treatment, substance use disorder treatment, and problem gambling treatment.

(11) "Behavior Support Plan" means the individualized proactive support strategies that are used to support positive behavior.

(12) "Behavior Support Strategies" means proactive supports designed to replace challenging behavior with functional, positive behavior. The strategies address environmental, social, neuro-developmental and physical factors that affect behavior.

(13) "Care Coordination" means a process-oriented activity to facilitate ongoing communication and collaboration to meet multiple needs. Care coordination includes facilitating communication between the family, natural supports, community resources, and involved providers and agencies; organizing, facilitating and participating in team meetings; and providing for continuity of care by creating linkages to and managing transi-

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tions between levels of care and transitions for young adults in transition to adult services.

(14) “Case Management” means the services provided to assist individuals, who reside in a community setting, or are transitioning to a community setting, in gaining access to needed medical, social, educational, entitlement and other applicable services.

(15) “Certificate” means the document or documents issued by OHA, which identifies and declares certification of a provider pursuant to OAR 309-008-0000. A letter accompanying issuance of the Certificate will detail the scope and approved locations of the Certificate.

(16) “Chief Officer” means the Chief Health Systems Officer of the Division, or his or her designee.

(17) “Child” means a person under the age of 18. An individual with Medicaid eligibility, who is in need of services specific to children, adolescents, or young adults in transition, must be considered a child until age 21 for purposes of these rules.

(18) “Clinical Supervision” means oversight by a qualified Clinical Supervisor of addictions and mental health services and supports provided according to this rule, including ongoing evaluation and improvement of the effectiveness of those services and supports.

(19) “Clinical Supervisor” means a person qualified to oversee and evaluate addictions or mental health services and supports.

(20) “Co-occurring substance use and mental health disorders (COD)” means the existence of a diagnosis of both a substance use disorder and a mental health disorder.

(21) “Community Mental Health Program (CMHP)” means the organization of various services for persons with a mental health diagnosis or addictive disorders, operated by, or contractually affiliated with, a local mental health authority and operated in a specific geographic area of the state under an agreement with the Division pursuant to OAR 309-014

(22) “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 organization’s members.

(23) “Conditional Release” means placement by a court or the Psychiatric Security Review Board (PSRB), of a person who has been found eligible under ORS 161.327(2)(b) or 161.336, for supervision and treatment in a community setting.

(24) “Court” means the last convicting or ruling court unless specifically noted.

(25) “Criminal Records Check” means the Oregon Criminal Records Check and the processes and procedures required by OAR 407-007-0000 through 407-007-0370.

(26) “Crisis” means either an actual or perceived urgent or emergent situation that occurs when an individual’s stability or functioning is disrupted and there is an immediate need to resolve the situation to prevent a serious deterioration in the individual’s mental or physical health or to prevent referral to a significantly higher level of care.

(27) “Cultural Awareness” means the process by which people and systems respond respectfully and effectively to people of all cultures, languages, classes, races, ethnic backgrounds, disabilities, religions, genders, sexual orientations and other diversity factors in a manner that recognizes, affirms, and values the worth of individuals, families and communities and protects and preserves the dignity of each.

(28) “Culturally Specific Program” means a program that is designed to meet the unique service needs of a specific culture and that provides services to a majority of individuals representing that culture.

(29) “Declaration for Mental Health Treatment” means a written statement of an individual’s preferences concerning his or her mental health treatment. The declaration is made when the individual is able to understand and legally make decisions related to such treatment. It is honored, as clinically appropriate, in the event the individual becomes unable to make such decisions.

(30) “Diagnosis” means the principal mental health, substance use or problem gambling diagnosis listed in the Diagnostic and Statistical Manual of Mental Disorders (DSM). The diagnosis is determined through the assessment and any examinations, tests, or consultations suggested by the assessment, and is the medically appropriate reason for services.

(31) “Division” means the Health Systems Division.

(32) “DSM” means the most recent version of the Diagnostic and Statistical Manual of Mental Disorders, published by the American Psychiatric Association.

(33) “Driving Under the Influence of Intoxicants (DUII) Substance Use Disorders Rehabilitation Program” means a program of treatment and therapeutically oriented education services for an individual who is either:

(a) A violator of ORS 813.010 Driving Under the Influence of Intoxicants; or

(b) A defendant who is participating in a diversion agreement under ORS 813.200.

(34) “Emergent” means the onset of symptoms requiring attention within 24 hours to prevent serious deterioration in mental or physical health or threat to safety.

(35) “Enhanced Care Services (ECS)” and “Enhanced Care Outreach Services (ECOS)” means intensive behavioral and rehabilitative mental health services to eligible individuals who reside in Aging and People with Disabilities (APD) licensed homes or facilities.

(36) “Entry” means the act or process of acceptance and enrollment into services regulated by this rule.

(37) “Family” means the biological or legal parents, siblings, other relatives, foster parents, legal guardians, spouse, domestic partner, caregivers and other primary relations to the individual whether by blood, adoption, legal or social relationships. Family also means any natural, formal or informal support persons identified as important by the individual.

(38) “Family Support” means the provision of peer delivered services to persons defined as family to the individual. It includes support to caregivers at community meetings, assistance to families in system navigation and managing multiple appointments, supportive home visits, peer support, parent mentoring and coaching, advocacy, and furthering efforts to develop natural and informal community supports.

(39) “Family Support Specialist” means an individual who meets qualification criteria under ORS 4124.665 and provides supportive services to and has experience parenting a child who is a current or former consumer of mental health or addiction treatment or is facing or has faced difficulties in accessing education, health and wellness services due to a mental health or behavioral health barrier

(40) “Gender Identity” means a person’s self-identification of gender, without regard to legal or biological identification, including, but not limited to persons identifying themselves as male, female, transgender and transsexual.

(41) “Gender Presentation” means the external characteristics and behaviors that are socially defined as either masculine or feminine, such as dress, mannerisms, speech patterns and social interactions.

(42) “Geographic service area” means the catchment area within the county boundaries of which the CMHP operates.

(43) “Grievance” means a formal complaint submitted to a provider verbally, or in writing, by an individual, or the individual’s chosen representative, pertaining to the denial or delivery of services and supports.

(44) “Guardian” means a person appointed by a court of law to act as guardian of a minor or a legally incapacitated person.

(45) “HIPAA” means the federal Health Insurance Portability and Accountability Act of 1996 and the regulations published in Title 45, parts 160 and 164, of the Code of Federal Regulations (CFR).

(46) “Individual” means any person being considered for or receiving services and supports regulated by these rules.

(47) “Informed Consent for Services” means that the service options, risks and benefits have been explained to the individual and guardian, if applicable, in a manner that they comprehend, and the individual and guardian, if applicable, have consented to the services on, or prior to, the first date of service.

(48) “Intensive Outpatient Substance Use Disorders Treatment Services” means structured nonresidential evaluation, treatment, and continued care services for individuals with substance use disorders who need a greater number of therapeutic contacts per week than are provided by traditional outpatient services. Intensive outpatient services may include, but are not limited to, day treatment, correctional day treatment, evening treatment, and partial hospitalization.

(49) “Intensive Outpatient Services and Supports (IOSS)” means a specialized set of comprehensive in-home and community-based supports and mental health treatment services, for children that are developed by the child and family team and delivered in the most integrated setting in the community.

(50) “Interim Referral and Information Services” means services provided by a substance use disorders treatment provider to individuals on a waiting list, and whose services are funded by the Substance Abuse Prevention and Treatment (SAPT) Block Grant, to reduce the adverse health effects of substance use, promote the health of the individual and reduce the risk of disease transmission.

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(15) “Intern” or “Student” means a person who provides a paid or unpaid program service to complete a credentialed or accredited educational program recognized by the state of Oregon.

(16) “Juvenile Psychiatric Security Review Board (JPSRB)” means the entity described in ORS 161.385.

(17) “Level of Care” means the range of available services provided from the most integrated setting to the most restrictive and most intensive in an inpatient setting.

(18) “Licensed Health Care Professional” means a practitioner of the healing arts, acting within the scope of his or her practice under State law, who is licensed by a recognized governing board in Oregon.

(19) “Licensed Medical Practitioner (LMP)” means a person who meets the following minimum qualifications as documented by the Local Mental Health Authority (LMHA) or designee:

- (a) Physician licensed to practice in the State of Oregon; or
- (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

(d) Whose training, experience and competence demonstrate the ability to conduct a mental health assessment and provide medication management.

(e) For IOSS and ITS providers, LMP means a board-certified or board-eligible child and adolescent psychiatrist licensed to practice in the State of Oregon.

(20) “Local Mental Health Authority (LMHA)” means one of the following entities:

(a) The board of county commissioners of one or more counties that establishes or operates a CMHP;

(b) The tribal council, in the case of a federally recognized tribe of Native Americans that elects to enter into an agreement to provide mental health services; or

(c) A regional local mental health authority comprised of two or more boards of county commissioners.

(21) “Mandatory Reporter” means any public or private official, as defined in ORS 419B.005(3), who comes in contact with or has reasonable cause to believe that an individual has suffered abuse, or that any person with whom the official comes in contact with, has abused the individual. Pursuant to 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.

(22) “Medicaid” means the federal grant-in-aid program to state governments to provide medical assistance to eligible persons, under Title XIX of the Social Security Act.

(23) “Medical Director” means a physician licensed to practice medicine in the State of Oregon and who is designated by a substance use disorders treatment program to be responsible for the program’s medical services, either as an employee or through a contract.

(24) “Medical Supervision” means an LMP’s review and approval, at least annually, of the medical appropriateness of services and supports identified in the Service Plan for each individual receiving mental health services for one or more continuous years.

(25) “Medically Appropriate” means services and medical supplies required for prevention, diagnosis and treatment of a physical or behavioral health condition, or injuries, and which are:

(a) Consistent with the symptoms of a health condition or treatment of a health condition;

(b) Appropriate with regard to standards of good health practice and generally recognized by the relevant scientific community and professional standards of care as effective;

(c) Not solely for the convenience of an individual or a provider of the service or medical supplies; and

(d) The most cost effective of the alternative levels of medical services or medical supplies that can be safely provided to an individual.

(26) “Mental Health Intern” means a person who meets qualifications for QMHA but does not have the necessary graduate degree in psychology, social work or behavioral science field to meet the educational requirement of QMHP. The person must:

(a) Be currently enrolled in a graduate program for a master’s degree in psychology, social work or in a behavioral science field;

(b) Have a collaborative educational agreement with the CMHP, or other provider, and the graduate program;

(c) Work within the scope of his/her practice and competencies identified by the policies and procedures for credentialing of clinical staff as established by provider; and

(d) Receive, at minimum, weekly supervision by a qualified clinical supervisor employed by the provider of services.

(27) “Mobile Crisis Services” means mental health services for people in crisis, provided by mental health practitioners who respond to behavioral health crises onsite at the location in the community where the crisis arises and who provide a face-to-face therapeutic response. The goal of mobile crisis services is to help an individual resolve a psychiatric crisis in the most integrated setting possible, and to avoid unnecessary hospitalization, inpatient psychiatric treatment, involuntary commitment, and arrest or incarceration.

(28) “Mobile Crisis Response Time” means the time from the initial crisis call or notification of the crisis event to the face to face intervention.

(29) “Nursing Services” means services that are provided by a registered nurse (RN) or a licensed practical nurse (LPN) within their scope of practice as defined in OAR 851-045-0060.

(30) “Oregon Health Authority” means the Oregon Health Authority of the State of Oregon.

(31) “Outpatient Substance Use Disorders Treatment Program” means a program that provides assessment, treatment, and rehabilitation on a regularly scheduled basis or in response to crisis for individuals with alcohol or other drug use disorders and their family members, or significant others.

(32) “Outpatient Community Mental Health Services and Supports” means all outpatient mental health services and supports provided to children, youth and adults.

(33) “Outpatient Problem Gambling Treatment Services” means all outpatient treatment services and supports provided to individuals with gambling related problems and their families.

(34) “Outreach” means the delivery of behavioral health services, referral services and case management services in non-traditional settings, such as, but not limited to, the individual’s residence, shelters, streets, jails, transitional housing sites, drop-in centers, single room occupancy hotels, child welfare settings, educational settings or medical settings. It also refers to attempts made to engage or re-engage an individual in services by such means as letters or telephone calls.

(35) “Peer” means any person supporting an individual, or a family member of an individual, who has similar life experience, either as a current or former recipient of addictions or mental health services, or as a family member of an individual who is a current or former recipient of addictions or mental health services.

(36) “Peer Delivered Services” means community-based services and supports provided by peers, and peer support specialists, to individuals or family members with similar lived experience. These services are intended to support individuals and families to engage individuals in ongoing treatment and to live successfully in the community.

(37) “Peer Support Specialist” means a person providing peer delivered services to an individual or family member with similar life experience, under the supervision of a qualified Clinical Supervisor. A Peer Support Specialist must complete a Division approved training program as required by OAR 410-180-0300 to 0380 and be:

(a) A self-identified person currently or formerly receiving mental health services; or

(b) A self-identified person in recovery from a substance use or gambling disorder, who meets the abstinence requirements for recovering staff in substance use disorders or gambling treatment programs; or

(38) “Peer Wellness Specialist” means an individual who is responsible for assessing mental health and substance use disorder service and support needs of a member of a coordinated care organization through community outreach, assisting members with access to available services and resources, addressing barriers to services and providing education and information about available resources for individuals with mental health or substance use disorders in order to reduce stigma and discrimination toward consumers of mental health and substance use disorder services and to assist the member in creating and maintaining recovery, health and wellness.

(39) “Problem Gambling Treatment Staff” means a person certified or licensed by a health or allied provider agency to provide problem gambling treatment services that include assessment, development of a Service Plan, group and family counseling.

(40) “Program” means a particular type or level of service that is organizationally distinct.

(41) “Program Administrator” or “Program Director” means a person with appropriate professional qualifications and experience, who is designated to manage the operation of a program.

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(78) “Program Staff” means an employee or person who, by contract with the program, provides a service and who has the applicable competencies, qualifications or certification, required in this rule to provide the service.

(79) “Provider” means a person, organizational provider, or Community Mental Health Program as designated under ORS 430.637(b) that holds a current Certificate to provide outpatient behavioral health treatment or prevention services pursuant to these and an other applicable service delivery rules.

(80) “Psychiatric Security Review Board (PSRB)” means the entity described in ORS 161.295 through 161.400.

(81) “Psychiatrist” means a physician licensed pursuant to ORS 677.010 to 677.228 and 677.410 to 677.450 by the Board of Medical Examiners for the State of Oregon and who has completed an approved residency training program in psychiatry.

(82) “Psychologist” means a psychologist licensed by the Oregon Board of Psychologist Examiners.

(83) “Publicly Funded” means financial support, in part or in full, with revenue generated by a local, state or federal government.

(84) “Qualified Mental Health Associate (QMHA)” means a person delivering services under the direct supervision of a QMHP who meets the minimum qualifications as authorized by the LMHA, or designee, and specified in 309-019-0125(7).

(85) “Qualified Mental Health Professional (QMHP)” means a LMP or any other person meeting the minimum qualifications as authorized by the LMHA, or designee, and specified in 309-019-0125(8).

(86) “Qualified Person” means a person who is a QMHP, or a QMHA, and is identified by the PSRB and JPSRB in its Conditional Release Order. This person is designated by the provider to deliver or arrange and monitor the provision of the reports and services required by the Conditional Release Order.

(87) “Quality Assessment and Performance Improvement” means the structured, internal monitoring and evaluation of services to improve processes, service delivery and service outcomes.

(88) “Recovery” means a process of healing and transformation for a person to achieve full human potential and personhood in leading a meaningful life in communities of his or her choice.

(89) “Representative” means a person who acts on behalf of an individual, at the individual’s request, with respect to a grievance, including, but not limited to a relative, friend, employee of the Division, attorney or legal guardian.

(90) “Resilience” means the universal capacity that a person uses to prevent, minimize, or overcome the effects of adversity. Resilience reflects a person’s strengths as protective factors and assets for positive development.

(91) “Respite care” means planned and emergency supports designed to provide temporary relief from care giving to maintain a stable and safe living environment. Respite care can be provided in or out of the home. Respite care includes supervision and behavior support consistent with the strategies specified in the Service Plan.

(92) “Screening” means the process to determine whether the individual needs further assessment to identify circumstances requiring referrals or additional services and supports.

(93) “Screening Specialist” means a person who possesses valid certification issued by the Division to conduct DUI evaluations.

(94) “Service Plan” means a comprehensive plan for services and supports provided to or coordinated for an individual and his or her family, as applicable, that is reflective of the assessment and the intended outcomes of service.

(95) “Service Note” means the written record of services and supports provided, including documentation of progress toward intended outcomes, consistent with the timelines stated in the Service Plan.

(96) “Service Record” means the documentation, written or electronic, regarding an individual and resulting from entry, assessment, orientation, services and supports planning, services and supports provided, and transfer.

(97) “Services” means those activities and treatments described in the Service Plan that are intended to assist the individual’s transition to recovery from a substance use disorder, problem gambling disorder or mental health condition, and to promote resiliency, and rehabilitative and functional individual and family outcomes.

(98) “Signature” means any written or electronic means of entering the name, date of authentication and credentials of the person providing a specific service or the person authorizing services and supports. Signature also means any written or electronic means of entering the name and date

of authentication of the individual receiving services, the guardian of the individual receiving services, or any authorized representative of the individual receiving services.

(99) “Skills Training” means providing information and training to individuals and families designed to assist with the development of skills in areas including, but not limited to, anger management, stress reduction, conflict resolution, self-esteem, parent-child interactions, peer relations, drug and alcohol awareness, behavior support, symptom management, accessing community services and daily living.

(100) “Substance Abuse Prevention and Treatment Block Grant” or “SAPT Block Grant” means the federal block grants for prevention and treatment of substance abuse under Public Law 102-321 (31 U.S.C. 7301-7305) and the regulations published in Title 45 Part 96 of the Code of Federal Regulations.

(102) “Substance Use Disorders” means disorders related to the taking of a drug of abuse including alcohol, to the side effects of a medication, and to a toxin exposure. The disorders include substance use disorders such as substance dependence and substance abuse, and substance-induced disorders, including substance intoxication, withdrawal, delirium, and dementia, as well as substance induced psychotic disorder, mood disorder, etc., as defined in DSM criteria.

(103) “Substance Use Disorders Treatment and Recovery Services” means outpatient, intensive outpatient, and residential services and supports for individuals with substance use disorders.

(104) “Substance Use Disorders Treatment Staff” means a person certified or licensed by a health or allied provider agency to provide substance use disorders treatment services that include assessment, development of a Service Plan, and individual, group and family counseling.

(105) “Successful DUI Completion” means that the DUI program has documented in its records that for the period of service deemed necessary by the program, the individual has:

(a) Met the completion criteria approved by the Division;

(b) Met the terms of the fee agreement between the provider and the individual; and

(c) Demonstrated 90 days of continuous abstinence prior to completion.

(106) “Supports” means activities, referrals and supportive relationships designed to enhance the services delivered to individuals and families for the purpose of facilitating progress toward intended outcomes.

(107) “Transfer” means the process of assisting an individual to transition from the current services to the next appropriate setting or level of care.

(108) “Trauma Informed Services” means services that are reflective of the consideration and evaluation of the role that trauma plays in the lives of people seeking mental health and addictions services, including recognition of the traumatic effect of misdiagnosis and coercive treatment. Services are responsive to the vulnerabilities of trauma survivors and are delivered in a way that avoids inadvertent re-traumatization and facilitates individual direction of services.

(109) “Treatment” means the planned, medically appropriate, individualized program of medical, psychological, and rehabilitative procedures, experiences and activities designed to remediate symptoms of a DSM diagnosis, that are included in the Service Plan.

(110) “Urinalysis Test” means an initial test and, if positive, a confirmatory test:

(a) An initial test must include, at a minimum, a sensitive, rapid, and inexpensive immunoassay screen to eliminate “true negative” specimens from further consideration.

(b) A confirmatory test is a second analytical procedure used to identify the presence of a specific drug or metabolite in a urine specimen. The confirmatory test must be by a different analytical method from that of the initial test to ensure reliability and accuracy.

(c) All urinalysis tests must be performed by laboratories meeting the requirements of OAR 333-024-0305 to 333-024-0365.

(111) “Urgent” means the onset of symptoms requiring attention within 48 hours to prevent a serious deterioration in an individual’s mental or physical health or threat to safety.

(112) “Variance” means an exception from a provision of these rules, granted in writing by the Division pursuant to the process regulated by OAR 309-008-1600, upon written application from the provider. Duration of a variance is determined on a case-by-case basis.

(113) “Volunteer” means an individual who provides a program service or who takes part in a program service and who is not an employee of the program and is not paid for services. The services must be non-clinical

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unless the individual has the required credentials to provide a clinical service.

(114) “Wellness” means an approach to healthcare that emphasizes good physical and mental health, preventing illness, and prolonging life.

(115) “Wraparound” means a high fidelity model of team based intensive care coordination for children and their families based on National Wraparound Initiative values and principles.

(116) “Young Adult in Transition” means an individual who is developmentally transitioning into independence, sometime between the ages of 14 and 25.

(117) “Youth Support Specialist” means an individual who meets qualification criteria under OAR 415-180.

Stat. Auth.: ORS 161.390, 413.042, 430.256, 428.205 - 428.270, 430.640
Stats. Implemented: ORS 109.675, 161.390 - 161.400, 413.520 - 413.522, 430.010, 430.205-430.210, 430.240 - 430.640, 430.850 - 430.955, 461.549, 743A.168, 813.010 - 813.052 & 813.200 - 813.270
Hist.: MHS 6-2013(Temp), f. 8-8-13, cert. ef. 8-9-13 thru 2-5-14; MHS 4-2014, f. & cert. ef. 2-3-14; MHS 11-2016(Temp), f. 6-29-16, cert. ef. 7-1-16 thru 12-27-16; MHS 18-2016, f. 11-28-16, cert. ef. 11-30-16; MHS 26-2016(Temp), f. 12-27-16, cert. ef. 12-28-16 thru 6-23-17

309-019-0110

Provider Policies

(1) Personnel Policies: All providers must develop and implement written personnel policies and specific procedures, compliant with these rules including:

(a) Personnel Qualifications and Credentialing;

(b) Mandatory abuse reporting, compliant with ORS 430.735-430.768 and OAR 943-045-0250 through 943-045-0370;

(c) Criminal Records Checks, compliant with ORS 181.533 through 181.575 and 407-007-0000 through 407-007-0370; and

(d) Fraud, waste and abuse in Federal Medicaid and Medicare programs compliant with OAR 410-120-1380 and 410-120-1510.

(2) Service Delivery Policies: All providers must develop and implement written service delivery policies and specific procedures, compliant with these rules.

(a) Service delivery policies must be available to individuals and family members upon request; and

(b) Service delivery policies and procedures must include, at a minimum:

(A) Fee agreements;

(B) Confidentiality and compliance with HIPAA, Federal Confidentiality Regulations (42 CFR, Part 2), and State confidentiality regulations as specified in ORS 179.505 and 192.518 through 192.530;

(C) Compliance with Title 2 of the Americans with Disabilities Act of 1990 (ADA);

(D) Grievances and Appeals;

(E) Individual Rights;

(F) Quality Assessment and Performance Improvement;

(G) Trauma Informed Service Delivery, consistent with the HSD Trauma Informed Services Policy;

(H) Provision of culturally and linguistically appropriate services;

(I) Crisis Prevention and Response;

(J) Incident Reporting; and

(K) Peer Delivered Services.

(3) Behavior Support Policies: Providers of ECS Services must develop policies consistent with 309-019-0155(3) of these rules.

Stat. Auth.: ORS 161.390, 413.042, 430.256, 428.205 - 428.270, 430.640
Stats. Implemented: ORS 109.675, 161.390 - 161.400, 179.505, 413.520 - 413.522, 430.010, 430.205 - 430.210, 430.240 - 430.640, 430.850 - 430.955, 461.549, 743A.168, 813.010 - 813.052 & 813.200 - 813.270
Hist.: MHS 6-2013(Temp), f. 8-8-13, cert. ef. 8-9-13 thru 2-5-14; MHS 4-2014, f. & cert. ef. 2-3-14; MHS 11-2016(Temp), f. 6-29-16, cert. ef. 7-1-16 thru 12-27-16; MHS 18-2016, f. 11-28-16, cert. ef. 11-30-16; MHS 26-2016(Temp), f. 12-27-16, cert. ef. 12-28-16 thru 6-23-17

309-019-0115

Individual Rights

(1) In addition to all applicable statutory and constitutional rights, every individual receiving services has the right to:

(a) Choose from available services and supports, those that are consistent with the Service Plan, culturally competent, provided in the most integrated setting in the community and under conditions that are least restrictive to the individual's liberty, that are least intrusive to the individual and that provide for the greatest degree of independence;

(b) Be treated with dignity and respect;

(c) Have access to Peer Delivered Services

(d) Participate in the development of a written Service Plan, receive services consistent with that plan and participate in periodic review and reassessment of service and support needs, assist in the development of the plan, and to receive a copy of the written Service Plan;

(e) Have all services explained, including expected outcomes and possible risks;

(f) Confidentiality, and the right to consent to disclosure in accordance with ORS 107.154, 179.505, 179.507, 192.515, 192.507, 42 CFR Part 2 and 45 CFR Part 205.50.

(g) Give informed consent in writing prior to the start of services, except in a medical emergency or as otherwise permitted by law. Minor children may give informed consent to services in the following circumstances:

(A) Under age 18 and lawfully married;

(B) Age 16 or older and legally emancipated by the court; or

(C) Age 14 or older for outpatient services only. For purposes of informed consent, outpatient service does not include service provided in residential programs or in day or partial hospitalization programs;

(h) Inspect their Service Record in accordance with ORS 179.505;

(i) Refuse participation in experimentation;

(j) Receive medication specific to the individual's diagnosed clinical needs;

(k) Receive prior notice of transfer, unless the circumstances necessitating transfer pose a threat to health and safety;

(l) Be free from abuse or neglect and to report any incident of abuse or neglect without being subject to retaliation;

(m) Have religious freedom;

(n) Be free from seclusion and restraint;

(o) Be informed at the start of services, and periodically thereafter, of the rights guaranteed by this rule;

(p) Be informed of the policies and procedures, service agreements and fees applicable to the services provided, and to have a custodial parent, guardian, or representative, assist with understanding any information presented;

(q) Have family and guardian involvement in service planning and delivery;

(r) Make a declaration for mental health treatment, when legally an adult;

(s) File grievances, including appealing decisions resulting from the grievance;

(t) Exercise all rights set forth in ORS 109.610 through 109.697 if the individual is a child, as defined by these rules;

(u) Exercise all rights set forth in ORS 426.385 if the individual is committed to the Authority; and

(v) Exercise all rights described in this rule without any form of reprisal or punishment.

(2) Notification of Rights: The provider must give to the individual and, if appropriate, the guardian, a document that describes the applicable individual's rights as follows:

(a) Information given to the individual must be in written form or, upon request, in an alternative format or language appropriate to the individual's need;

(b) The rights, and how to exercise them, must be explained to the individual, and if appropriate, to her or his guardian; and

(c) Individual rights must be posted in writing in a common area.

Stat. Auth.: ORS 161.390, 413.042, 430.256, 426.490 - 426.500, 428.205 - 428.270, 430.640 & 443.450
Stats. Implemented: ORS 109.675, 161.390 - 161.400, 179.505, 413.520 - 413.522, 426.380-426.395, 426.490 - 426.500, 430.010, 430.205 - 430.210, 430.240 - 430.640, 430.850 - 430.955, 443.400 - 443.460, 443.991, 461.549, 743A.168, 813.010 - 813.052 & 813.200 - 813.270
Hist.: MHS 6-2013(Temp), f. 8-8-13, cert. ef. 8-9-13 thru 2-5-14; MHS 4-2014, f. & cert. ef. 2-3-14; MHS 26-2016(Temp), f. 12-27-16, cert. ef. 12-28-16 thru 6-23-17

309-019-0120

Licensing and Credentialing

Program staff in the following positions must meet applicable credentialing or licensing standards, including those outlined in these rules:

(1) Substance Use Disorders Treatment Staff;

(2) Clinical Supervisors;

(3) LMPs;

(4) Medical Directors;

(5) Peer Support Specialists;

(6) Problem Gambling Treatment Staff;

(7) QMHAs; and

(8) QMHPs.

Stat. Auth.: ORS 428.205 - 428.270, 430.256, 430.640
Stats. Implemented: ORS 109.675, 161.390 - 161.400, 179.505, 413.520 - 413.522, 430.010, 430.205 - 430.210, 430.240 - 430.640, 430.850 - 430.955, 461.549, 743A.168, 813.010 - 813.052 & 813.200 - 813.270
Hist.: MHS 6-2013(Temp), f. 8-8-13, cert. ef. 8-9-13 thru 2-5-14; MHS 4-2014, f. & cert. ef. 2-3-14; MHS 26-2016(Temp), f. 12-27-16, cert. ef. 12-28-16 thru 6-23-17

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309-019-0125

Specific Staff Qualifications and Competencies

(1) Program Administrators or Program Directors must demonstrate competence in leadership, program planning and budgeting, fiscal management, supervision of program staff, personnel management, program staff performance assessment, use of data, reporting, program evaluation, quality assurance, and developing and coordinating community resources.

(2) Clinical Supervisors in all programs must demonstrate competence in leadership, wellness, oversight and evaluation of services, staff development, service planning, case management and coordination, utilization of community resources, group, family and individual therapy or counseling, documentation and rationale for services to promote intended outcomes and implementation of all provider policies.

(3) Clinical supervisors in mental health programs must meet QMHP requirements and have completed two years of post-graduate clinical experience in a mental health treatment setting.

(4) Clinical Supervisors in substance use disorders treatment programs must be certified or licensed by a health or allied provider agency as follows:

(a) For supervisors holding a certification or license in addiction counseling, qualifications for the certificate or license must have included at least:

(A) 4000 hours of supervised experience in substance use counseling;

(B) 300 contact hours of education and training in substance use related subjects; and

(C) Successful completion of a written objective examination or portfolio review by the certifying body.

(b) For supervisors holding a health or allied provider license, the license or registration must have been issued by one of the following state bodies and the supervisor must possess documentation of at least 120 contact hours of academic or continuing professional education in the treatment of substance use disorders:

(A) Board of Medical Examiners;

(B) Board of Psychologist Examiners;

(C) Board of Licensed Social Workers;

(D) Board of Licensed Professional Counselors and Therapists; or

(E) Board of Nursing.

(c) Additionally, clinical supervisors in substance use disorders programs must have one of the following qualifications:

(A) Five years of paid full-time experience in the field of substance use disorders counseling; or

(B) A Bachelor's degree and four years of paid full-time experience in the social services field, with a minimum of two years of direct substance use disorders counseling experience; or

(C) A Master's degree and three years of paid full-time experience in the social services field with a minimum of two years of direct substance use disorders counseling experience;

(5) Clinical Supervisors in problem gambling treatment programs must meet the requirements for clinical supervisors in either mental health or substance use disorders treatment programs, and have completed 10 hours of gambling specific training within two years of designation as a problem gambling services supervisor.

(6) Substance use disorders treatment staff must:

(a) Demonstrate competence in treatment of substance-use disorders including individual assessment and individual, group, family and other counseling techniques, program policies and procedures for service delivery and documentation, and identification, implementation and coordination of services identified to facilitate intended outcomes; and

(b) Be certified or licensed by a health or allied provider agency, as defined in these rules, to provide addiction treatment within two years of the first hire date and must make application for certification no later than six months following that date. The two years is not renewable if the person ends employment with a provider and becomes re-employed with another provider.

(c) For treatment staff holding certification in addiction counseling, qualifications for the certificate must have included at least:

(A) 750 hours of supervised experience in substance use counseling;

(B) 150 contact hours of education and training in substance use related subjects; and

(C) Successful completion of a written objective examination or portfolio review by the certifying body.

(d) For treatment staff holding a health or allied provider license, the license or registration must have been issued by one of the following state bodies and the person must possess documentation of at least 60 contact

hours of academic or continuing professional education in substance use disorders treatment:

(A) Board of Medical Examiners;

(B) Board of Psychologist Examiners;

(C) Board of Licensed Social Workers;

(D) Board of Licensed Professional Counselors and Therapists; or

(E) Board of Nursing.

(7) Problem Gambling treatment staff must:

(a) Demonstrate competence in treatment of problem gambling including individual assessment and individual, group, family and other counseling techniques, program policies and procedures for service delivery and documentation, and identification, implementation and coordination of services identified to facilitate intended outcomes.

(b) Be certified or licensed by a health or allied provider agency, as defined in these rules, to provide problem gambling treatment within two years of the first hire date and must make application for certification no later than six months following that date. The two years is not renewable if the person ends employment with a provider and becomes re-employed with another provider.

(c) For treatment staff holding certification in problem gambling counseling, qualifications for the certificate must have included at least:

(A) 500 hours of supervised experience in problem gambling counseling;

(B) 60 contact hours of education and training in problem gambling related subjects; and

(C) Successful completion of a written objective examination or portfolio review by the certifying body.

(d) For treatment staff holding a health or allied provider license, the license or registration must have been issued by one of the following state bodies and the person must possess documentation of at least 60 contact hours of academic or continuing professional education in problem gambling treatment:

(A) Board of Medical Examiners;

(B) Board of Psychologist Examiners;

(C) Board of Licensed Social Workers;

(D) Board of Licensed Professional Counselors and Therapists; or

(E) Board of Nursing.

(8) QMHAs must demonstrate the ability to communicate effectively, understand mental health assessment, treatment and service terminology and apply each of these concepts, implement skills development strategies, and identify, implement and coordinate the services and supports identified in a Service Plan. In addition, QMHAs must also meet the follow minimum qualifications:

(a) Bachelor's degree in a behavioral science field; or

(b) A combination of at least three years of relevant work, education, training or experience; or

(c) A qualified Mental Health Intern, as defined in 309-019-0105(61).

(9) QMHPs must demonstrate the ability to conduct an assessment, including identifying precipitating events, gathering histories of mental and physical health, substance use, past mental health services and criminal justice contacts, assessing family, cultural, social and work relationships, and conducting a mental status examination, complete a DSM diagnosis, write and supervise the implementation of a Service Plan and provide individual, family or group therapy within the scope of their training. In addition, QMHPs must also meet the following minimum qualifications:

(a) Bachelor's degree in nursing and licensed by the State or Oregon;

(b) Bachelor's degree in occupational therapy and licensed by the State of Oregon;

(c) Graduate degree in psychology;

(d) Graduate degree in social work;

(e) Graduate degree in recreational, art, or music therapy;

(f) Graduate degree in a behavioral science field; or

(g) A qualified Mental Health Intern, as defined in 309-019-0105(61).

(10) Peer support specialists must demonstrate knowledge of approaches to support others in recovery and resiliency, and demonstrate efforts at self-directed recovery.

(11) Recovering Staff: Program staff, contractors, volunteers and interns recovering from a substance use or problem gambling disorders, providing treatment services or peer support services in substance use disorders treatment programs, must be able to document continuous abstinence under independent living conditions or recovery housing for the immediate past two years.

(12) Peer Delivered Services provided by individuals certified as defined in OAR 415-180-0312.Stat.

Stat. Auth.: ORS 161.390, 413.042, 428.205 - 428.270, 430.256, 430.640

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Stats. Implemented: ORS 109.675, 413.520 - 413.522, 426.380, 430.010, 430.205 - 430.210, 430.240 - 430.640, 430.850 - 430.955, 461.549, 743A.168, 813.010 - 813.052 & 813.200 - 813.270
Hist.: MHS 6-2013(Temp), f. 8-8-13, cert. ef. 8-9-13 thru 2-5-14; MHS 4-2014, f. & cert. ef. 2-3-14; MHS 1-2015(Temp), f. & cert. ef. 3-25-15 thru 9-20-15; MHS 3-2015, f. & cert. ef. 5-28-15; MHS 11-2016(Temp), f. 6-29-16, cert. ef. 7-1-16 thru 12-27-16; MHS 18-2016, f. 11-28-16, cert. ef. 11-30-16; MHS 26-2016(Temp), f. 12-27-16, cert. ef. 12-28-16 thru 6-23-17

309-019-0130

Personnel Documentation, Training and Supervision

(1) Providers must maintain personnel records for each program staff which contains all of the following documentation:

(a) Where required, verification of a criminal record check consistent with OAR 407-007-0000 through 407-007-0370;

(b) A current job description that includes applicable competencies;

(c) Copies of relevant licensure or certification, diploma, or certified transcripts from an accredited college, indicating that the program staff meets applicable qualifications;

(d) Periodic performance appraisals;

(e) Staff orientation documentation; and

(f) Disciplinary documentation;

(g) Documentation of trainings required by this or other applicable rules; and

(h) Documentation of clinical and non-clinical supervision. Documentation must include: the date supervision took place, the amount of supervision time, and a brief description of relevant topics discussed.

(2) Providers utilizing contractors, interns or volunteers must maintain the following documentation, as applicable:

(a) A contract or written agreement;

(b) A signed confidentiality agreement;

(c) Orientation documentation; and

(d) For subject individuals, verification of a criminal records check consistent with OAR 407-007-0000 through 407-007-0370.

(3) Training: Providers must ensure that program staff receives training applicable to the specific population for whom services are planned, delivered, or supervised as follows:

(a) Orientation training: The program must document appropriate orientation training for each program staff, or person providing services, within 30 days of the hire date. At minimum, orientation training for all program staff must include, but not be limited to,

(A) A review of crisis prevention and response procedures;

(B) A review of emergency evacuation procedures;

(C) A review of program policies and procedures;

(D) A review of rights for individuals receiving services and supports;

(E) Mandatory abuse reporting procedures;

(F) HIPAA, and Fraud, Waste and Abuse;

(G) Care Coordination;

(H) For ACT Services, planning and implementing a warm handoff; and

(I) For Enhanced Care Services, positive behavior support training.

(4) Clinical Supervision: Persons providing direct services must receive supervision by a qualified Clinical Supervisor, as defined in these rules, related to the development, implementation and outcome of services.

(a) Clinical supervision must be provided to assist program staff and volunteers to increase their skills, improve quality of services to individuals, and supervise program staff and volunteers' compliance with program policies and procedures, including:

(b) Documentation of two hours per month of supervision for each person supervised. The two hours must include one hour of individual face-to-face contact for each person supervised, or a proportional level of supervision for part-time program staff. Individual face-to-face contact may include real time, two-way audio visual conferencing;

(c) Documentation of two hours of quarterly supervision for program staff holding a health or allied provider license, including at least one hour of individual face-to-face contact for each person supervised; or

(d) Documentation of weekly supervision for program staff meeting the definition of Mental Health Intern.

Stat. Auth.: ORS 161.390, 413.042, 428.205 - 428.270, 430.256, 430.640

Stats. Implemented: ORS 109.675, 413.520 - 413.522, 426.380, 430.010, 430.205 - 430.210, 430.240 - 430.640, 430.850 - 430.955, 461.549, 743A.168, 813.010 - 813.052 & 813.200 - 813.270

Hist.: MHS 6-2013(Temp), f. 8-8-13, cert. ef. 8-9-13 thru 2-5-14; MHS 4-2014, f. & cert. ef. 2-3-14; MHS 11-2016(Temp), f. 6-29-16, cert. ef. 7-1-16 thru 12-27-16; MHS 18-2016, f. 11-28-16, cert. ef. 11-30-16; MHS 26-2016(Temp), f. 12-27-16, cert. ef. 12-28-16 thru 6-23-17

309-019-0135

Entry and Assessment

(1) Entry Process: The program must utilize an entry procedure which at minimum will ensure the provision and documentation of the following:

(a) Individuals must be considered for entry without regard to race, ethnicity, gender, gender identity, gender presentation, sexual orientation, religion, creed, national origin, age, except when program eligibility is restricted to children, adults or older adults, familial status, marital status, source of income, and disability.

(b) Individuals must receive services in the most timely manner feasible consistent with the presenting circumstances.

(c) Written voluntary informed consent for services must be obtained from the individual or guardian, if applicable, prior to the start of services. If such consent is not obtained, the reason must be documented and further attempts to obtain informed consent must be made as appropriate.

(d) The provider must develop and maintain adequate clinical records and other documentation for each individual served which demonstrates the specific supports, care, items, or services for which payment has been requested.

(e) The provider must report the entry of all individuals on the mandated state data system.

(f) In accordance with ORS 179.505 and HIPAA, an authorization for the release of information must be obtained for any confidential information concerning the individual being considered for, or receiving, services.

(g) Orientation: At the time of entry, the program must offer to the individual and guardian if applicable, written program orientation information. The written information must be in a language understood by the individual and must include:

(A) An opportunity to complete a declaration for mental health treatment with the individual's participation and informed consent;

(B) A description of individual rights consistent with these rules;

(C) Policies and specific procedures concerning grievances including:

(i) An example grievance form;

(ii) Grievance appeal processes; and

(iii) Expedited grievance processes.

(D) Notice of privacy practices; and

(E) An opportunity to register to vote. (2) Entry Priority: Entry of individuals whose services are funded by the SAPT Block Grant, must be prioritized in the following order:

(A) Women who are pregnant and using substances intravenously;

(B) Women who are pregnant;

(C) Individuals who are using substances intravenously; and

(D) Women with dependent children.

(3) Assessment:

(a) At the time of entry, an assessment must be completed.

(b) The assessment must be typed and completed by qualified program staff as follows:

(A) A QMHP in mental health programs. A QMHA may assist in the gathering and compiling of information to be included in the assessment.

(B) Supervisory or treatment staff in substance use disorders treatment programs, and

(C) Supervisory or treatment staff in problem gambling treatment programs.

(c) Each assessment must include sufficient information and documentation to justify the presence of a diagnosis that is the medically appropriate reason for services.

(d) For Substance Use Disorders services, each assessment must be consistent with the dimensions described in the ASAM PPC, and must document a diagnosis and level of care determination consistent with the DSM and ASAM PPC.

(e) When the assessment process determines the presence of co-occurring substance use and mental health disorders, or any significant risk to health and safety, all providers must document referral for further assessment, planning and intervention from an appropriate professional, either with the same provider or with a collaborative community provider.

(e) Providers must periodically update assessments as applicable, when there are changes in clinical circumstances; and

(f) Any individual continuing to receive mental health services for one or more continuous years, must receive an annual assessment by a QMHP.

Stat. Auth.: ORS 161.390, 413.042, 430.256, 428.205 - 428.270, 430.640

Stats. Implemented: ORS 109.675, 161.390 - 161.400, 413.520 - 413.522, 430.010, 430.205 - 430.210, 430.240 - 430.640, 430.850 - 430.955, 461.549, 743A.168, 813.010 - 813.052 & 813.200 - 813.270

Hist.: MHS 6-2013(Temp), f. 8-8-13, cert. ef. 8-9-13 thru 2-5-14; MHS 4-2014, f. & cert. ef. 2-3-14; MHS 18-2016, f. 11-28-16, cert. ef. 11-30-16; MHS 26-2016(Temp), f. 12-27-16, cert. ef. 12-28-16 thru 6-23-17

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309-019-0140

Service Plan and Service Notes

(1) In addition to any program specific service delivery requirements, the Service Plan must be a typed, individualized plan designed to improve the individual's condition to the point where the individual's continued participation in the program is no longer necessary. The Service Plan is included in the individual's service record and must:

- (a) Be completed prior to the start of services;
- (b) Reflect the assessment and the level of care to be provided;
- (c) Include the participation of the individual and family members, as applicable;
- (d) Include a description of all warm handoff, care coordination planning and implementation; and
- (d) Be completed by qualified program staff as follows:
 - (A) A QMHP in mental health programs;
 - (B) Supervisory or treatment staff in substance use disorders treatment programs, and
 - (C) Supervisory or treatment staff in problem gambling treatment programs.

(e) For mental health services, a QMHP, who is also a licensed health care professional, must recommend the services and supports by signing the Service plan within ten (10) business days of the start of services; and

(f) A LMP must approve the Service Plan at least annually for each individual receiving mental health services for one or more continuous years. The LMP may designate annual clinical oversight by documenting the designation to a specific licensed health care professional.

(2) At minimum, each Service Plan must include:

- (a) Treatment objectives, which are:
 - (A) Individualized to meet the assessed needs of the individual;
 - (B) Quantifiable for the purpose of evaluating individual progress;

and

(C) Include a baseline evaluation of current progress toward meeting each objective.

(b) The specific services and supports indicated by the assessment, including peer delivered services as medically appropriate that will be used to meet the treatment objectives;

(c) A projected schedule for service and support delivery, including the expected frequency and duration of each type of planned therapeutic session or encounter;

(d) A notation of the credential or credentials held by the personnel that will be furnishing each service; and

(e) A projected schedule for re-evaluating the Service Plan.

(3) Service Notes:

(a) Providers must document each service and support. A Service Note, at minimum, must include:

- (A) The specific services rendered;
- (B) The specific Service Plan objective(s) being addressed by the services provided;

(C) The date, time of service, and the actual amount of time the services were rendered;

(D) The relationship of the services provided to the treatment objective described in the Service Plan;

(E) Who rendered the services and their credential;

(F) The setting in which the services were rendered; and

(G) A statement quantifying individual progress toward the specific service objectives addressed by the service.

(4) Decisions to transfer individuals must be documented, including the reason for the transfer.

Stat. Auth.: ORS 161.390, 413.042, 430.256, 428.205 - 428.270, 430.640

Stats. Implemented: ORS 109.675, 161.390 - 161.400, 413.520 - 413.522, 430.010, 430.205-430.210, 430.240 - 430.640, 430.850 - 430.955, 461.549, 743A.168, 813.010 - 813.052 & 813.200 - 813.270

Hist.: MHS 6-2013(Temp), f. 8-8-13, cert. ef. 8-9-13 thru 2-5-14; MHS 4-2014, f. & cert. ef. 2-3-14; MHS 11-2016(Temp), f. 6-29-16, cert. ef. 7-1-16 thru 12-27-16; MHS 18-2016, f. 11-28-16, cert. ef. 11-30-16; MHS 26-2016(Temp), f. 12-27-16, cert. ef. 12-28-16 thru 6-23-17

309-019-0145

Co-Occurring Mental Health and Substance Use Disorders (COD)

Providers approved under OAR 309-008-0000 and designated to provide services and supports for individuals diagnosed with COD must provide concurrent service and support planning and delivery for substance use, gambling disorder, and mental health diagnosis, including integrated assessment addressing Co-Occurring Behavioral Health Diagnoses, Service Plan and Service Record.

Stat. Auth.: ORS 430.640

Stats. Implemented: ORS 430.010, 430.205 - 430.210, 430.240 - 430.640, 430.850 - 430.955

Hist.: MHS 6-2013(Temp), f. 8-8-13, cert. ef. 8-9-13 thru 2-5-14; MHS 4-2014, f. & cert. ef. 2-3-14; MHS 11-2016(Temp), f. 6-29-16, cert. ef. 7-1-16 thru 12-27-16; MHS 18-2016, f. 11-28-16, cert. ef. 11-30-16; MHS 26-2016(Temp), f. 12-27-16, cert. ef. 12-28-16 thru 6-23-17

309-019-0150

Outpatient Mental Health Services to Children and Adults

(1) Crisis services must be provided directly or through linkage to a local crisis services provider and must include the following:

(a) 24 hours, seven days per week telephone or face-to-face screening within one hour of notification of the crisis event to determine an individual's need for immediate community mental health services; and

(b) 24 hour, seven days per week capability to conduct, by or under the supervision of a QMHP, an assessment resulting in a Service Plan that includes the crisis services necessary to assist the individual and family to stabilize and transition to the appropriate level of care.

(2) Available case management services must be provided, including the following:

(a) Assistance in applying for benefits to which the individual may be entitled. Program staff must assist individuals in gaining access to, and maintaining, resources such as Social Security benefits, general assistance, food stamps, vocational rehabilitation, and housing. When needed, program staff must arrange transportation or accompany individuals to help them apply for benefits; and

(b) Referral and coordination to help individuals gain access to services and supports identified in the Service Plan;

(3) When significant health and safety concerns are identified, program staff must ensure that necessary services or actions occur to address the identified health and safety needs for the individual.

(4) Peer Delivered Services must be made available.

Stat. Auth.: ORS 161.390, 413.042, 430.256, 428.205 - 428.270, 430.640

Stats. Implemented: ORS 109.675, 161.390 - 161.400, 413.520 - 413.522, 430.010, 430.205-430.210, 430.240 - 430.640, 430.850 - 430.955, 461.549, 743A.168, 813.010 - 813.052 & 813.200 - 813.270

Hist.: MHS 6-2013(Temp), f. 8-8-13, cert. ef. 8-9-13 thru 2-5-14; MHS 4-2014, f. & cert. ef. 2-3-14; MHS 26-2016(Temp), f. 12-27-16, cert. ef. 12-28-16 thru 6-23-17

309-019-0151

Mobile Crisis Services

(1) The effectiveness of Mobile Crisis Services in de-escalating a crisis and diverting hospitalization or arrest is enhanced by team members competent in performing an assessment and delivering an effective course of intervention. These services provide access to a multi-disciplinary support team, ready resources such as access to urgent appointments, brief respite services and the ability to provide brief follow-up care when indicated. Effective mobile crisis services are those that planned and delivered with local stakeholders. Mobile crisis programs shall be developed in coordination with the Local Public Safety Coordinating Council as outlined in ORS § 423.560.

(2) CMHP shall provide Mobile Crisis Services as a component of crisis services according to OAR 309-019-0150 for individuals experiencing mental health crisis within their respective geographic service area to meet the following objectives:

(a) Reduce acute psychiatric hospitalization of individuals experiencing mental health crisis; and

(b) Reduce the number of individuals with mental health diagnoses who are incarcerated as a result of mental health crisis events involving law enforcement.

(3) CMHP shall provide Mobile Crisis Services including, but not limited to:

(a) 24 hours a day, 7 days a week screening to determine the need for immediate services for any individual requesting assistance or for whom assistance is requested;

(b) A face-to-face therapeutic response delivered in a public setting at locations in the community where the crisis arises including, but not limited to, a person's home, schools, residential programs, nursing homes, group home settings, and hospitals to enhance community integration;

(c) Services that are generally delivered in a natural environment by or under the supervision of a QMHP, such as QMHAs and peers, and resulting in a Service Plan. Disposition of services shall maintain as the primary goal, with diversion from hospitalization and incarceration through clinically appropriate community-based supports and services;

(d) Eliminating the need for transportation (frequently by law enforcement officers or emergency services) to a hospital emergency department or a community crisis site;

(e) Are not intended to be restricted to services delivered in hospitals or at residential programs;

(f) Mental Health crisis assessment;

(g) Brief crisis intervention;

ADMINISTRATIVE RULES

- (h) Assistance with placement in crisis respite or residential services;
- (i) Initiation of commitment process if applicable;
- (j) Assistance with hospital placement; and,
- (k) Connecting individuals with ongoing supports and services.

(4) County shall track and report response time. County shall respond to crisis events in their respective geographic service area with the following maximum response times:

- (a) Counties classified as “urban” shall respond within one (1) hour.
- (b) Counties classified as “rural” shall respond within two (2) hours.
- (c) Counties classified as “frontier” shall respond within three (3) hours.

(d) Counties classified as “rural” and “frontier” shall contact an individual experiencing a crisis event via telephone by a staff member who is trained in crisis management (such as a person from a crisis line or a peer) within one (1) hour of being notified of the crisis event.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 109.675, 161.390 - 161.400, 413.520 - 413.522, 430.010, 430.205 - 430.210, 430.240 - 430.640, 430.850 - 430.955, 461.549, 743A.168, 813.010 - 813.052 & 813.200 - 813.270

Hist.: MHS 26-2016(Temp), f. 12-27-16, cert. ef. 12-28-16 thru 6-23-17

309-019-0152

Mobile Crisis Response Reporting Requirements

The CMHP shall submit a written quarterly report, using forms and procedures prescribed by OHA, electronically to the HSD contract administrator, no later than 45 calendar days following the end of each reporting quarter.

(1) The CMHP shall track and report the number of individuals receiving a Mobile Crisis Services contact to include the following information:

- (a) Location of mobile crisis service; and
- (b) Disposition of the mobile crisis contact
- (c) If the crisis contact resulted in admission to Acute Care; or
- (d) If the mobile crisis contact resulted in enrollment in mental health treatment and stabilization in a community setting.

(2) County shall track and report response time. County shall respond to crisis events in their respective geographic service area with the following maximum response times:

- (a) Counties classified as “urban” shall respond within one (1) hour.
- (b) Counties classified as “rural” shall respond within two (2) hours.
- (c) Counties classified as “frontier” shall respond within three (3) hours.

Stat. Auth.: ORS 161.390, 413.042, 430.256, 428.205 - 428.270, 430.640

Stats. Implemented: ORS 109.675, 161.390 - 161.400, 413.520 - 413.522, 430.010, 430.205 - 430.210, 430.240 - 430.640, 430.850 - 430.955, 461.549, 743A.168, 813.010 - 813.052 & 813.200 - 813.270

Hist.: MHS 26-2016(Temp), f. 12-27-16, cert. ef. 12-28-16 thru 6-23-17

309-019-0155

Enhanced Care Services and Enhanced Care Outreach Services

(1) Services will be provided in a facility or program approved by the Department of Human Services (DHS), Aging and People with Disabilities (APD) as follows:

(a) Enhanced Care Services (ECS) must be provided in designated DHS licensed facilities that have a multipurpose room, an environment with low stimulation, an accessible outdoor space with a covered area, security doors, a refrigerator, a microwave conveniently located for program activities, space for interdisciplinary meetings, space for mental health treatment and space for storage of records. A minimum of one private room is required in facilities opened after January 1, 1994; and

(b) Enhanced Care Outreach Services (ECOS) must be provided to residents of DHS licensed facilities and include individualized wrap-around rehabilitative mental health services.

(2) To be eligible for ECS/ECOS an individual must:

- (a) Be APD service eligible;
- (b) Meet the diagnostic criteria of severe mental illness with problematic behavior or be approved by the Enhanced Care Services Team;

(c) Require intensive community mental health services to transition to a lower level of care;

(d) Have a history of multiple APD placements due to problematic behavior; and

(e) Be currently or have been a patient at Oregon State Hospital or have received in-patient services in an acute psychiatric unit for over 14 days and have been referred to non-enhanced APD facilities and denied admission due to severe mental illness with problematic behavior and be currently exhibiting two or more of the following: self-endangering behavior, aggressive behavior, intrusive behavior, intractable psychiatric symp-

toms, medication needs, sexually inappropriate behavior and elopement behavior.

(3) ECS/ECOS providers must:

(a) For ECS, provide a minimum of 12 hours per day, 7 days per week of mental health services, provided or arranged for by the contracted mental health provider. Services must include a minimum of 3 hours rehabilitative services per day;

(b) For ECOS, services based on the assessed need of the individual will not exceed 5 days per week;

(c) Coordinate Interdisciplinary team meetings (IDT) to develop the Service Plan, review the behavior support plan and to coordinate care planning with the DHS licensed provider staff, APD case manager, QMHP, prescriber and related professionals such as DHS licensed facility/program direct care staff, DHS licensed facility RN and facility administrator. IDTs in ECS programs must be held weekly and at least quarterly for ECOS;

(d) Conduct quarterly mental health in-service trainings for DHS-licensed providers and related program staff providing services to ECS/ECOS recipients; and

(e) Ensure the availability of crisis services staffed by a QMHP, or the local CMHP, available to the ECS/ECOS provider and DHS licensed facility direct care staff 24-hours per day.

(4) Behavior support services must be designed to facilitate positive alternatives to challenging behavior, and to assist the individual in developing adaptive and functional living skills. Providers must:

(a) Develop and implement individual behavior support strategies, based on a functional or other clinically appropriate assessment of challenging behavior;

(b) Document the behavior support strategies and measures for tracking progress as a behavior support plan in the Service Plan;

(c) Establish a framework which assures individualized positive behavior support practices throughout the program and articulates a rationale consistent with the philosophies supported by the Division, including the Division’s Trauma-informed Services Policy;

(d) Obtain informed consent from the individual or guardian, if one is appointed, in the use of behavior support strategies and communicate both verbally and in writing the information to the individual or guardian, if one is appointed, in a language understood;

(e) Establish outcome-based tracking methods to measure the effectiveness of behavior support strategies in:

(A) The use of least restrictive interventions possible; and

(B) Increasing positive behavior.

(f) Require all program staff to receive quarterly mental health in-service training in Evidence-based Practices to promote positive behavior support and related to needs of each individual; and

(g) Review and update behavior support policies, procedures, and practices annually.

(5) Providers must develop a transition plan for each individual as part of the initial assessment process. Each individual’s mental health service plan will reflect their transition goal and the supports necessary to achieve transition.

(6) Staffing requirements:

(a) Each ECS/ECOS program must have a minimum of 1 FTE QMHP for programs serving five or more individuals who is responsible for coordinating entries, transitions and required IDT’s, assuring the completion of individual assessments, mental health service and behavior support plans; providing supervision of QMHP’s and QMHA’s and to coordinate services and trainings with facility staff;

(b) Each ECS/ECOS program must have psychiatric consultation available. For ECS programs serving more than 10 individuals, the psychiatrist must participate.

(7) In ECS programs, the CMHP and the DHS licensed provider must develop a written collaborative agreement that addresses at minimum: risk management, census management, staff levels, training, treatment and activity programs, entry and transition procedures, a process for reporting and evaluating critical incidents, record keeping, policy and procedure manuals, dispute resolution and service coordination.

(8) Peer Delivered Services must be made available.

Stat. Auth.: ORS 161.390, 413.042, 428.205 - 428.270, 430.640 & 443.450

Stats. Implemented: ORS 109.675, 161.390 - 161.400, 430.010, 430.205 - 430.210, 430.240 - 430.640, 430.850 - 430.955, 743A.168, 813.010 - 813.052

Hist.: MHS 6-2013(Temp), f. 8-8-13, cert. ef. 8-9-13 thru 2-5-14; MHS 4-2014, f. & cert. ef. 2-3-14; MHS 26-2016(Temp), f. 12-27-16, cert. ef. 12-28-16 thru 6-23-17

ADMINISTRATIVE RULES

309-019-0160

Psychiatric Security Review Board and Juvenile Psychiatric Security Review Board

(1) Services and supports must include all appropriate services, including Peer Delivered Services determined necessary to assist the individual in maintaining community placement and which are consistent with Conditional Release Orders and the Agreement to Conditional Release.

(2) Providers of PSRB and JPSRB services acting through the designated Qualified Person, must submit reports to the PSRB or JPSRB as follows:

(a) Orders for Evaluation: For individuals under the jurisdiction of the PSRB or the JPSRB, providers must take the following action upon receipt of an Order for Evaluation:

(A) Within 15 days of receipt of the Order, schedule an interview with the individual for the purpose of initiating or conducting the evaluation;

(B) Appoint a QMHP to conduct the evaluation and to provide an evaluation report to the PSRB or JPSRB;

(C) Within 30 days of the evaluation interview, submit the evaluation report to the PSRB or JPSRB responding to the questions asked in the Order for Evaluation; and

(D) If supervision by the provider is recommended, notify the PSRB or JPSRB of the name of the person designated to serve as the individual's Qualified Person, who must be primarily responsible for delivering or arranging for the delivery of services and the submission of reports under these rules.

(b) Monthly reports consistent with PSRB or JPSRB reporting requirements as specified in the Conditional Release Order that summarize the individual's adherence to Conditional Release requirements and general progress; and

(c) Interim reports, including immediate reports by phone, if necessary, to ensure the public or individual's safety including:

(A) At the time of any significant change in the individual's health, legal, employment or other status which may affect compliance with Conditional Release orders;

(B) Upon noting major symptoms requiring psychiatric stabilization or hospitalization;

(C) Upon noting any other major change in the individual's Service Plan;

(D) Upon learning of any violations of the Conditional Release Order; and

(E) At any other time when, in the opinion of the Qualified Person, such an interim report is needed to assist the individual.

(3) PSRB and JPSRB providers must submit copies of all monthly reports and interim reports to both the PSRB or JPSRB and the Division.

(4) When the individual is under the jurisdiction of the PSRB or JPSRB, providers must include the following additional documentation in the Service Record:

(a) Monthly reports to the PSRB or JPSRB;

(b) Interim reports, as applicable;

(c) The PSRB or JPSRB Initial Evaluation; and

(d) A copy of the Conditional Order of Release.

Stat. Auth.: ORS 161.390, 413.042, 430.256, 426.490 - 426.500, 428.205 - 428.270, 430.640 & 443.450

Stats. Implemented: ORS 109.675, 161.390 - 161.400, 179.505, 413.520 - 413.522, 426.380 - 426.395, 426.490 - 426.500, 430.010, 430.205 - 430.210, 430.240 - 430.640, 430.850 - 430.955, 443.400 - 443.460, 443.991

Hist.: MHS 6-2013(Temp), f. 8-8-13, cert. ef. 8-9-13 thru 2-5-14; MHS 4-2014, f. & cert. ef. 2-3-14; MHS 26-2016(Temp), f. 12-27-16, cert. ef. 12-28-16 thru 6-23-17

309-019-0165

Intensive Community-Based Treatment and Support Services (ICTS) for Children

(1) IOSS services may be delivered at a clinic, facility, home, school, other provider or allied agency location or other setting as identified by the child and family team. In addition to services specified by the Service Plan and the standards for outpatient mental health services, IOSS services must include:

(a) Provider participation on the child and family team or Wraparound team;

(b) A documented proactive safety and crisis plan developed by the child and family team, if applicable, or the provider. The proactive safety and crisis plan must at minimum include:

(A) Strategies designed to facilitate positive alternatives to challenging behavior and to assist the individual in developing adaptive and functional living skills;

(B) Strategies to avert potential crisis without placement disruptions;

(C) Professional and natural supports to provide 24 hours, seven days per week flexible response; and

(D) Documented informed consent from the parent or guardian.

(2) IOSS providers must include the following additional documentation in the Service Record:

(a) Identified care coordinator and care coordination provider as well as documentation of provider participation on child and family team or Wraparound team;

(b) Documented identification of strengths and needs;

(c) A summary and review of service coordination planning by the provider or by the child and family team/Wraparound team when applicable; and

(d) A documented proactive safety and crisis plan including a suicide prevention plan.

Stat. Auth.: ORS 161.390, 413.042, 430.256, 428.205 - 428.270, 430.640

Stats. Implemented: ORS 109.675, 161.390 - 161.400, 430.010, 430.205 - 430.210, 430.240 - 430.640, 430.850 - 430.955

Hist.: MHS 6-2013(Temp), f. 8-8-13, cert. ef. 8-9-13 thru 2-5-14; MHS 4-2014, f. & cert. ef. 2-3-14; MHS 26-2016(Temp), f. 12-27-16, cert. ef. 12-28-16 thru 6-23-17

309-019-0175

Outpatient Substance Use Disorders Treatment and Recovery Services

(1) Interim Referral and Information Services: Pregnant women or other individuals using substances intravenously, whose services are funded by the SAPT Block Grant, must receive interim referrals and information prior to entry, to reduce the adverse health effects of substance use, promote the health of the individual, and reduce the risk of transmission of disease. At a minimum, interim referral and informational services must include:

(a) Counseling and education about blood borne pathogens including Hepatitis, HIV, STDs and Tuberculosis (TB); the risks of needle and paraphernalia sharing and the likelihood of transmission to sexual partners and infants;

(b) Counseling and education about steps that can decrease the likelihood of Hepatitis, HIV, STD, and TB transmission;

(c) Referral for Hepatitis, HIV, STD and TB testing, vaccine or care services if necessary;

(d) For pregnant women, counseling on the likelihood of blood borne pathogen transmission as well as the effects of alcohol, tobacco and other drug use on the fetus and referral for prenatal care; and

(e) Peer Delivered Services that addresses parenting and youth in transition support.

(2) Culturally Specific Services: Programs approved and designated as culturally specific programs must meet the following criteria:

(a) Serve a majority of individuals representing culturally specific populations;

(b) Maintain a current demographic and cultural profile of the community;

(c) Ensure that individuals from the identified cultural group receive effective and respectful care that is provided in a manner compatible with their cultural health beliefs, practices, and preferred language;

(d) Implement strategies to recruit, retain, and promote a diverse staff at all levels of the organization that are representative of the population being served;

(e) Ensure that staff at all levels and across all disciplines receive ongoing education and training in culturally and linguistically appropriate service delivery;

(f) Providers should ensure that a majority of the substance use disorders treatment staff be representative of the specific culture being served;

(g) Ensure that individuals are offered customer satisfaction surveys that address all areas of service and that the results of the surveys are used for quality improvement;

(h) Consider race, ethnicity, and language data in measuring customer satisfaction;

(i) Develop and implement cultural awareness policies;

(j) Ensure that data on individual's race, ethnicity, and spoken and written language are collected in health records, integrated into the organization's management information systems, and periodically updated;

(k) Develop and maintain a Governing or Advisory Board as follows:
(A) Have a majority representation of the culturally specific group being served;

(B) Receive training concerning the significance of culturally relevant services and supports;

(C) Meet at least quarterly; and

(D) Monitor agency quality improvement mechanisms and evaluate the ongoing effectiveness and implementation of culturally relevant services (CLAS) and supports within the organization.

ADMINISTRATIVE RULES

- (l) Maintain accessibility to culturally specific populations including:
 - (A) The physical location of the program must be within close proximity to the culturally specific populations;
 - (B) Where available, public transportation must be within close proximity to the program; and
 - (C) Hours of service, telephone contact, and other accessibility issues must be appropriate for the population.
- (m) The physical facility where the culturally specific services are delivered must be psychologically comfortable for the group including:
 - (A) Materials displayed must be culturally relevant; and
 - (B) Mass media programming (radio, television, etc.) must be sensitive to cultural background;
 - (n) Other cultural differences must be considered and accommodated when possible, such as the need or desire to bring family members to the facility, play areas for small children and related accommodations; and
 - (o) Ensure that grievance processes are culturally and linguistically sensitive and capable of identifying, preventing and resolving cross-cultural conflicts or complaints.

Stat. Auth.: ORS 413.042, 428.205 - 428.270, 430.640 & 443.450
Stats. Implemented: ORS 430.010, 430.205 - 430.210, 430.240 - 430.640, 430.850 - 430.955, 443.400 - 443.460, 443.991
Hist.: MHS 6-2013(Temp), f. 8-8-13, cert. ef. 8-9-13 thru 2-5-14; MHS 4-2014, f. & cert. ef. 2-3-14; MHS 18-2016, f. 11-28-16, cert. ef. 11-30-16; MHS 26-2016(Temp), f. 12-27-16, cert. ef. 12-28-16 thru 6-23-17

309-019-0180

Outpatient Adolescent Substance Use Disorders Treatment and Recovery Services

Programs approved to provide adolescent substance use disorders treatment services or those with adolescent-designated service funding must meet the following standards:

- (1) Development of Service Plans and case management services must include participation of parents, other family members, schools, children's services agencies, and juvenile corrections, as appropriate;
- (2) Services, or appropriate referrals, must include:
 - (a) Family counseling;
 - (b) Community and social skills training; and
 - (c) Smoking cessation service.
- (3) Continuing care services must be of appropriate duration and designed to maximize recovery opportunities. The services must include:
 - (a) Reintegration services and coordination with family and schools;
 - (b) Youth dominated self-help groups where available;
 - (c) Linkage to emancipation services when appropriate;
 - (d) Linkage to physical or sexual abuse counseling and support services when appropriate; and
 - (e) Access to Peer Delivered Services.

Stat. Auth.: ORS 161.390, 413.042, 428.205 - 428.270, 430.640
Stats. Implemented: ORS 109.675, 161.390 - 161.400, 430.010, 430.205 - 430.210, 430.240-430.640, 430.850 - 430.955, 743A.168, 813.010 - 813.052 & 813.200 - 813.270
Hist.: MHS 6-2013(Temp), f. 8-8-13, cert. ef. 8-9-13 thru 2-5-14; MHS 4-2014, f. & cert. ef. 2-3-14; MHS 26-2016(Temp), f. 12-27-16, cert. ef. 12-28-16 thru 6-23-17

309-019-0185

Outpatient Women's Substance Use Disorders Treatment and Recovery Programs

- (1) Programs approved to provide women's substance use disorders treatment services or those with women-specific designated service funding must meet the following standards:
 - (a) The Assessment must contain an evaluation that identifies and assesses needs specific to women's issues in service such as social isolation, self-reliance, parenting issues, domestic violence, women's physical health, housing and financial considerations;
 - (b) The service plan must address all areas identified in the assessment and applicable service coordination details to address the identified needs;
 - (c) The program must provide or coordinate services and supports that meet the special access needs of women such as childcare, mental health services, and transportation, as indicated; and
 - (d) The program must provide, or coordinate, the following services and supports unless clinically contraindicated:
 - (A) Gender-specific services and supports;
 - (B) Family services, including therapeutic services for children in the custody of women in treatment;
 - (C) Reintegration with family;
 - (D) Peer delivered supports;
 - (E) Smoking cessation;
 - (F) Peer Delivered Services;
 - (G) Housing; and

- (H) Transportation.
 - (2) Services must include the participation of family and other agencies as appropriate, such as social service, child welfare, or corrections agencies;
 - (3) Referral Services: The program must coordinate services with the following, if indicated:
 - (a) Agencies providing services to women who have experienced physical abuse, sexual abuse or other types of domestic violence; and
 - (b) Parenting training; and
 - (c) Continuing care treatment services must be consistent with the ASAM PPC and must include referrals to female dominated support groups where available; and
 - (4) Programs that receive SAPT Block Grant funding must provide or coordinate the following services for pregnant women and women with dependent children, including women who are attempting to regain custody of their children:
 - (a) Primary medical care for women, including referral for prenatal care and, while the women are receiving such services, child care;
 - (b) Primary pediatric care, including immunizations for their children;
 - (c) Gender specific substance abuse treatment and other therapeutic interventions for women which may include, but are not limited to:
 - (A) Relationship issues;
 - (B) Sexual and physical abuse;
 - (C) Parenting;
 - (D) Access to child care while the women are receiving these services; and
 - (E) Therapeutic interventions for children in the custody of women in treatment which may include, but are not limited to:
 - (i) Their developmental needs;
 - (ii) Any issues concerning sexual and physical abuse, and neglect; and
 - (iii) Sufficient case management and transportation to ensure that women and their children have access to services.

Stat. Auth.: ORS 161.390, 413.042, 428.205 - 428.270, 430.640
Stats. Implemented: ORS 109.675, 161.390 - 161.400, 430.010, 430.205 - 430.210, 430.240-430.640, 430.850 - 430.955, 743A.168, 813.010 - 813.052 & 813.200 - 813.270
Hist.: MHS 6-2013(Temp), f. 8-8-13, cert. ef. 8-9-13 thru 2-5-14; MHS 4-2014, f. & cert. ef. 2-3-14; MHS 26-2016(Temp), f. 12-27-16, cert. ef. 12-28-16 thru 6-23-17

309-019-0215

Grievances and Appeals

- (1) Any individual receiving services, or the parent or guardian of the individual receiving services, may file a grievance with the provider, the individual's managed care plan or the Division.
- (2) For individuals whose services are funded by Medicaid, grievance and appeal procedures outlined in OAR 410-141-0260 through 410-141-0266, must be followed.
- (3) For individuals whose services are not funded by Medicaid, providers must:
 - (a) Notify each individual, or guardian, of the grievance procedures by reviewing a written copy of the policy upon entry;
 - (b) Assist individuals and parents or guardians, as applicable, to understand and complete the grievance process; and notify them of the results and basis for the decision;
 - (c) Encourage and facilitate resolution of the grievance at the lowest possible level;
 - (d) Complete an investigation of any grievance within 30 calendar days;
 - (e) Implement a procedure for accepting, processing and responding to grievances including specific timelines for each;
 - (f) Designate a program staff person to receive and process the grievance;
 - (g) Document any action taken on a substantiated grievance within a timely manner; and
 - (h) Document receipt, investigation and action taken in response to the grievance.
- (4) Grievance Process Notice. The provider must have a Grievance Process Notice, which must be posted in a conspicuous place stating the telephone number of:
 - (a) The Division;
 - (b) Disability Rights Oregon; and
 - (c) The applicable managed care organization.
- (5) Expedited Grievances: In circumstances where the matter of the grievance is likely to cause harm to the individual before the grievance procedures outlined in these rules are completed, the individual, or guardian of the individual, may request an expedited review. The program administrator must review and respond in writing to the grievance within 48 hours of

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receipt of the grievance. The written response must include information about the appeal process.

(6) **Retaliation:** A grievant, witness or staff member of a provider must not be subject to retaliation by a provider for making a report or being interviewed about a grievance or being a witness. Retaliation may include, but is not limited to, dismissal or harassment, reduction in services, wages or benefits, or basing service or a performance review on the action.

(7) **Immunity:** The grievant is immune from any civil or criminal liability with respect to the making or content of a grievance made in good faith.

(8) **Appeals:** Individuals and their legal guardians, as applicable, must have the right to appeal entry, transfer and grievance decisions as follows:

(a) If the individual or guardian, if applicable, is not satisfied with the decision, the individual or guardian may file an appeal in writing within ten working days of the date of the program administrator's response to the grievance or notification of denial for services as applicable. The appeal must be submitted to the Division as applicable;

(b) If requested, program staff must be available to assist the individual;

(c) The Division, must provide a written response within ten working days of the receipt of the appeal; and

(d) If the individual or guardian, if applicable, is not satisfied with the appeal decision, he or she may file a second appeal in writing within ten working days of the date of the written response to the Chief Officer.

Stat. Auth.: ORS 161.390, 413.042, 430.256, 428.205 - 428.270, 430.640
Stats. Implemented: ORS 109.675, 161.390 - 161.400, 179.505, 413.520 - 413.522, 430.010, 430.205 - 430.210, 430.240 - 430.640, 430.850 - 430.955, 461.549, 743A.168, 813.010 - 813.052 & 813.200 - 813.270
Hist.: MHS 6-2013(Temp), f. 8-8-13, cert. ef. 8-9-13 thru 2-5-14; MHS 4-2014, f. & cert. ef. 2-3-14; MHS 11-2016(Temp), f. 6-29-16, cert. ef. 7-1-16 thru 12-27-16; MHS 18-2016, f. 11-28-16, cert. ef. 11-30-16; MHS 26-2016(Temp), f. 12-27-16, cert. ef. 12-28-16 thru 6-23-17

309-019-0225

Definitions

(1) In addition to the definitions identified in OAR 309-019-0105, the definitions below apply to this and subsequent rule sections.

(2) "Collateral Contacts" are members of the individual's family or household, or significant others (e.g. landlord, employer, etc.) who regularly interact with the individual and are directly affected by or have the capability of affecting his or her condition, and are identified in the treatment plan as having a role in the individual's recovery. For the purpose of the Assertive Community Treatment (ACT) program, a collateral contact does not include contacts with other mental health service providers or individuals who are providing a paid service that would ordinarily be provided by the ACT team (e.g. meeting with a shelter staff who is assisting an ACT recipient in locating housing).

(3) "Community-based" means that services and supports must be provided in a participant's home and surrounding community and not solely based in a traditional office-setting.

(a) ACT services may not be provided to individuals residing in an RTF or RTH licensed by HSD unless:

(A) The individual is not being provided rehabilitative services; or

(B) The individual has been identified for transition to a less intensive level of care. When identified for transition to a less intensive level of care, the individual may receive ACT services for up to six months prior to discharge from the RTH or RTF.

(4) "Competency" means one year of experience or training in the specialty area and demonstration of the specific skills or knowledge.

(5) "Competitive Integrated Employment" means full-time or part time work: at minimum wage or higher, at a rate that 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 skill; with eligibility for the level of benefits provided to other employees; 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 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.

(6) "Comprehensive Assessment" means the organized process of gathering and analyzing current and past information with each individual and the family and/or support system and other significant people to evaluate: 1) mental and functional status; 2) effectiveness of past treatment; 3) current treatment, rehabilitation and support needs to achieve individual

goals and support recovery; and, 4) the range of individual strengths (e.g., knowledge gained from dealing with adversity, personal/professional roles, talents, personal traits) that can act as resources to the individual and his/her recovery planning team in pursuing goals. The results of the information gathering and analysis are used to: 1) establish immediate and longer-term service needs with each individual; 2) set goals and develop the first person directed recovery plan with each individual; and, 3) optimize benefits that can be derived from existing strengths and resources of the individual and his/her family and/or natural support network in the community.

(7) "Co-Occurring Disorders (COD) Services" include integrated assessment and treatment for individuals who have co-occurring mental health and substance use condition.

(8) "Division approved reviewer" means the Oregon Center of Excellence for Assertive Community Treatment (OCEACT). OCEACT is the Division's contracted entity that is responsible for conducting ACT fidelity reviews, training, and technical assistance to support new and existing ACT programs statewide.

(9) "Fidelity" for the purposes of the ACT program means the provider is providing services that are faithful to the evidence-based practice model and obtains a satisfactory score from the Oregon Center of Excellence for ACT as part of the their regular reviews.

(10) "Fixed point of responsibility" means the ACT team itself provides virtually all needed services, rather than sending clients to different providers. If the team cannot provide a service (e.g. dental services) the team ensures that the service is provided.

(11) "Full-Time Equivalent" (FTE) for the purpose of ACT services is a way to measure how many full-time employees are required to provide the appropriate level of services to fulfill minimum fidelity requirements.

(12) "Hospital discharge planning" for the purposes of the ACT program means a process that begins upon admission to the Oregon State Hospital and that is based on the presumption that with sufficient supports and services, all individuals can live in an integrated community setting. Discharge planning is developed and implemented through a person-centered planning process in which the individual has a primary role and is based on principles of self-determination. Discharge planning teams at OSH include a representative of a community mental health provider from the county where the individual is likely to transition.

(13) "Individual Placement and Support (IPS) Supported Employment Services" are individualized services that assist individuals to obtain and maintain integrated, paid, competitive employment. Supported employment services are provided in a manner that seeks to allow individuals to work the maximum number of hours consistent with their preferences, interests and abilities and are individually planned, based on person-centered planning principles and evidence-based practices.

(14) "Individual Treatment Team (ITT)" is a group or combination of three to five ACT team staff members who together have a range of clinical and rehabilitation skills and expertise. The core members are the case manager, the psychiatrist or psychiatric nurse practitioner, one clinical or rehabilitation staff person who backs up and shares case coordination tasks and substitutes for the service coordinator when he or she is not working, and a Peer Support and Wellness Specialist. The individual treatment team has continuous responsibility to: 1) be knowledgeable about the individual's life, circumstances, goals and desires; 2) collaborate with the client to develop and write the treatment plan; 3) offer options and choices in the treatment plan; 4) ensure that immediate changes are made as an individual's needs change; and 5) advocate for the client's wishes, rights, and preferences.

(15) "Initial Assessment and Individualized Treatment Plan" as it pertains to the ACT program is the initial evaluation of: 1) the individual's mental and functional status; 2) the effectiveness of past treatment; and 3) the current treatment, rehabilitation, and support service needs. The results of the information gathering and analysis are used to establish the initial treatment plan to support recovery and help the individual achieve his or her goals.

(16) "Large ACT Team" means an ACT team serving 80 to 120 individuals.

(17) "Life skills training" means training that help individuals develop skills and access resources needed to increase their capacity to be successful and satisfied in the living, working, learning, and social environments of their choice.

(18) "Medication Management" is the prescribing and/or administering and reviewing of medications and their side effects, includes both pharmacological management as well as supports and training to the individual. For the purposes of Assertive Community Treatment (ACT), medication management is a collaborative effort between the individual receiving serv-

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ices and the prescribing psychiatrist or psychiatric nurse practitioner with the ACT treatment team.

(19) "Mid-Size Act Team" means an ACT team serving between 41 and 79 individuals.

(20) "Natural Supports" means personal associations and relationships typically developed in the community that enhance the quality and security of life for people, including, but not limited to, family relationships; friendships reflecting the diversity of the neighborhood and the community; association with fellow students or employees in regular classrooms and work places; and associations developed through participation in clubs, organizations, and other civic activities.

(21) "Psychiatry services" for the purposes of the ACT program in Oregon means the prescribing and/or administering and reviewing of medications and their side effects, includes both pharmacological management as well as supports and training to the individual. Psychiatry services must be provided by a psychiatrist or a psychiatric nurse practitioner who is licensed by the Oregon Medical Board.

(22) "Single Point of Contact" (SPOC) is a designated individual(s) in a service region that is responsible for coordinating, tracking referrals to ACT programs within their geographic service area.

(23) "Small ACT Team" means an ACT team serving between 10 to 40 individuals.

(24) "Symptom management" means to prevent or treat as early as possible the symptoms of a disease, side effects caused by treatment of a disease, and psychological, social, and spiritual problems related to a disease or its treatment.

(25) "Tele psychiatry" as it pertains to the ACT program means the application of telemedicine to the specialty field of psychiatry. The term typically describes the delivery of psychiatric assessment and care through telecommunications technology, usually videoconferencing.

(26) "Time-unlimited services" means services are provided not on the basis of predetermined timelines but as long as they are medically appropriate.

(27) "Vocational services" for the purposes of the ACT program in Oregon means employment support services that will lead to competitive integrated employment. The Division encourages the use of fidelity IPS Supported Employment for providing vocational services within the ACT program.

(28) "Warm Handoff" means the process of transferring an individual from one provider to another, prior to discharge, which includes face-to-face meeting(s) with an individual, and which coordinates the transfer of responsibility for the individual's ongoing care and continuing treatment and services. A warm handoff shall either (a) include a face-to-face meeting with the community provider and the individual, and if possible, hospital staff, or (b) provide a transitional team to support the individual, serve as a bridge between the hospital and the community provider, and ensure that the individual connects with the community provider. For warm handoffs under subparagraph (b), the transitional team shall meet face to face with the individual, and if possible, with hospital staff, prior to discharge. Face-to-face in person meetings are preferable for warm handoffs. However, a face-to-face meeting may be accomplished through technological solutions that provide two-way video-like communication on a secure line ("telehealth"), when either distance is a barrier to an in person meeting or individualized clinical criteria support the use of telehealth.

Stat. Auth.: ORS 161.390, 413.042, 430.256, 428.205 - 428.270, 430.640
Stats. Implemented: ORS 109.675, 161.390 - 161.400, 413.520 - 413.522, 430.010, 430.205-430.210, 430.240 - 430.640, 430.850 - 430.955, 461.549, 743A.168, 813.010 - 813.052 & 813.200 - 813.270
Hist.: MHS 11-2016(Temp), f. 6-29-16, cert. ef. 7-1-16 thru 12-27-16; MHS 18-2016, f. 11-28-16, cert. ef. 11-30-16; MHS 26-2016(Temp), f. 12-27-16, cert. ef. 12-28-16 thru 6-23-17

309-019-0226

ACT Assertive Community Treatment (ACT) Overview

(1) The Substance Abuse and Mental Health Services Administration (SAMHSA) characterizes ACT as an evidence-based practice for individuals with a serious and persistent mental illness. ACT is characterized by:

- (a) A team approach;
 - (b) Community based;
 - (c) A small client to staff caseload, typically 10:1, to consistently provide necessary staffing diversity and coverage;
 - (d) Time-unlimited services;
 - (e) Flexible service delivery;
 - (f) A fixed point of responsibility; and
 - (g) 24/7 availability for response to psychiatric crisis.
- (2) ACT services must include, but are not limited to:
- (a) Hospital discharge planning;
 - (b) Case management;

- (c) Symptom management;
 - (d) Psychiatry services;
 - (e) Nursing services;
 - (f) Co-occurring substance use and mental health disorders treatment services;
 - (g) Individual Placement and Support (IPS) supported employment services;
 - (h) Life skills training; and
 - (i) Peer support services.
- (2) SAMHSA characterizes a high fidelity ACT Program as one that includes the following staff members:
- (a) Psychiatrist or Psychiatric Nurse Practitioner;
 - (b) Psychiatric Nurse(s);
 - (c) Qualified Mental Health Professional (QMHP) ACT Team Supervisor;
 - (d) Qualified Mental Health Professional(s) (QMHP) Mental Health Clinician;
 - (e) Substance Abuse Treatment Specialist;
 - (f) Employment Specialist;
 - (g) Mental Health Case Manager; and
 - (h) Certified Peer Support Specialist.

(3) SAMHSA characterizes high fidelity ACT Programs as those that adhere to the following :

- (a) Provision of explicit admission criteria with an identified mission to serve a particular population utilizing quantitative and operationally defined criteria;
- (b) Manage intake rates: ACT eligible individuals are admitted to the program at a low rate to maintain a stable service environment;
- (c) Maintain full responsibility for treatment services which includes, at a minimum, the services required under OAR 309-019-0230(2)(a)-(i);
- (d) Twenty four-hour responsibility for covering psychiatric crises;
- (e) Involvement in psychiatric hospital admissions;
- (f) Involvement in planning for hospital discharges; and
- (g) Time-unlimited services.

Stat. Auth.: ORS 161.390, 413.042, 430.256, 428.205 - 428.270, 430.640
Stats. Implemented: ORS 109.675, 161.390 - 161.400, 413.520 - 413.522, 430.010, 430.205-430.210, 430.240 - 430.640, 430.850 - 430.955, 461.549, 743A.168, 813.010 - 813.052 & 813.200 - 813.270
Hist.: MHS 26-2016(Temp), f. 12-27-16, cert. ef. 12-28-16 thru 6-23-17

309-019-0230

ACT Provider Qualifications

(1) In order to be eligible for Medicaid or State General Fund reimbursement, ACT services shall be provided only by those providers meeting the following minimum qualifications:

(a) The provider must hold and maintain a certificate issued under the authority established in OAR 309-008, issued by the Division, for the purpose of providing outpatient behavioral health treatment services; and

(b) The provider must hold and maintain a certificate, issued by the Division, under OAR 309-019-0225 through 309-019-0255, for the purpose of providing Assertive Community Treatment; and

(c) A provider certified to provide ACT services under this rule must be reviewed annually for fidelity adherence by the Division approved reviewer and achieve a minimum score of 114 on the fidelity scale. Providers shall not bill Medicaid or use General Funds for the provision of ACT services unless they complete an annual fidelity review by the Division approved reviewer.

(A) The Division approved reviewer shall forward a copy of the annual fidelity review report to the Division approved reviewer and provide a copy of the review to the provider.

(B) The provider shall forward a copy of the annual fidelity review report to the appropriate CCO.

(2) A Provider already holding a certificate of approval under OAR 309-008 may request the addition of ACT services be added to their certificate of approval via the procedure outlined in OAR 309-008-0400 and 309-008-1000(1). In addition to application materials required in OAR 309-008 and this rule, the provider must also submit to the Division a letter of support which indicates receipt of technical assistance and training from the Division approved ACT reviewer.

Stat. Auth.: ORS 161.390, 413.042, 430.256, 428.205 - 428.270, 430.640
Stats. Implemented: ORS 109.675, 161.390 - 161.400, 413.520 - 413.522, 430.010, 430.205-430.210, 430.240 - 430.640, 430.850 - 430.955, 461.549, 743A.168, 813.010 - 813.052 & 813.200 - 813.270
Hist.: MHS 11-2016(Temp), f. 6-29-16, cert. ef. 7-1-16 thru 12-27-16; MHS 18-2016, f. 11-28-16, cert. ef. 11-30-16; MHS 26-2016(Temp), f. 12-27-16, cert. ef. 12-28-16 thru 6-23-17

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309-019-0240

Failure to Meet Fidelity Standards

(1) In addition to any plan of correction requirements issued by the Division under 309-008-0800(4)(c); If a provider certified under these rules for the provision of ACT services does not receive a minimum score of 114 on any fidelity review, the following shall occur:

(a) Technical assistance shall be made available by the Division approved reviewer to address problem areas identified in the fidelity review.

(b) Technical assistance will be available for a period of 90 days from the date of the fidelity review where the provider scored below the minimum established in section one of this rule; ;

(c) At the end of the 90 day period, a follow-up review will be conducted by the Division approved reviewer;

(d) The provider shall forward a copy of the amended fidelity review report to the provider's appropriate CCO; and

(e) The Division approved reviewer shall forward a copy of the fidelity review report to the Division.

(2) In addition to the standards set for suspension and revocation of a certificate in OAR 309-008-1100(1) and (2) a provider of ACT services may also have their certificate of approval suspended or revoked if the 90 day re-review results in a fidelity score of less than 114.

(3) A provider issued a notice of intent to apply a condition, revoke, suspend, or refusal to renew its certificate under these rules shall be entitled to request a hearing in accordance with ORS Chapter 183 and OAR 309-008-1300.

Stat. Auth.: ORS 161.390, 413.042, 430.256, 428.205 - 428.270, 430.640
Stats. Implemented: ORS 109.675, 161.390 - 161.400, 413.520 - 413.522, 430.010, 430.205-430.210, 430.240 - 430.640, 430.850 - 430.955, 461.549, 743A.168, 813.010 - 813.052 & 813.200 - 813.270
Hist.: MHS 11-2016(Temp), f. 6-29-16, cert. ef. 7-1-16 thru 12-27-16; MHS 18-2016, f. 11-28-16, cert. ef. 11-30-16; MHS 26-2016(Temp), f. 12-27-16, cert. ef. 12-28-16 thru 6-23-17

309-019-0241

Waiver of Minimum Fidelity Requirements

(1) HSD may grant a waiver of minimum ACT fidelity requirements and extend an ACT program's certification period so long as the waiver to the requirement would not diminish the effectiveness of the ACT model, violate the purposes of the program, or adversely affect the program participants' health and welfare.

(a) Waivers cannot be granted which are inconsistent with the individual participant's rights or federal, state, or local laws and regulations.

(b) HSD will review waivers to minimum fidelity requirements on a case-by-case basis.

(2) Waivers granted to ACT minimum fidelity requirements will result in an extension to the ACT program's certification period. An ACT program that is an HSD approved waiver period is eligible to receive Medicaid and State General Fund reimbursement for ACT services so long as the ACT program meets the following criteria:

(a) The ACT program must receive technical assistance from the Division approved reviewer and develop a plan to meet the minimum fidelity requirements; and

(b) The ACT program shall notify the appropriate CCO that the program is operating under an HSD approved waiver of minimum fidelity requirements.

(3) HSD shall grant waivers of minimum fidelity requirements for a period that shall not exceed 180 days.

(4) A waiver of minimum fidelity requirements may only be granted to ACT programs that have received a fidelity review within 12 months prior to the request.

(5) Requests for a waiver of minimum fidelity requirements shall be submitted to the Division's ACT program coordinator for approval.

Stat. Auth.: ORS 161.390, 413.042, 430.256, 428.205 - 428.270, 430.640
Stats. Implemented: ORS 109.675, 161.390 - 161.400, 413.520 - 413.522, 430.010, 430.205-430.210, 430.240 - 430.640, 430.850 - 430.955, 461.549, 743A.168, 813.010 - 813.052 & 813.200 - 813.270
Hist.: MHS 26-2016(Temp), f. 12-27-16, cert. ef. 12-28-16 thru 6-23-17

309-019-0242

ACT Program Operational Standards

(1) Hours of operation. All ACT teams must be available seven days a week, 24 hours a day by direct phone link and regularly accessible to individuals who work or who are involved in other scheduled vocational or rehabilitative services during the daytime hours. ACT teams may utilize split staff assignment schedule to achieve coverage.

(2) Crisis intervention. ACT teams are primarily responsible for crisis response and for after-hours calls related to individuals they serve. The ACT team must operate continuous and direct after-hours on-call system

with staff experienced in the program and skilled in crisis intervention procedures. The ACT team must have the capacity to respond rapidly to emergencies, both in person and by telephone. To ensure direct access to the ACT team, recipients must be given a phone list with the responsible ACT staff to contact after hours.

(3) Service Intensity

(a) The ACT team must have the capacity to provide the frequency and duration of staff-to-recipient contact required by each recipient's individualized service plan and their immediate needs;

(b) The ACT team must provide a minimum of 40% of all services in-community as demonstrated by the average in-community encounters reviewed in case record reviews;

(c) The ACT team must have the capacity to increase and decrease contacts based upon daily assessment of the individual's clinical need, with a goal of maximizing independence;

(d) The team must have the capacity to provide multiple contacts to persons in high need and a rapid response to early signs of relapse;

(e) The ACT team must have the capacity to provide support and skills development services to individuals' natural supports and collateral contacts;

(f) Natural supports and collateral contacts may include family, friends, landlords, or employers, consistent with the service plan. Natural supports and collateral contacts are typically not supports that are paid for services;

(g) The ACT team Psychiatrist and the Psychiatric Nurse Practitioner (PNP) must have scheduling flexibility to accommodate individual needs. If the individual will not come to meet the Psychiatrist and/or the PNP at the ACT office, the Psychiatrist and/or PNP must provide services as clinically indicated for that individual in the community. Secure telepsychiatry is also acceptable when clinically indicated;

(h) The ACT team must have the capacity to provide services via group modalities as clinically appropriate; e.g. for individuals with substance abuse disorders, and for family psychoeducation and wellness self-management services.

(4) ACT Staffing Requirements. An ACT team shall have sufficient staffing to meet the varying needs of individuals. As an all-inclusive treatment program, a variety of expertise must be represented on the team. ACT team staffing is to be clearly defined and dedicated to the operation of the team.

(5) Staffing Guidelines for ACT teams:

(a) A single ACT team cannot serve more than 120 individuals unless:

(A) It is expanding for the expressed purpose of splitting into two ACT teams within a 12 month period; and

(B) Also hires the appropriate staff to meet the required 1:10 staff to individuals served ratio.

(b) ACT team individual to clinical staff ratio cannot exceed 10:1;

(c) ACT team staff must be comprised of individual staff members in which a portion or all of their job responsibilities are defined as providing ACT services;

(d) Other than for coverage when a staff member has a leave of absence, ACT teams shall not rotate staff members into the ACT team that are not specifically assigned to the team as part of their position's job responsibilities;

(6) Minimum ACT team staffing requirements: No individual ACT staff member should be assigned less than .20 FTE for their role on the team unless filling the role of Psychiatrist or PNP. The ACT team psychiatrist or PNP who should not be assigned less than .10 FTE).

(7) Maximum ACT team staffing requirements: ACT teams will not exceed the following upper staffing limits:

(a) No more than eight (8) individual staff members per small ACT team;

(b) No more than 12 individual staff member per mid-size ACT team.

(b) No more than 18 individual staff members per large ACT team.

(8) ACT team staffing is multi-disciplinary. The core minimum staffing for an ACT team includes:

(a) Team Leader: This position is to be occupied by only one person. The team leader is a QMHP level clinician qualified to provide direct supervision to all ACT staff except the psychiatric care provider and nurse. Team Leader FTE is dictated by the number of individuals served by eh ACT team as follows:

(A) Small ACT teams: .5 FTE;

(B) Mid-sized ACT teams: 1.0 FTE; and

(C) Large ACT teams: 1.0 FTE

(b) Psychiatric Care Provider (Psychiatrist or PNP) FTE is dictated by the number of individuals served by eh ACT team as follows:

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(A) Small ACT teams: Minimum Psychiatric Care Provider FTE is .10 staffing 4 hours each week for 10 ACT individuals and should reflect the equivalent of 1.0 FTE per 100 clients as the number of individuals increases, e.g. .20 FTE for 20 individuals; .35 FTE for 35 individuals; .40 FTE for 40 individuals;

(B) Mid-sized ACT teams: Minimum Psychiatric Care Provider FTE is .40 FTE staffing 16 hours each week and should reflect the equivalent of 1.0 FTE per 100 individuals as the number of individuals increases FTE; and

(C) Large ACT teams: Minimum Psychiatric Care Provider FTE is .80 FTE staffing 32 hours each week and should reflect the equivalent of 1.0 FTE per 100 individuals as the number of individuals increases

(c) Nurse FTE is dictated by the number of individuals served by eh ACT team as follows:

(A) Small ACT teams: Minimum Nurse FTE is .20 FTE for 10 individuals, and should reflect the equivalent of 2.0 FTE per 100 individuals as the number of individuals increases;

(B) Mid-sized ACT teams: Minimum Nurse FTE is .80 FTE for 40 individuals, and should reflect the equivalent of 2.0 FTE per 100 individuals as the number of individuals increases; and

(C) Large ACT teams: Minimum Nurse FTE is 1.60 FTE for 80 individuals, and should reflect the equivalent of 2.0 FTE per 100 individuals as the number of individuals increases.

(d) Program Administrative Assistant FTE is not counted in the clinical staff ratio.

(9) Other clinical staff to achieve minimum staffing per ACT team model. ACT team minimum staffing must include clinical staff with the following FTE and specialized competencies:

(a) Substance Abuse Specialist FTE is dictated by the number of individuals served by the ACT team as follows:

(A) Small ACT teams: Minimum Substance Abuse Specialist FTE is 20 FTE SAS time for 10 individuals, and should reflect the equivalent of 2.0 FTE per 100 individuals as the number of individuals increases;

(B) Mid-sized ACT teams: Minimum Substance Abuse Specialist FTE is .80 FTE SAS time for 40 individuals, and should reflect the equivalent of 2.0 FTE per 100 individuals as the number of individuals increases; and

(C) Large ACT teams: Minimum Substance Abuse Specialist FTE is 1.60 FTE SAS time for 80 individuals, and should reflect the equivalent of 2.0 FTE per 100 individuals as the number of individuals increases;

(D) Substance Abuse Specialist specialized competencies must include:

- (i) Substance abuse assessment and substance abuse diagnosis
- (ii) Principles and practices of harm reduction
- (iii) Knowledge and application of motivational interviewing strategies

(b) Employment Specialist FTE is dictated by the number of individuals served by the ACT team as follows:

(A) Small ACT teams: Minimum Employment Specialist FTE is 20 FTE SAS time for 10 individuals, and should reflect the equivalent of 2.0 FTE per 100 individuals as the number of individuals increases;

(B) Mid-sized ACT teams: Minimum Employment Specialist FTE is .80 FTE SAS time for 40 individuals, and should reflect the equivalent of 2.0 FTE per 100 individuals as the number of individuals increases; and

(C) Large ACT teams: Minimum Employment Specialist FTE is 1.60 FTE for 80 individuals, and should reflect the equivalent of 2.0 FTE per 100 individuals as the number of individuals increases;

(D) Employment Specialist specialized competencies must include:

- (i) Competent in the IPS Supported Employment fidelity model;
- (ii) Vocational assessment;
- (iii) Job exploration and matching to recipient's interest and strengths;
- (iv) Skills development related to choosing, securing, and maintaining employment;

(c) Peer Support and Wellness Specialist FTE is dictated by the number of individuals served by the ACT team as follows:

(A) Small ACT teams: Minimum Peer Support and Wellness Specialist FTE is 20 FTE for 10 individuals, and should reflect the equivalent of 2.0 FTE per 100 individuals as the number of individuals increases;

(B) Mid-sized ACT teams: Minimum Peer Support and Wellness Specialist FTE is .80 FTE for 40 individuals, and should reflect the equivalent of 2.0 FTE per 100 individuals as the number of individuals increases; and

(C) Large ACT teams: Minimum Peer Support and Wellness Specialist FTE is 1.60 FTE for 80 individuals, and should reflect the equivalent of 2.0 FTE per 100 individuals as the number of individuals increases;

alent of 2.0 FTE per 100 individuals as the number of individuals increases;

(D) Employment Specialist specialized competencies must include:

(i) Trained by an OHA Approved Peer Support Specialist or Peer Wellness Specialist Training Program as described in OAR 410-180-0300 — 410-180-0380. A directory of Approved Peer Support Specialist or Peer Wellness Specialist Training Programs can be found at Division's Peer Delivered Services website; and

(ii) Be an OHA Office of Equity and Inclusion (OEI) Certified Peer Support Specialist or Peer Wellness Specialist before providing ACT services.

(10) ACT Team Staffing Core Competencies.

(a) At hire, all clinical staff on an ACT team must have experience in providing direct services related to the treatment and recovery of individuals with a serious and persistent mental illness. Staff should be selected consistent with the ACT core operating principles and values. Clinical staff should have demonstrated competencies in clinical documentation and motivational interviewing;

(b) All staff will demonstrate basic core competencies in designated areas of practice, including the Assertive Community Treatment core principles, integrated mental health and substance abuse treatment, supported employment, psycho-education and wellness self-management;

(c) All staff must complete ACT receive ACT 101 training from the Division approved reviewer prior to receiving HSD provisional certification; and

(d) All professional ACT team staff must have obtained the appropriate licensure to provide services in Oregon for their respective area of specialization.

(11) ACT Team meetings. The ACT team shall conduct daily organizational staff meetings at least four (4) days per week and regularly scheduled times per a schedule established by the team leader. These meetings will be conducted in accordance with the following procedures:

(a) The ACT team shall maintain in writing:

(A) A roster of the individuals served in the program; and

(B) For each individual, a brief documentation of any treatment or service contacts that have occurred during the last 24 hours and a concise, behavioral description of the individual's status that day;

(b) The daily organizational staff meeting includes a review of the treatment contacts which occurred the day before and provides a systematic means for the team to assess the day-to-day progress and status of all clients.

(c) During the daily organizational staff meeting, the ACT team shall also revise treatment plans as needed, plan for emergency and crisis situations, and add service contacts to the daily staff assignment schedule per the revised treatment plans.

(12) Treatment planning meetings. The ACT team shall conduct treatment planning meetings under the supervision of the team leader and the Psychiatrist or PNP. These treatment planning meetings shall:

(a) Convene at regularly scheduled times per a written schedule set by the team leader;

(b) Occur and be scheduled when the majority of the team members can attend, including the psychiatrist or psychiatric nurse practitioner, team leader, and all members of the treatment team;

(c) Require individual staff members to present and systematically review and integrate an individual's information into a holistic analysis and prioritize problems; and

(d) Occur with sufficient frequency and duration to make it possible for all staff to:

(A) Be familiar with each individual and their goals and aspirations;

(B) Participate in the ongoing assessment and reformulation of problems;

(C) Problem-solve treatment strategies and rehabilitation options;

(D) Participate with the individual and the treatment team in the development and the revision of the treatment plan; and

(E) Fully understand the treatment plan rationale in order to carry out each individual's plan.

(13) ACT Assessment and Individualized Treatment Planning.

(a) An initial assessment and treatment plan is completed upon each individual's admission to the ACT program; and

(b) Individualized treatment plans for ACT team served individuals must be updated at least every six (6) months.

(14) Service Note Content.

(a) More than one intervention, activity, or goal may be reported in one service note, if applicable.

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(b) ACT team staff must complete a service note for each contact or intervention provided to an individual. Each service note must include all of the following:

- (A) Individual's name;
- (B) Medicaid identification number or client identification number;
- (C) Date of service provision;
- (D) Name of service provided;
- (E) Type of contact;
- (F) Place of service;
- (G) Purpose of the contact as it relates to the goal(s) on the individual's Treatment Plan;

(H) Description of the intervention provided. Documentation of the intervention must accurately reflect substance abuse related treatment for the duration of time indicated;

(I) Duration of service: Amount of time spent performing the intervention;

(J) Assessment of the effectiveness of the intervention and the Individual's progress towards the individual's goal;

(K) Signature and credentials or job title of the staff member who provided the service; and

(L) Each service note page must be identified with the beneficiary's name and client identification number.

(c) Documentation of discharge or transition to lower levels of care must include all of the following:

(A) The reasons for discharge or transition as stated by both the individual and the ACT team;

(B) The Individual's biopsychosocial status at discharge or transition;

(C) A written final evaluation summary of the Individual's progress toward the goals set forth in the Person Centered Treatment Plan;

(D) A plan for follow-up treatment, developed in conjunction with the Individual; and

(E) The signatures of the individual, the team leader, and the Psychiatrist or PNP.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 109.675, 161.390 - 161.400, 413.520 - 413.522, 430.010, 430.205-430.210, 430.240 - 430.640, 430.850 - 430.955, 461.549, 743A.168, 813.010 - 813.052 & 813.200 - 813.270

Hist.: MHS 26-2016(Temp), f. 12-27-16, cert. ef. 12-28-16 thru 6-23-17

309-019-0245

Admission Criteria

Participants must meet the Medically Appropriate standard as designated in OAR 309-019-0105. Participants who are Medically Appropriate must have the following characteristics:

(1) Participants diagnosed with severe and persistent mental illness as listed in the Diagnostic and Statistical Manual, Fifth Edition (DSM V) of the American Psychiatric Association that seriously impair their functioning in community living. Priority is given to people with schizophrenia, other psychotic disorders (e.g., schizoaffective disorder), and bipolar disorder because these illnesses more often cause long-term psychiatric disability.

(2) Individuals with a primary diagnosis of a substance use disorder, or intellectual developmental disabilities, or borderline personality disorder, or traumatic brain injury, or an autism spectrum disorder are not the intended recipients of ACT and should not be referred to ACT if they do not have a co-occurring, qualifying psychiatric disorder.

(3) Participants with other psychiatric illnesses are eligible dependent on the level of the long-term disability.

(4) Participants with significant functional impairments as demonstrated by at least one of the following conditions:

(a) Significant difficulty consistently performing the range of practical daily living tasks required for basic adult functioning in the community (e.g., caring for personal business affairs; obtaining medical, legal, and housing services; recognizing and avoiding common dangers or hazards to self and possessions; meeting nutritional needs; maintaining personal hygiene) or persistent or recurrent difficulty performing daily living tasks except with significant support or assistance from others such as friends, family, or relatives.

(b) Significant difficulty maintaining consistent employment at a self-sustaining level or significant difficulty consistently carrying out the home-maker role (e.g., household meal preparation, washing clothes, budgeting, or child-care tasks and responsibilities).

(c) Significant difficulty maintaining a safe living situation (e.g., repeated evictions or loss of housing).

(d) Participants with one or more of the following problems, which are indicators of continuous high service needs (i.e., greater than eight hours per month):

(5) High use of acute psychiatric hospitals (e.g., two or more admissions per year) or psychiatric emergency services.

(6) Intractable (i.e., persistent or very recurrent) severe major symptoms (e.g., affective, psychotic, suicidal).

(7) Coexisting substance abuse disorder of significant duration (e.g., greater than 6 months).

(8) High risk or recent history of criminal justice involvement (e.g., arrest, incarceration).

(9) Significant difficulty meeting basic survival needs, residing in substandard housing, homelessness, or imminent risk of becoming homeless.

(10) Residing in an inpatient or supervised community residence in the community where ACT services are available, but clinically assessed to be able to live in a more independent living situation if intensive services are provided, or requiring a residential or institutional placement if more intensive services are not available.

(11) Difficulty effectively utilizing traditional office-based outpatient services. The ACT program provides community based, long-term or time-unlimited services and is not intended to be in and of itself a transitional program.

Stat. Auth.: ORS 161.390, 413.042, 430.256, 428.205 - 428.270, 430.640

Stats. Implemented: ORS 109.675, 161.390 - 161.400, 413.520 - 413.522, 430.010, 430.205-430.210, 430.240 - 430.640, 430.850 - 430.955, 461.549, 743A.168, 813.010 - 813.052 & 813.200 - 813.270

Hist.: MHS 11-2016(Temp), f. 6-29-16, cert. ef. 7-1-16 thru 12-27-16; MHS 18-2016, f. 11-28-16, cert. ef. 11-30-16; MHS 26-2016(Temp), f. 12-27-16, cert. ef. 12-28-16 thru 6-23-17

309-019-0270

Definitions

(1) "Competitive Integrated Employment" means full-time or part time work: at minimum wage or higher, at a rate that 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 skill; with eligibility for the level of benefits provided to other employees; 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 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.

(2) "Division Approved Reviewer" means the Oregon Supported Employment Center for Excellence (OSECE). OSECE is the Division's contracted entity that is responsible for conducting IPS Supported Employment fidelity reviews, training, and technical assistance to support new and existing IPS Supported Employment programs statewide.

(3) "Fidelity" for the purposes of the IPS Supported Employment program means the provider is providing services that are faithful to the evidence-based practice model and obtains a satisfactory score from the Oregon Supported Employment Center for Excellence for IPS Supported Employment as part of their regular reviews.

(4) "Vocational services" for the purposes of the ACT program in Oregon means employment support services that will lead to competitive integrated employment. The Division encourages the use of fidelity IPS Supported Employment for providing vocational services within the ACT program.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 109.675, 161.390 - 161.400, 413.520 - 413.522, 430.010, 430.205-430.210, 430.240 - 430.640, 430.850 - 430.955, 461.549, 743A.168, 813.010 - 813.052 & 813.200 - 813.270

Hist.: MHS 26-2016(Temp), f. 12-27-16, cert. ef. 12-28-16 thru 6-23-17

309-019-0275

Individual Placement and Support (IPS) Supported Employment Overview

(1) Supported Employment is an evidence-based practice for individuals with serious mental illness.

(2) Supported Employment is characterized by:

(a) Emphasis on competitive employment;

(b) Every person who is interested in work is eligible for services regardless of symptoms, substance use disorders, treatment decisions, or any other issue;

(c) Employment services are integrated with mental health treatment;

(d) Individuals have access to personalized benefits planning;

(e) Job search begins soon after a person expresses interest in working; and

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(f) Client preferences for jobs, and preferences for service delivery, are honored.

- (3) Supported Employment services include, but are not limited to:
 - (a) Job development;
 - (b) Supervision and job training;
 - (c) On-the-job visitation;
 - (d) Consultation with the employer;
 - (e) Job coaching;
 - (f) Counseling;
 - (g) Skills training; and/or
 - (h) Transportation.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 109.675, 161.390 - 161.400, 413.520 - 413.522, 430.010, 430.205-430.210, 430.240 - 430.640, 430.850 - 430.955, 461.549, 743A.168, 813.010 - 813.052 & 813.200 - 813.270

Hist.: MHS 26-2016(Temp), f. 12-27-16, cert. ef. 12-28-16 thru 6-23-17

309-019-0280

Supported Employment Providers

(1) In order to be eligible for Medicaid or State General Fund reimbursement, Supported Employment services shall be provided only by those providers meeting the following minimum qualifications:

- (a) The provider must hold and maintain a current certificate under OAR 309-008, issued by the Division, for the purpose of providing behavioral health treatment services; and
- (b) The provider must hold and maintain a current certificate, issued by the Division, under OAR 309-019-0225 through 309-019-026055, 309-019-019-for the purpose of providing Assertive Community Treatment; and

(c) A provider certified to provide Supported Employment services under this rule must be reviewed annually for fidelity adherence by the Division approved reviewer and achieve a minimum score of 100 on the fidelity scale. Providers shall not bill Medicaid or use General Funds unless they are subject to an annual fidelity review by the Division approved reviewer.

(A) The Division approved reviewer shall forward a copy of the annual fidelity review report to the Division approved reviewer and provide a copy of the review to the provider.

(B) The provider shall forward a copy of the annual fidelity review report to the appropriate CCO. (1) To be eligible for Medicaid reimbursement, Supported Employment services must be provided by a Certified Supported Employment Provider.

(2) A Provider already holding a certificate of approval under OAR 309-008 may request the addition of ACT services be added to their certificate of approval via the procedure outlined in OAR 309-008-0400 and 309-008-1000(1).

(a) In addition to application materials required in OAR 309-008 and this rule, the provider must also submit to the Division a letter of support which indicates receipt of technical assistance and training from the Division approved Supported Employment reviewer.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 109.675, 161.390 - 161.400, 413.520 - 413.522, 430.010, 430.205-430.210, 430.240 - 430.640, 430.850 - 430.955, 461.549, 743A.168, 813.010 - 813.052 & 813.200 - 813.270

Hist.: MHS 26-2016(Temp), f. 12-27-16, cert. ef. 12-28-16 thru 6-23-17

309-019-0285

Continued Fidelity Requirements

(1) In addition to the minimum requirements established in OAR 309-019-0275, in order to maintain a Supported Employment provider designation on the Division issued certificate, a provider must submit to their CCO an annual fidelity review report by the Division approved reviewer with a minimum score of 100.

(2) Providers certified to provide Supported Employment services under this rule that achieve a fidelity score of 100 or better when reviewed by the Division Approved Supported Employment Reviewer are certified for 12 months.

(a) Extension of Fidelity reviews has no bearing on the frequency of re-certification reviews required under OAR 309-008.

(3) Fidelity reviews will be conducted utilizing the Substance Abuse and Mental Health Services Supported Employment Fidelity Scale, which will be made available to providers electronically.

(4) Provider shall cooperate with the Division Approved Supported Employment Reviewer for the purpose of improving Supported Employment Services.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 109.675, 161.390 - 161.400, 413.520 - 413.522, 430.010, 430.205-430.210, 430.240 - 430.640, 430.850 - 430.955, 461.549, 743A.168, 813.010 - 813.052 & 813.200 - 813.270

Hist.: MHS 26-2016(Temp), f. 12-27-16, cert. ef. 12-28-16 thru 6-23-17

309-019-0290

Failure to Meet Fidelity Standards

In addition to any plan of correction requirements issued by the Division under 309-008-0800(4)(c); If a Provider certified under these rules to provide Supported Employment services does not receive a minimum score of 100 on a fidelity review, the following shall occur:

(1) Technical assistance shall be made available by the Division approved reviewer for a period of 90 days to address problem areas identified in the fidelity review;

(2) At the end of the 90 day period, a follow-up review will be conducted by the Division approved reviewer; and

(3) The provider shall forward a copy of the amended fidelity review report to the provider's appropriate CCO.

(4) The Division approved reviewer shall forward a copy of the fidelity review report to the Division.

(a) In addition to the standards set for suspension and revocation of a certificate in OAR 309-008-1100(1) & (2) a provider of Supported Employment services may also have their certificate of approval suspended or revoked if the 90 day re-review results in a fidelity score of less than 100.

(b) A provider issued a notice of intent to apply a condition, revoke, suspend, or refusal to renew its certificate under these rules shall be entitled to request a hearing in accordance with ORS Chapter 183 and OAR 309-008-1300.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 109.675, 161.390 - 161.400, 413.520 - 413.522, 430.010, 430.205-430.210, 430.240 - 430.640, 430.850 - 430.955, 461.549, 743A.168, 813.010 - 813.052 & 813.200 - 813.270

Hist.: MHS 26-2016(Temp), f. 12-27-16, cert. ef. 12-28-16 thru 6-23-17

309-019-0295

Reporting Requirements

Providers certified by the Division to provide Supported Employment services shall submit quarterly outcomes reports, using forms and procedures prescribed by the Division, within 45 days following the end of each subject quarter to the Division or the Division approved reviewer. Each quarterly report shall provide the following information:

(1) All individuals who received Supported Employment in the reporting quarter:

(2) Individuals who receive Supported Employment services who are employed in competitive integrated employment; and

(3) Individuals who discontinued receiving Supported Employment services and are employed in competitive integrated employment; and

(4) Individuals who received Supported Employment services as a part of the Assertive Community Treatment Program.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 109.675, 161.390 - 161.400, 413.520 - 413.522, 430.010, 430.205-430.210, 430.240 - 430.640, 430.850 - 430.955, 461.549, 743A.168, 813.010 - 813.052 & 813.200 - 813.270

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Rule Caption: Temporary amendments to OAR 309-022 regarding intensive and emergency psychiatric interventions for children and adolescents.

Adm. Order No.: MHS 27-2016(Temp)

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Subject: These rules prescribe minimum standards for services and supports provided by addictions and mental health providers approved by the Health Systems Division (HSD) of the Oregon Health Authority.

Rules Coordinator: Nola Russell—(503) 945-7652

309-022-0105

Definitions

(1) "Abuse of a child" means the circumstances defined in ORS 419B.005.

(2) "Health Systems Services and Supports" means all services and supports including but not limited to, Outpatient Community Mental Health

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Services and Supports for Children and Adults, Intensive Treatment Services for Children, Outpatient and Residential Substance Use Disorders Treatment Services and Outpatient and Residential Problem Gambling Treatment Services.

(3) “Adolescent” means an individual from 12 through 17 years of age, or those individuals who are determined to be developmentally appropriate for youth services.

(4) “Assessment” means the process of obtaining sufficient information, through a face-to-face interview to determine a diagnosis and to plan individualized services and supports.

(5) “Authority” means the Oregon Health Authority.

(6) “Behavioral Health” means mental health, mental illness, addictive health and addiction disorders.

(7) “Behavior Support Plan” means the individualized proactive support strategies that are used to support positive behavior.

(8) “Behavior Support Strategies” means proactive supports designed to replace challenging behavior with functional, positive behavior. The strategies address environmental, social, neuro-developmental and physical factors that affect behavior.

(9) “Care Coordination” means a process-oriented activity to facilitate ongoing communication and collaboration to meet multiple needs. Care coordination includes facilitating communication between the family, natural supports, community resources, and involved providers and agencies; organizing, facilitating and participating in team meetings; and providing for continuity of care by creating linkages to and managing transitions between levels of care and transitions for young adults in transition to adult services.

(10) “Certificate” means the document or documents issued by the Division, which identifies and declares certification of a provider pursuant to OAR 309-008-0100 to 309-008-1600. A letter accompanying issuance of the certificate will detail the scope and approved service delivery locations of the certificate.

(11) “Chemical Restraint” means the administration of medication for the acute management of potentially harmful behavior. Chemical restraint is prohibited in the services regulated by these rules.

(12) “Chief Officer” means the Chief Health Systems Officer of the Oregon Health Authority, or his or her designee.

(13) “Child” means a person under the age of 18. An individual with Medicaid eligibility, who is in need of services specific to children, adolescents, or young adults in transition, must be considered a child until age 21 for purposes of these rules.

(14) “Children’s Emergency Safety Intervention Specialist (CESIS)” means a Qualified Mental Health Professional (QMHP) who is licensed to order, monitor, and evaluate the use of seclusion and restraint in accredited and certified facilities providing intensive mental health treatment services to individuals less than 21 years of age.

(15) “Clinical Supervision” means oversight by a qualified Clinical Supervisor of addictions and mental health services and supports provided according to this rule, including ongoing evaluation and improvement of the effectiveness of those services and supports.

(16) “Clinical Supervisor” means a person qualified to oversee and evaluate addictions or mental health services and supports.

(17) “Community Mental Health Program” (CMHP) means an entity that is responsible for planning and delivery of services for individuals with substance use or mental illness diagnoses, operated in a specific geographic area of the state under an intergovernmental agreement or a direct contract with the Addictions and Mental Health Division (AMH).

(18) “Co-occurring Disorder” means the existence of both, a substance use disorder and also mental health disorder.

(19) “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 Oregon Health Authority under ORS 414.625 to be accountable for care management and to provide integrated and coordinated health care for each of the organization’s members

(20) “Community Mental Health Program (CMHP)” means the organization of various services for persons with a mental health diagnosis or addictive disorders, operated by, or contractually affiliated with, a local mental health authority and operated in a specific geographic area of the state under an agreement with the Division pursuant to OAR 309-014-0000.

(21) “Criminal Records Check” means the Oregon Criminal Records Check and the processes and procedures required by OAR 407-007-0000 through 407-007-0370.

(22) “Crisis” means either an actual or perceived urgent or emergent situation that occurs when an individual’s stability or functioning is dis-

rupted and there is an immediate need to resolve the situation to prevent a serious deterioration in the individual’s mental or physical health or to prevent referral to a significantly higher level of care.

(23) “Cultural Competence” means the process by which people and systems respond respectfully and effectively to people of all cultures, languages, classes, races, ethnic backgrounds, disabilities, religions, genders, sexual orientations and other diversity factors in a manner that recognizes, affirms, and values the worth of individuals, families and communities and protects and preserves the dignity of each.

(24) “Declaration for Mental Health Treatment” means a written statement of an individual’s preferences concerning his or her mental health treatment. The declaration is made when the individual is able to understand and legally make decisions related to such treatment. It is honored, as clinically appropriate, in the event the individual becomes unable to make such decisions.

(25) “Diagnosis” means the principal mental health, substance use or problem gambling diagnosis listed in the Diagnostic and Statistical Manual of Mental Disorders (DSM). The diagnosis is determined through the assessment and any examinations, tests, or consultations suggested by the assessment, and are the medically appropriate reason for services.

(26) “Division” means the Health Systems Division.

(27) “DSM” means the most recent version of the Diagnostic and Statistical Manual of Mental Disorders, published by the American Psychiatric Association.

(28) “Emergency Safety Intervention” means the use of seclusion or personal restraint under OAR 309-022-0175 of these rules, as an immediate response to an unanticipated threat of violence or injury to an individual, or others.

(29) “Emergency Safety Intervention Training” means a Division approved course that includes an identified instructor, a specific number of face-to-face instruction hours, a component to assess competency of the course materials, and an established curriculum including the following:

(a) Prevention of emergency safety situations using positive behavior support strategies identified in the individual’s behavior support plan;

(b) Strategies to safely manage emergency safety situations; and

(c) De-escalation and debriefing.

(30) “Emergency Safety Situation” means an unanticipated behavior that places the individual or others at serious threat of violence or injury if no intervention occurs and that calls for an emergency safety intervention as defined in this section.

(31) “Emergent” means the onset of symptoms requiring attention within 24 hours to prevent serious deterioration in mental or physical health or threat to safety.

(32) “Entry” means the act or process of acceptance and enrollment into services regulated by this rule.

(33) “Family” means the biological or legal parents, siblings, other relatives, foster parents, legal guardians, spouse, domestic partner, caregivers and other primary relations to the individual whether by blood, adoption, legal or social relationships. Family also means any natural, formal or informal support persons identified as important by the individual.

(34) “Family Support” means the provision of peer delivered services to persons defined as family to the individual. It includes support to caregivers at community meetings, assistance to families in system navigation and managing multiple appointments, supportive home visits, peer support, parent mentoring and coaching, advocacy, and furthering efforts to develop natural and informal community supports.

(35) Family Support Specialist means an individuals who meets qualification criteria under OAR 410-180 and provides peer delivered services to family member who has experience parenting a child who is a current or former consumer of mental health or addiction treatment or is facing or has faced difficulties in accessing education, health and wellness services due to a mental health or behavioral health barrier

(36) “Gender Identity” means a person’s self-identification of gender, without regard to legal or biological identification, including, but not limited to persons identifying themselves as male, female, transgender and transsexual.

(37) “Gender Presentation” means the external characteristics and behaviors that are socially defined as either masculine or feminine, such as dress, mannerisms, speech patterns and social interactions.

(38) “Grievance” means a formal complaint submitted to a provider verbally, or in writing, by an individual, or the individual’s chosen representative, pertaining to the denial or delivery of services and supports.

(39) “Guardian” means a person appointed by a court of law to act as guardian of a minor or a legally incapacitated person.

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(40) "HIPAA" means the federal Health Insurance Portability and Accountability Act of 1996 and the regulations published in Title 45, parts 160 and 164, of the Code of Federal Regulations (CFR).

(41) "Individual" means any person being considered for or receiving services and supports regulated by these rules.

(42) "Informed Consent for Services" means that the service options, risks and benefits have been explained to the individual and guardian, if applicable, in a manner that they comprehend, and the individual and guardian, if applicable, have consented to the services on, or prior to, the first date of service.

(43) "Intensive Outpatient Services and Supports (IOSS)" means a specialized set of comprehensive in-home and community-based supports and mental health treatment services for children that are developed by the child and family team and delivered in the most integrated setting in the community.

(44) "Intensive Treatment Services (ITS)" means the range of services in the system of care comprised of Psychiatric Residential Treatment Facilities (PRTF) and Psychiatric Day Treatment Services (PDTS), or other services as determined by the Division, that provide active psychiatric treatment for children with severe emotional disorders and their families.

(45) "Interdisciplinary Team" means the group of people designated to advise in the planning and provision of services and supports to individuals receiving ITS services and may include multiple disciplines or agencies. For Psychiatric Residential Treatment Facilities (PRTF), the composition of the interdisciplinary team must be consistent with the requirements of 42 CFR Part 441.156.

(46) "Intern" or "Student" means a person who provides a paid or unpaid program service to complete a credentialed or accredited educational program recognized by the state of Oregon.

(47) "Juvenile Psychiatric Security Review Board (JPSRB)" means the entity described in ORS 161.385.

(48) "Level of Care" means the range of available services provided from the most integrated setting to the most restrictive and most intensive in an inpatient setting.

(49) "Licensed Health Care Professional" means a practitioner of the healing arts, acting within the scope of his or her practice under State law, who is licensed by a recognized governing board in Oregon.

(50) "Licensed Medical Practitioner (LMP)" means a person who meets the following minimum qualifications as documented by the Local Mental Health Authority (LMHA) or designee:

- (a) Physician licensed to practice in the State of Oregon; or
- (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

(d) Whose training, experience and competence demonstrate the ability to conduct a mental health assessment and provide medication management.

(e) For IOSS and ITS providers, LMP means a board-certified or board-eligible child and adolescent psychiatrist licensed to practice in the State of Oregon.

(51) "Local Mental Health Authority (LMHA)" means one of the following entities:

- (a) The board of county commissioners of one or more counties that establishes or operates a CMHP;
- (b) The tribal council, in the case of a federally recognized tribe of Native Americans that elects to enter into an agreement to provide mental health services; or
- (c) A regional local mental health authority comprised of two or more boards of county commissioners.

(52) "Mandatory Reporter" means any public or private official, as defined in ORS 419B.005(3), who comes in contact with or has reasonable cause to believe that an individual has suffered abuse, or that any person with whom the official comes in contact with, has abused the individual. Pursuant to 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) "Mechanical restraint" means any device attached or adjacent to the resident's body that he or she cannot easily remove that restricts freedom of movement or normal access to his or her body. Mechanical restraint is prohibited in the services regulated by these rules.

(54) "Medicaid" means the federal grant-in-aid program to state governments to provide medical assistance to eligible persons, under Title XIX of the Social Security Act. (56) "Medical Supervision" means an LMP's review and approval, at least annually, of the medical appropriateness of

services and supports identified in the Service Plan for each individual receiving mental health services for one or more continuous years.

(55) "Medically Appropriate" means services and medical supplies required for prevention, diagnosis or treatment of a physical or behavioral health condition, or injuries, and which are:

(a) Consistent with the symptoms of a health condition or treatment of a health condition;

(b) Appropriate with regard to standards of good health practice and generally recognized by the relevant scientific community and professional standards of care as effective;

(c) Not solely for the convenience of an individual or a provider of the service or medical supplies; and

(d) The most cost effective of the alternative levels of medical services or medical supplies that can be safely provided to an individual.

(56) "Mental Health Intern" means a person who meets qualifications for QMHA but does not have the necessary graduate degree in psychology, social work or behavioral science field to meet the educational requirement of QMHP. The person must:

(a) Be currently enrolled in a graduate program for a master's degree in psychology, social work or in a behavioral science field;

(b) Have a collaborative educational agreement with the CMHP, or other provider, and the graduate program;

(c) Work within the scope of his/her practice and competencies identified by the policies and procedures for credentialing of clinical staff as established by provider; and

(d) Receive, at minimum, weekly supervision by a qualified clinical supervisor employed by the provider of services.

(57) "Oregon Health Authority" means the Oregon Health Authority of the State of Oregon.

(58) "Outreach" means the delivery of behavioral health services, referral services and case management services in non-traditional settings, such as, but not limited to, the individual's residence, shelters, streets, jails, transitional housing sites, drop-in centers, single room occupancy hotels, child welfare settings, educational settings or medical settings. It also refers to attempts made to engage or re-engage an individual in services by such means as letters or telephone calls.

(59) "Peer" means any person supporting an individual, or a family member of an individual, who has similar life experience, either as a current or former recipient of addictions or mental health services, or as a family member of an individual who is a current or former recipient of addictions or mental health services.

(60) "Peer Delivered Services" means an array of agency or community-based services and supports provided by peer wellness specialists, and peer support specialists, to individuals or family members with similar lived experience, that are designed to support the needs of individuals and families as applicable.

(61) "Peer Support Specialist" means a person providing peer delivered services to an individual or family member with similar life experience, under the supervision of a qualified Clinical Supervisor. A Peer Support Specialist must complete a Division approved training program as required in OAR 410-180-0300 to 0380 and be:

(a) A self-identified person currently or formerly receiving mental health services; or

(b) A self-identified person in recovery from a substance use or gambling disorder, who meets the abstinence requirements for recovering staff in substance use disorders or gambling treatment programs.

(62) "Personal Restraint" means the application of physical force without the use of any device, for the purpose of restraining the free movement of an individual's body to protect the individual, or others, from immediate harm. Personal restraint does not include briefly holding without undue force an individual to calm or comfort him or her, or holding an individual's hand to safely escort him or her from one area to another. Personal restraint can be used only in approved ITS programs as an emergency safety intervention under OAR 309-022-0175.

(63) "Program" means a particular type or level of service that is organizationally distinct.

(64) "Program Administrator" or "Program Director" means a person with appropriate professional qualifications and experience, who is designated to manage the operation of a program.

(65) "Program Staff" means an employee or person who, by contract with the program, provides a service and who has the applicable competencies, qualifications or certification, required in this rule to provide the service.

(66) "Provider" means a person, organizational provider as defined in ORS 430.637(1)(b), tribal organization, or CMHP that holds a current cer-

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tificate listed in OAR 309-008-0100(2) to provide behavioral health treatment services pursuant to these and applicable service delivery rules. (67) “Psychiatrist” means a physician licensed pursuant to ORS 677.010 to 677.228 and 677.410 to 677.450 by the Board of Medical Examiners for the State of Oregon and who has completed an approved residency training program in psychiatry.

(68) “Psychiatric Day Treatment Services (PDTs)” means the comprehensive, interdisciplinary, non-residential, community-based program certified under this rule consisting of psychiatric treatment, family treatment and therapeutic activities integrated with an accredited education program.

(69) “Psychiatric Residential Treatment Facility (PRTF)” means facilities that are structured residential treatment environments with daily 24-hour supervision and active psychiatric treatment including Psychiatric Residential Treatment Services (PRTS), Secure Children’s Inpatient Treatment Programs (SCIP), Secure Adolescent Inpatient Treatment Programs (SAIP), and Sub-acute psychiatric treatment for children who require active treatment for a diagnosed mental health condition in a 24-hour residential setting.

(70) “Psychiatric Residential Treatment Services (PRTS)” means services delivered in a PRTF that include 24-hour supervision for children who have serious psychiatric, emotional or acute mental health conditions that require intensive therapeutic counseling and activity and intensive staff supervision, support and assistance.

(71) “Psychologist” means a psychologist licensed by the Oregon Board of Psychologist Examiners.

(72) “Publicly Funded” means financial support, in part or in full, with revenue generated by a local, state or federal government.

(73) “Qualified Mental Health Associate (QMHA)” means a person delivering services under the direct supervision of a QMHP who meets the minimum qualifications as authorized by the LMHA, or designee, and specified in 309-022-0125.

(74) “Qualified Mental Health Professional (QMHP)” means a LMP or any other person meeting the minimum qualifications as authorized by the LMHA, or designee, and specified in 309-022-0125.

(75) “Quality Assessment and Performance Improvement” means the structured, internal monitoring and evaluation of services to improve processes, service delivery and service outcomes.

(76) “Recovery” means a process of healing and transformation for a person to achieve full human potential and personhood in leading a meaningful life in communities of his or her choice.

(77) “Reportable Incident” means a serious incident involving an individual in an ITS program that must be reported in writing to the Division within 24 hours of the incident, including, but not limited to, serious injury or illness, act of physical aggression that results in injury, suspected abuse or neglect, involvement of law enforcement or emergency services, or any other serious incident that presents a risk to health and safety.

(78) “Representative” means a person who acts on behalf of an individual, at the individual’s request, with respect to a grievance, including, but not limited to a relative, friend, employee of the Division, attorney or legal guardian.

(79) “Resilience” means the universal capacity that a person uses to prevent, minimize, or overcome the effects of adversity. Resilience reflects a person’s strengths as protective factors and assets for positive development.

(80) “Respite care” means planned and emergency supports designed to provide temporary relief from care giving to maintain a stable and safe living environment. Respite care can be provided in or out of the home. Respite care includes supervision and behavior support consistent with the strategies specified in the Service Plan.

(81) “Screening” means the process to determine whether the individual needs further assessment to identify circumstances requiring referrals or additional services and supports.

(82) “Seclusion” means the involuntary confinement of a resident alone in a room or an area from which the resident is physically prevented from leaving. Seclusion can be used only in approved ITS programs as an emergency safety intervention specified in OAR 309-022-0175.

(83) “Secure Children’s Inpatient Programs (SCIP) and Secure Adolescent Inpatient Programs (SAIP)” means ITS programs that are designed to provide inpatient psychiatric stabilization and treatment services to children up to age 14 for SCIP services and individuals under the age of 21 for SAIP services, who require a secure intensive treatment setting.

(84) “Service Plan” means a comprehensive plan for services and supports provided to or coordinated for an individual and his or her family,

as applicable, that is reflective of the assessment and the intended outcomes of service.

(85) “Service Note” means the written record of services and supports provided, including documentation of progress toward intended outcomes, consistent with the timelines stated in the Service Plan.

(86) “Service Record” means the documentation, written or electronic, regarding an individual and resulting from entry, assessment, orientation, services and supports planning, services and supports provided, and transfer.

(87) “Services” means those activities and treatments described in the Service Plan that are intended to assist the individual’s transition to recovery from a substance use disorder, problem gambling disorder or mental health condition, and to promote resiliency, and rehabilitative and functional individual and family outcomes.

(88) “Signature” means any written or electronic means of entering the name, date of authentication and credentials of the person providing a specific service or the person authorizing services and supports. Signature also means any written or electronic means of entering the name and date of authentication of the individual receiving services, the guardian of the individual receiving services, or any authorized representative of the individual receiving services.

(89) “Skills Training” means providing information and training to individuals and families designed to assist with the development of skills in areas including, but not limited to, anger management, stress reduction, conflict resolution, self-esteem, parent-child interactions, peer relations, drug and alcohol awareness, behavior support, symptom management, accessing community services and daily living.

(90) “Sub-Acute Psychiatric Care” means services that are provided by nationally accredited providers to children who need 24-hour intensive mental health services and supports, provided in a secure setting to assess, evaluate, stabilize or resolve the symptoms of an acute episode that occurred as the result of a diagnosed mental health condition.

(91) “Supports” means activities, referrals and supportive relationships designed to enhance the services delivered to individuals and families for the purpose of facilitating progress toward intended outcomes.

(92) “Transfer” means the process of assisting an individual to transition from the current services to the next appropriate setting or level of care.

(93) “Trauma Informed Services” means services that are reflective of the consideration and evaluation of the role that trauma plays in the lives of people seeking mental health and addictions services, including recognition of the traumatic effect of misdiagnosis and coercive treatment. Services are responsive to the vulnerabilities of trauma survivors and are delivered in a way that avoids inadvertent re-traumatization and facilitates individual direction of services.

(94) “Treatment” means the planned, medically appropriate, individualized program of medical, psychological, and rehabilitative procedures, experiences and activities designed to remediate symptoms of a DSM diagnosis, that are included in the Service Plan.

(95) “Urgent” means the onset of symptoms requiring attention within 48 hours to prevent a serious deterioration in an individual’s mental or physical health or threat to safety.

(96) “Variance” means an exception from a provision of these rules, granted in writing by the Division, upon written application from the provider. Duration of a variance is determined on a case-by-case basis.

(97) “Volunteer” means an individual who provides a program service or who takes part in a program service and who is not an employee of the program and is not paid for services. The services must be non-clinical unless the individual has the required credentials to provide a clinical service.

(98) “Wellness” means an approach to healthcare that emphasizes good physical and mental health, preventing illness, and prolonging life.

(99) “Wraparound” means a high fidelity process of team based intensive care coordination for children and their families based on National Wraparound Initiative values and principles.

(100) “Young Adult in Transition” means an individual who is developmentally transitioning into independence, sometime between the ages of 14 and 25.

Stat. Auth.: ORS 161.390, 413.042, 430.256, 426.490 - 426.500, 428.205 - 428.270, 430.640 & 443.450

Stats. Implemented: ORS 109.675, 161.390-161.400, 179.505, 413.520 - 413.522, 426.380 - 426.395, 426.490 - 426.500, 430.010, 430.205 - 430.210, 430.240 - 430.640, 430.850 - 430.955, 443.400 - 443.460, 443.991, 743A.168

Hist.: MHS 8-2013(Temp), f. 8-8-13, cert. ef. 8-9-13 thru 2-5-14; MHS 5-2014, f. & cert. ef. 2-3-14; MHS 9-2016(Temp), f. 6-28-16, cert. ef. 7-1-16 thru 12-27-16; MHS 21-2016, f. & cert. ef. 12-1-16; MHS 27-2016(Temp), f. & cert. ef. 12-29-16 thru 6-26-17

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309-022-0110

Provider Policies

(1) Personnel Policies: All providers must develop and implement written personnel policies and procedures, compliant with these rules, including:

- (a) Personnel Qualifications and Credentialing;
- (b) Mandatory abuse reporting, compliant with ORS 430.735-430.768 and OAR 943-045-0250 through 943-045-0370;
- (c) Criminal Records Checks, compliant with ORS 181.533 through 181.575 and 407-007-0000 through 407-007-0370; and
- (d) Fraud, waste and abuse in Federal Medicaid and Medicare programs compliant with OAR 410-120-1380 and 410-120-1510.

(2) Service Delivery Policies: All providers must develop and implement written policies and procedures, consistent with these rules.

- (a) Policies must be available to individuals and family members upon request; and
- (b) Service delivery policies and procedures must include, at a minimum:

- (A) Fee agreements;
- (B) Confidentiality and compliance with HIPAA, Federal Confidentiality Regulations (42 CFR, Part 2), and State confidentiality regulations as specified in ORS 179.505 and 192.518 through 192.530;
- (C) Compliance with Title 2 of the Americans with Disabilities Act of 1990 (ADA);
- (D) Grievances and Appeals;
- (E) Individual Rights;
- (F) Quality Assessment and Performance Improvement;
- (G) Crisis and Suicide Prevention and Response;
- (H) Incident Reporting;
- (I) Family Involvement;
- (J) Trauma-informed Service Delivery, consistent with the AMH Trauma Informed Services Policy;
- (K) Provision of culturally and linguistically appropriate services; and
- (L) Peer Delivered Services

(3) Residential Program Policies: In addition to the personnel and service delivery policies required of all providers, residential program providers must develop and implement written policies and procedures for the following:

- (a) Medical Protocols and Medical Emergencies;
- (b) Medication Administration, Storage and Disposal;
- (c) General Safety, Suicide Risk Assessment, and Emergency Procedures;
- (d) Emergency Safety Interventions in ITS Programs; and
- (e) Behavior Support Policies consistent with 309-022-0165.
Stat. Auth.: ORS 161.390, 413.042, 430.256, 426.490 - 426.500, 428.205 - 428.270, 430.640 & 443.450
Stats. Implemented: ORS 109.675, 161.390 - 161.400, 179.505, 413.520 - 413.522, 426.380 - 426.395, 426.490 - 426.500, 430.010, 430.205 - 430.210, 430.240 - 430.640, 430.850 - 430.955, 443.400 - 443.460, 443.991, 743A.168
Hist.: MHS 8-2013(Temp), f. 8-8-13, cert. ef. 8-9-13 thru 2-5-14; MHS 27-2016(Temp), f. & cert. ef. 12-29-16 thru 6-26-17

309-022-0115

Individual Rights

(1) In addition to all applicable statutory and constitutional rights, every individual receiving services has the right to:

- (a) Choose from available services and supports, those that are consistent with the Service Plan, culturally competent, provided in the most integrated setting in the community and under conditions that are least restrictive to the individual's liberty, that are least intrusive to the individual and that provide for the greatest degree of independence;
- (b) Be treated with dignity and respect;
- (c) Access to peer delivered services
- (d) Participate in the development of a written Service Plan, receive services consistent with that plan and participate in periodic review and reassessment of service and support needs, assist in the development of the plan, and to receive a copy of the written Service Plan;
- (e) Have all services explained, including expected outcomes and possible risks;
- (f) Confidentiality, and the right to consent to disclosure in accordance with ORS 107.154, 179.505, 179.507, 192.515, 192.507, 42 CFR Part 2 and 45 CFR Part 205.50.
- (g) Give informed consent in writing prior to the start of services, except in a medical emergency or as otherwise permitted by law. Minor children may give informed consent to services in the following circumstances:
 - (A) Under age 18 and lawfully married;

- (B) Age 16 or older and legally emancipated by the court; or
- (C) Age 14 or older for outpatient services only. For purposes of informed consent, outpatient service does not include service provided in residential programs or in day or partial hospitalization programs;
- (h) Inspect their Service Record in accordance with ORS 179.505;
- (i) Refuse participation in experimentation;
- (j) Receive medication specific to the individual's diagnosed clinical needs;
- (k) Receive prior notice of transfer, unless the circumstances necessitating transfer pose a threat to health and safety;
 - (1) Be free from abuse or neglect and to report any incident of abuse or neglect without being subject to retaliation;
 - (m) Have religious freedom;
 - (n) Be free from seclusion and restraint, except as regulated in OAR 309-021-0175.
 - (o) Be informed at the start of services, and periodically thereafter, of the rights guaranteed by this rule;
 - (p) Be informed of the policies and procedures, service agreements and fees applicable to the services provided, and to have a custodial parent, guardian, or representative, assist with understanding any information presented;
 - (q) Have family and guardian involvement in Service Planning and delivery;
 - (r) Make a declaration for mental health treatment, when legally an adult;
 - (s) File grievances, including appealing decisions resulting from the grievance;
 - (t) Exercise all rights set forth in ORS 109.610 through 109.697 if the individual is a child, as defined by these rules;
 - (u) Exercise all rights set forth in ORS 426.385 if the individual is committed to the Authority; and
 - (v) Exercise all rights described in this rule without any form of reprisal or punishment.
- (2) In addition to the rights specified in (1) of this rule, every individual receiving residential services has the right to:
 - (a) A safe, secure and sanitary living environment;
 - (b) A humane service environment that affords reasonable protection from harm, reasonable privacy and daily access to fresh air and the outdoors;
 - (c) Keep and use personal clothing and belongings, and to have an adequate amount of private, secure storage space. Reasonable restriction of the time and place of use, of certain classes of property may be implemented if necessary to prevent the individual or others from harm, provided that notice of this restriction is given to individuals and their families, if applicable, upon entry to the program, documented, and reviewed periodically;
 - (d) Express sexual orientation, gender identity and gender presentation;
 - (e) Have access to and participate in social, religious and community activities;
 - (f) Private and uncensored communications by mail, telephone and visitation, subject to the following restrictions:
 - (A) This right may be restricted only if the provider documents in the individual's record that there is a court order to the contrary, or that in the absence of this restriction, significant physical or clinical harm will result to the individual or others. The nature of the harm must be specified in reasonable detail, and any restriction of the right to communicate must be no broader than necessary to prevent this harm; and
 - (B) The individual and his or her guardian, if applicable, must be given specific written notice of each restriction of the individual's right to private and uncensored communication. The provider must ensure that correspondence can be conveniently received and mailed, that telephones are reasonably accessible and allow for confidential communication, and that space is available for visits. Reasonable times for the use of telephones and visits may be established in writing by the provider;
 - (g) Communicate privately with public or private rights protection programs or rights advocates, clergy, and legal or medical professionals;
 - (h) Have access to and receive available and applicable educational services in the most integrated setting in the community;
 - (i) Participate regularly in indoor and outdoor recreation;
 - (j) Not be required to perform labor;
 - (k) Have access to adequate food and shelter; and
 - (l) A reasonable accommodation if, due to a disability, the housing and services are not sufficiently accessible.

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(3) Notification of Rights: The provider must give to the individual and, if appropriate, the guardian, a document that describes the applicable individual's rights as follows:

(a) Information given to the individual must be in written form or, upon request, in an alternative format or language appropriate to the individual's need;

(b) Rights, and how to exercise them, must be explained to the individual, and if appropriate, to her or his guardian; and

(c) Individual rights must be posted in writing in a common area.
Stat. Auth.: ORS 161.390, 413.042, 430.256, 426.490 - 426.500, 428.205 - 428.270, 430.640 & 443.450
Stats. Implemented: ORS 109.675, 161.390 - 161.400, 179.505, 413.520 - 413.522, 426.380 - 426.395, 426.490 - 426.500, 430.010, 430.205 - 430.210, 430.240 - 430.640, 430.850 - 430.955, 443.400 - 443.460, 443.991, 743A.168
Hist.: MHS 8-2013(Temp), f. 8-8-13, cert. ef. 8-9-13 thru 2-5-14; MHS 5-2014, f. & cert. ef. 2-3-14; MHS 27-2016(Temp), f. & cert. ef. 12-29-16 thru 6-26-17

309-022-0125

Specific Staff Qualifications and Competencies

(1) Program Administrators or Program Directors must demonstrate competence in leadership, program planning and budgeting, fiscal management, supervision of program staff, personnel management, program staff performance assessment, use of data, reporting, program evaluation, quality assurance, and developing and coordinating community resources.

(2) Clinical Supervisors in all programs must demonstrate competence in leadership, wellness, oversight and evaluation of services, staff development, service planning, case management and coordination, utilization of community resources, group, family and individual therapy or counseling, documentation and rationale for services to promote intended outcomes and implementation of all provider policies.

(3) Clinical supervisors in mental health programs must meet QMHP requirements and have completed two years of post-graduate clinical experience in a mental health treatment setting.

(4) QMHAs must demonstrate the ability to communicate effectively, understand mental health assessment, treatment and service terminology and apply each of these concepts, implement skills development strategies, and identify, implement and coordinate the services and supports identified in a Service Plan.

(a) QMHAs must meet the follow minimum qualifications:

(A) Bachelor's degree in a behavioral science field; or

(B) A combination of at least three years of relevant work, education, training or experience; or

(C) A qualified Mental Health Intern, as defined in 309-022-0105(57).

(5) QMHPs must demonstrate the ability to conduct an assessment, including identifying precipitating events, gathering histories of mental and physical health, substance use, past mental health services and criminal justice contacts, assessing family, cultural, social and work relationships, and conducting a mental status examination, complete a DSM diagnosis, write and supervise the implementation of a Service Plan and provide individual, family or group therapy within the scope of their training.

(a) QMHPs must meet the following minimum qualifications:

(A) Bachelor's degree in nursing and licensed by the State or Oregon;

(B) Bachelor's degree in occupational therapy and licensed by the State of Oregon;

(C) Graduate degree in psychology;

(D) Graduate degree in social work;

(E) Graduate degree in recreational, art, or music therapy;

(F) Graduate degree in a behavioral science field.

(G) A qualified Mental Health Intern, as defined in 309-022-0105(57).

(6) Peer support specialists must be qualified as defined in OAR 410-0180-0312 demonstrate knowledge of approaches to support others in recovery and resiliency, and demonstrate efforts at self-directed recovery.

Stat. Auth.: ORS 161.390, 413.042, 426.490 - 426.500, 428.205 - 428.270, 430.256, 430.640 & 443.450

Stats. Implemented: ORS 109.675, 161.390 - 161.400, 179.505, 413.520 - 413.522, 426.380 - 426.395, 426.490 - 426.500, 430.010, 430.205 - 430.210, 430.240 - 430.640, 430.850 - 430.955, 443.400 - 443.460, 443.991, 743A.168

Hist.: MHS 8-2013(Temp), f. 8-8-13, cert. ef. 8-9-13 thru 2-5-14; MHS 5-2014, f. & cert. ef. 2-3-14; MHS 27-2016(Temp), f. & cert. ef. 12-29-16 thru 6-26-17

309-022-0130

Documentation, Training and Supervision

(1) Providers must maintain personnel records for each program staff that contains all of the following documentation:

(a) An employment application;

(b) Verification of a criminal record check consistent with OAR 407-007-0200 through 407-007-0370;

(c) A current job description that includes applicable competencies;

(d) Copies of relevant licensure or certification, diploma, or certified transcripts from an accredited college, indicating that the program staff meets applicable qualifications;

(e) Periodic performance appraisals;

(f) Staff orientation and development activities;

(g) Program staff incident reports;

(h) Disciplinary documentation;

(i) Reference checks;

(j) Emergency contact information; and

(k) Documentation of a tuberculosis screening pursuant to OAR 333-071-0057.

(2) Providers must maintain the following documentation for contractors, interns or volunteers, as applicable:

(a) A contract, or written agreement, if applicable;

(b) A signed confidentiality agreement;

(c) Service-specific orientation documentation; and

(d) Verification of a criminal records check consistent with OAR 407-007-0200 through 407-007-0370.

(3) Training: Providers must ensure that program staff receive training applicable to the specific population for whom services are planned or delivered, to include the following minimum orientation training, within 30 days of the hire date:

(a) A review of individual crisis response procedures;

(b) A review of emergency procedures;

(c) A review of program policies and procedures;

(d) A review of rights for individuals receiving services and supports;

(e) Mandatory abuse reporting procedures;

(f) Positive behavior support training consistent with 309-022-0165.

(4) Supervision: Persons providing services to individuals in accordance with these rules must receive supervision related to the development, implementation and outcome of services, by a qualified Clinical Supervisor, as defined in these rules.

(a) Clinical supervision must be provided to assist program staff and volunteers to increase their skills, improve quality of services to individuals, and supervise program staff and volunteers' compliance with program policies and procedures, including:

(b) QMHP supervision: Documentation of clinical supervision for QMHP staff of no less than two hours per month. The two hours must include one hour of face-to-face contact for each person supervised, or a proportional level of supervision for part-time QMHP staff. Face-to-face contact may include real time, two-way audio visual conferencing; or

(c) Documentation of two hours of quarterly supervision for program staff holding a health or allied provider license, including at least one hour of face-to-face contact for each person supervised.

(d) QMHA supervision: Documentation of clinical supervision for each QMHA staff supervised of no less than two hours per month. The two hours must include one hour of face-to-face contact for each person supervised related to direct care responsibilities, or a proportional level of supervision for part-time QMHA staff. Face-to-face contact may include real time, two-way audio visual conferencing. Clinical supervision of a QMHA can be conducted by a Lead QMHA staff.

(e) Mental Health Intern supervision: Documentation of weekly supervision for program staff meeting the definition of Mental Health Intern; and

(f) Documentation must include: the date supervision took place, the amount of supervision time, a brief description of relevant topics discussed.
Stat. Auth.: ORS 161.390, 413.042, 426.490 - 426.500, 428.205 - 428.270, 430.256, 430.640 & 443.450

Stats. Implemented: ORS 109.675, 161.390 - 161.400, 179.505, 413.520 - 413.522, 426.380 - 426.395, 426.490 - 426.500, 430.010, 430.205 - 430.210, 430.240 - 430.640, 430.850 - 430.955, 443.400 - 443.460, 443.991, 743A.168

Hist.: MHS 8-2013(Temp), f. 8-8-13, cert. ef. 8-9-13 thru 2-5-14; MHS 5-2014, f. & cert. ef. 2-3-14; MHS 27-2016(Temp), f. & cert. ef. 12-29-16 thru 6-26-17

309-022-0140

Service Planning and Coordination

(1) Individual Services and Supports: The provider must deliver or coordinate, for each individual, appropriate services and supports to collaboratively facilitate intended service outcomes as identified by the individual and family.

(a) Qualified program staff must facilitate a planning process, resulting in a Service Plan that reflects the assessment.

(b) A Service Plan must be completed prior to the start of services.

(c) A licensed health care professional, must recommend the services and supports by signing the Service Plan.

(d) Individuals, and family members, must be invited to participate in the development of the Service Plan.

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(e) Providers must fully inform the individual and guardian when applicable, of the proposed services and supports, in developmentally and culturally appropriate language, obtain informed consent for all proposed services, offer access to Peer Delivered Services and give the individual, and guardian, a written copy of the Service Plan.

(f) Providers must collaborate with community partners to coordinate or deliver services and supports identified in the Service Plan.

(g) Providers must collaborate to exchange information with any applicable physical health care providers, for the individual, to promote regular and adequate health care.

(2) Service Plan: The Service Plan must be a written, individualized plan to improve the individual's condition to the point where the individual's continued participation in the program is no longer necessary. The Service Plan is included in the individual's service records and must:

- (a) Be completed prior to the start of services;
- (b) Reflect the assessment and the level of care to be provided;
- (c) Include the participation of the individual and family members;
- (d) Be completed by a QMHP;

(e) A QMHP, who is also a licensed health care professional, must recommend the services and supports by signing the Service plan within ten (10) business days of the start of services; and

(f) A LMP must approve the Service Plan at least annually for each individual receiving mental health services for one or more continuous years. The LMP may designate annual clinical oversight by documenting the designation to a specific licensed health care professional.

(3) At minimum, each Service Plan must include:

(a) Individualized treatment objectives;

(b) The specific services and supports that will be used to meet the treatment objectives;

(c) Measurable and observable outcomes;

(d) A projected schedule for service delivery, including the expected frequency and duration of each type of planned therapeutic session or encounter;

(e) The type of personnel that will be furnishing the services; and

(f) Proactive safety and crisis planning;

(g) A behavior support plan, consistent with OAR 309-022-0165; and

(h) The interdisciplinary team must conduct a review of progress and transfer criteria at least every 30 days from the date of entry and must document members present, progress and changes made. For Psychiatric Day Treatment Services, the review must be conducted every 30 days and the LMP must participate in the review at least every 90 days.

(4) Service Notes:

(a) Providers must document each service and support. A Service Note, at minimum, must include:

(A) The specific services rendered;

(B) The date, time of service, and the actual amount of time the services were rendered;

(C) Who rendered the services;

(D) The setting in which the services were rendered;

(E) The relationship of the services to the treatment regimen described in the Service Plan; and

(F) Periodic Updates describing the individual's progress toward the treatment objectives; and

(G) Any decisions to transfer an individual from service.

Stat. Auth.: ORS 161.390, 413.042, 430.256, 426.490 - 426.500, 428.205 - 428.270, 430.640 & 443.450

Stats. Implemented: ORS 109.675, 161.390 - 161.400, 179.505, 413.520 - 413.522, 426.380 - 426.395, 426.490 - 426.500, 430.010, 430.205 - 430.210, 430.240 - 430.640, 430.850 - 430.955, 443.400 - 443.460, 443.991, 743A.168

Hist.: MHS 8-2013(Temp), f. 8-8-13, cert. ef. 8-9-13 thru 2-5-14; MHS 5-2014, f. & cert. ef. 2-3-14; MHS 27-2016(Temp), f. & cert. ef. 12-29-16 thru 6-26-17

309-022-0155

General Staffing Requirements

ITS providers must have the clinical leadership and sufficient QMHP, QMHA and other program staff to meet the 24-hour, seven days per week treatment needs of children and must establish policies, procedures and contracts to assure:

(1) Availability of psychiatric services to meet the following requirements;

(2) Provision of medical oversight of the clinical aspects of care in nationally accredited sub-acute and psychiatric residential treatment facilities and provide 24-hour, seven days per week psychiatric on-call coverage; or consult on clinical care and treatment in psychiatric day treatment; and

(3) Assessment of each child's medication and treatment needs, prescribe medicine or otherwise assure that case management and consultation

services are provided to obtain prescriptions, and prescribe therapeutic modalities to achieve the child's Service Plan goals.

(4) There must be at least one program staff who has completed First Aid and CPR training on duty at all times.

(5) Residential ITS providers must ensure overnight program staff will visually monitor clients at specified intervals as per agency policy during sleeping hours for signs of life, this includes monitoring for breathing and/or movement.

(6) ITS providers must ensure that the following services and supports are available and accessible through direct service, contract or by referral:

(a) Active psychiatric treatment and education services must be functionally integrated in a therapeutic environment designed of reflect and promote achievement of the intended outcomes of each child's Service Plan;

(b) Continuity of the child's education when treatment services interrupt the child's day to day educational environment;

(c) Family therapy, provided by a QMHP. The family therapist to child ratio must be at least one family therapist for each 12 children;

(d) Psychiatric services;

(e) Individual, group and family therapies provided by a QMHP. There must be no less than one family therapist available for each 12 children;

(f) Medication evaluation, management and monitoring;

(g) Pre-vocational or vocational rehabilitation;

(h) Therapies supporting speech, language and hearing rehabilitation;

(i) Individual and group psychosocial skills development;

(j) Activity and recreational therapies;

(k) Nutrition;

(l) Physical health care services or coordination;

(m) Recreational and social activities consistent with individual strengths and interests;

(n) Educational services coordination and advocacy; and

(o) Behavior support services, consistent with OAR 309-022-0165 of these rules.

Stat. Auth.: ORS 161.390, 413.042, 430.256, 426.490 - 426.500, 428.205 - 428.270, 430.640 & 443.450

Stats. Implemented: ORS 109.675, 161.390 - 161.400, 179.505, 413.520 - 413.522, 426.380 - 426.395, 426.490 - 426.500, 430.010, 430.205 - 430.210, 430.240 - 430.640, 430.850 - 430.955, 443.400 - 443.460, 443.991, 743A.168

Hist.: MHS 8-2013(Temp), f. 8-8-13, cert. ef. 8-9-13 thru 2-5-14; MHS 5-2014, f. & cert. ef. 2-3-14; MHS 27-2016(Temp), f. & cert. ef. 12-29-16 thru 6-26-17

309-022-0160

Program Specific Requirements

In addition to the general requirements for all ITS providers listed in OAR 309-022-0150 and 0155, the following requirements for facilities and programs must be met:

(1) Psychiatric Residential Treatment Facilities (PRTF):

(a) Children must either have or be screened for an Individual Education Plan, Personal Education Plan, or an Individual Family Service Plan;

(b) Psychiatric Residential Treatment Facilities must maintain one or more linkages with acute care hospitals or CCOs to coordinate necessary inpatient care;

(c) Psychiatric residential clinical care and treatment must be under the direction of a psychiatrist and delivered by an interdisciplinary team of board-certified or board-eligible child and adolescent psychiatrists, registered nurses, psychologists, other qualified mental health professionals, and other relevant program staff. A psychiatrist must be available to the unit 24-hours per day, seven days per week; and

(d) Psychiatric Residential Treatment Facilities must be staffed at a clinical staffing ratio of not less than one program staff for three children during the day and evening shifts at all times. At least one program staff for every three program staff members during the day and evening shifts must be a QMHP or QMHA. For overnight program staff there must be a staffing ratio of at least one program staff for six children at all times for each program unit; at least one of the overnight program staff must be a QMHA. For units that by this ratio have only one overnight program staff, there must be additional program staff immediately available within the facility or on the premises. At least one QMHP must be on site or on call at all times. At least one program staff with designated clinical leadership responsibilities must be on site at all times.

(2) Psychiatric Residential Treatment Services (PRTS): Programs providing PRTS must meet the requirements for PRTF's listed in 1(a) of this subsection.

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(3) SCIP and SAIP: Programs providing SCIP and SAIP Services must meet the requirements for PRTFs listed in 1 of this subsection. They must also establish policies and practices to meet the following:

(a) The staffing model must allow for the child's frequent contact with the child psychiatrist a minimum of one hour per week;

(b) Psychiatric nursing staff must be provided in the program 24 hours per day;

(c) A psychologist, psychiatric social worker, rehabilitation therapist and psychologist with documented training in forensic evaluations must be available 24 hours per day as appropriate; and

(d) Program staff with specialized training in SCIP or SAIP must be available 24 hours per day;

(e) The program must provide all medically appropriate psychiatric services necessary to meet the child's psychiatric care needs;

(f) The program must provide secure psychiatric treatment services in a manner that ensures public safety to youth who are under the care and custody of the Oregon Youth Authority, court ordered for the purpose of psychiatric evaluation, or admitted by the authority of the JPSRB; and

(g) The program must not rely on external entities such as law enforcement or acute hospital care to assist in the management of the SCIP or SAIP setting.

(4) Sub-Acute Psychiatric Care: In addition to the services provided as indicated by the assessment and specified in the Service Plan, Sub-Acute Psychiatric Care providers must:

(a) Provide psychiatric nursing staffing at least 16 hours per day;

(b) Provide nursing supervision and monitoring and psychiatric supervision at least once per week; and

(c) Work actively with the child and family team and multi-disciplinary community partners, to plan for the long-term emotional, behavioral, physical and social needs of the child to be met in the most integrated setting in the community.

(5) Psychiatric Day Treatment Services (PDTs):

(a) PDTs must be provided to children who remain at home with a parent, guardian or foster parent by qualified mental health professionals and qualified mental health associates in consultation with a psychiatrist;

(b) An education program must be provided and children must either have or be screened for an Individual Education Plan, Personal Education Plan or Individual Family Service Plan; and

(c) Psychiatric Day Treatment programs must be staffed at a clinical staffing ratio of at least one QMHP or QMHA for three children.

Stat. Auth.: ORS 161.390, 413.042, 430.256, 426.490 - 426.500, 428.205 - 428.270, 430.640 & 443.450

Stats. Implemented: ORS 109.675, 161.390 - 161.400, 179.505, 413.520 - 413.522, 426.380 - 426.395, 426.490 - 426.500, 430.010, 430.205 - 430.210, 430.240 - 430.640, 430.850 - 430.955, 443.400 - 443.460, 443.991, 743A.168

Hist.: MHS 8-2013(Temp), f. 8-8-13, cert. ef. 8-9-13 thru 2-5-14; MHS 5-2014, f. & cert. ef. 2-3-14; MHS 27-2016(Temp), f. & cert. ef. 12-29-16 thru 6-26-17

309-022-0175

Restraint and Seclusion

(1) Providers must meet the following general conditions of personal restraint and seclusion:

(a) Personal restraint and seclusion must only be used in an emergency safety situation to prevent immediate injury to an individual who is in danger of physically harming him or herself or others in situations such as the occurrence of, or serious threat of violence, personal injury or attempted suicide;

(b) Any use of personal restraint or seclusion must respect the dignity and civil rights of the individual;

(c) The use of personal restraint or seclusion must be directly related to the immediate risk related to the behavior of the individual and must not be used as punishment, discipline, or for the convenience of staff;

(d) Personal restraint or seclusion must only be used for the length of time necessary for the individual to resume self-control and prevent harm to the individual or others, even if the order for seclusion or personal restraint has not expired, and must under no circumstances, exceed 4 hours for individuals ages 18 to 21, 2 hours for individuals ages 9 to 17, or 1 hour for individuals under age 9;

(e) An order for personal restraint or seclusion must not be written as a standing order or on an as needed basis;

(f) Personal restraint and seclusion must not be used simultaneously;

(g) Providers must notify the individual's parent or guardian of any incident of seclusion or personal restraint as soon as possible;

(h) If incidents of personal restraint or seclusion used with an individual cumulatively exceed five interventions over a period of five days, or a single episode of one hour within 24 hours, the psychiatrist, or designee,

must convene, by phone or in person, program staff with designated clinical leadership responsibilities to:

(A) Discuss the emergency safety situation that required the intervention, including the precipitating factors that led up to the intervention and any alternative strategies that might have prevented the use of the personal restraint or seclusion;

(B) Discuss the procedures, if any, to be implemented to prevent any recurrence of the use of personal restraint or seclusion;

(C) Discuss the outcome of the intervention including any injuries that may have resulted; and

(D) Review the individual's Service Plan, making the necessary revisions, and document the discussion and any resulting changes to the individual's Service Plan in the Service Record.

(2) Personal Restraint:

(a) Each personal restraint must require an immediate documented order by a physician, licensed practitioner, or, in accordance with OAR 309-022-0195 through 309-022-0230, a licensed CESIS;

(b) The order must include:

(A) Name of the person authorized to order the personal restraint;

(B) Date and time the order was obtained; and

(C) Length of time for which the intervention was authorized.

(c) Each personal restraint must be conducted by program staff that have completed and use Division-approved crisis intervention training. If in the event of an emergency a non-Division approved crisis intervention technique is used, the provider's on-call administrator must immediately review the intervention and document the review in an incident report to be provided to the Division within 24 hours;

(d) At least one program staff trained in the use of emergency safety interventions must be physically present, continually assessing and monitoring the physical and psychological well-being of the individual and the safe use of the personal restraint throughout the duration of the personal restraint;

(e) Within one hour of the initiation of a personal restraint, a psychiatrist, licensed practitioner, or CESIS must conduct a face-to-face assessment of the physical and psychological well-being of the individual;

(f) A designated program staff with clinical leadership responsibilities must review all personal restraint documentation prior to the end of the shift in which the intervention occurred; and

(g) Each incident of personal restraint must be documented in the Service Record. The documentation must specify:

(A) Behavior support strategies and less restrictive interventions attempted prior to the personal restraint;

(B) Required authorization;

(C) Events precipitating the personal restraint;

(D) Length of time the personal restraint was used;

(E) Assessment of appropriateness of the personal restraint based on threat of harm to self or others;

(F) Assessment of physical injury; and

(G) Individuals response to the emergency safety intervention.

(3) Seclusion: Providers must be certified by the Division for the use of seclusion.

(a) Authorization for seclusion must be obtained by a psychiatrist, licensed practitioner or CESIS prior to, or immediately after the initiation of seclusion. Written orders for seclusion must be completed for each instance of seclusion and must include:

(A) Name of the person authorized to order seclusion;

(B) Date and time the order was obtained; and

(C) Length of time for which the intervention was authorized.

(b) Program staff trained in the use of emergency safety interventions must be physically present continually assessing and monitoring the physical and psychological well-being of the individual throughout the duration of the seclusion;

(c) Visual monitoring of the individual in seclusion must occur continuously and be documented at least every fifteen minutes or more often as clinically indicated;

(d) Within one hour of the initiation of seclusion a psychiatrist or CESIS must conduct a face-to-face assessment of the physical and psychological well-being of the individual;

(e) The individual must have regular meals, bathing, and use of the bathroom during seclusion and the provision of these must be documented in the Service Record; and

(f) Each incident of seclusion must be documented in the Service Record. The documentation must specify:

(A) The behavior support strategies and less restrictive interventions attempted prior to the use of seclusion;

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- (B) The required authorization for the use of seclusion;
- (C) The events precipitating the use of seclusion;
- (D) The length of time seclusion was used;
- (E) An assessment of the appropriateness of seclusion based on threat of harm to self or others;
- (F) An assessment of physical injury to the individual, if any; and
- (G) The individual's response to the emergency safety intervention.
- (4) Any room specifically designated for the use of seclusion or time out must be approved by the Division.
 - (a) If the use of seclusion occurs in a room with a locking door, the program must be authorized by the Division for this purpose and must meet the following requirements:
 - (A) A facility or program seeking authorization for the use of seclusion must submit a written application to the Division;
 - (B) Application must include a comprehensive plan for the need for and use of seclusion of children in the program and copies of the facility's policies and procedures for the utilization and monitoring of seclusion including a statistical analysis of the facility's actual use of seclusion, physical space, staff training, staff authorization, record keeping and quality assessment practices;
 - (C) The Division must review the application and, after a determination that the written application is complete and satisfies all applicable requirements, must provide for a review of the facility by authorized Division staff;
 - (D) The Division must have access to all records including Service Records, the physical plant of the facility, the employees of the facility, the professional credentials and training records for all program staff, and must have the opportunity to fully observe the treatment and seclusion practices employed by the facility;
 - (E) After the review, the Chief Officer must approve or disapprove the facility's application and upon approval must certify the facility based on the determination of the facility's compliance with all applicable requirements for the seclusion of children;
 - (F) If disapproved, the facility must be provided with specific recommendations and have the right of appeal to the Division; and
 - (G) Certification of a facility must be effective for a maximum of three years and may be renewed thereafter upon approval of a renewal application.
 - (5) Structural and physical requirements for seclusion: An ITS provider seeking this certification under these rules must have available at least one room that meets the following specifications and requirements:
 - (a) The room must be of adequate size to permit three adults to move freely and allows for one adult to lie down. Any newly constructed room must be no less than 64 square feet;
 - (b) The room must not be isolated from regular program staff of the facility, and must be equipped with adequate locking devices on all doors and windows;
 - (c) The door must open outward and contain a port of shatterproof glass or plastic through which the entire room may be viewed from outside;
 - (d) The room must contain no protruding, exposed, or sharp objects;
 - (e) The room must contain no furniture. A fireproof mattress or mat must be available for comfort;
 - (f) Any windows must be made of unbreakable or shatterproof glass or plastic. Non-shatterproof glass must be protected by adequate climb-proof screening;
 - (g) There must be no exposed pipes or electrical wiring in the room. Electrical outlets must be permanently capped or covered with a metal shield secured by tamper-proof screws. Ceiling and wall lights must be recessed and covered with safety glass or unbreakable plastic. Any cover, cap or shield must be secured by tamper-proof screws;
 - (h) The room must meet State Fire Marshal fire, safety, and health standards. If sprinklers are installed, they must be recessed and covered with fine mesh screening. If pop-down type, sprinklers must have break-away strength of under 80 pounds. In lieu of sprinklers, combined smoke and heat detector must be used with similar protective design or installation;
 - (i) The room must be ventilated, kept at a temperature no less than 64°F and no more than 85°F. Heating and cooling vents must be secure and out of reach;
 - (j) The room must be designed and equipped in a manner that would not allow a child to climb off the ground;
 - (k) Walls, floor and ceiling must be solidly and smoothly constructed, to be cleaned easily, and have no rough or jagged portions; and
 - (l) Adequate and safe bathrooms must be available.

Stat. Auth.: ORS 161.390, 413.042, 430.256, 426.490 - 426.500, 428.205 - 28.270, 430.640 & 443.450

Stats. Implemented: ORS 109.675, 161.390 - 161.400, 179.505, 413.520 - 413.522, 426.380 - 426.395, 426.490 - 426.500, 430.010, 430.205 - 430.210, 430.240 - 430.640, 430.850 - 430.955, 443.400 - 443.460, 443.991, 743A.168
Hist.: MHS 8-2013(Temp), f. 8-8-13, cert. ef. 8-9-13 thru 2-5-14; MHS 5-2014, f. & cert. ef. 2-3-14; MHS 9-2016(Temp), f. 6-28-16, cert. ef. 7-1-16 thru 12-27-16; MHS 21-2016, f. & cert. ef. 12-1-16; MHS 27-2016(Temp), f. & cert. ef. 12-29-16 thru 6-26-17

309-022-0180

Transfer and Continuity of Care

- (1) Planned Transfer: Providers must meet the following requirements for planned transfer:
 - (a) Decisions to transfer individuals must be documented in a transfer summary. The documentation must include the reason for transfer;
 - (b) Planned transfer must be consistent with the transfer criteria established by the interdisciplinary team and documented in the Service Plan.
 - (c) Providers must not transfer services unless the interdisciplinary team, in consultation with the child's parent or guardian and the next provider, agree that the child requires a more or less restrictive level of care; and
 - (d) If the determination is made to admit the child to acute care, the provider must not transfer services during the acute care stay unless the interdisciplinary team, in consultation with the child's parent or guardian and the next provider, agree that the child requires a more or less restrictive level of care following the acute care stay; and
 - (2) Transfer Process and Continuity of Care: Prior to transfer, providers must:
 - (a) Coordinate and provide appropriate referrals for medical care and medication management. The transferring provider must assist the individual to identify the medical provider who will provide continuing care and to arrange an initial appointment with that provider;
 - (b) Coordinate recovery and ongoing support services for individuals and their families including identifying resources and facilitating linkage to other service systems necessary to sustain recovery, including peer delivered services;
 - (c) Complete a Transfer Summary;
 - (d) When services are transferred due to the absence of the individual, the provider must document outreach efforts made to re-engage the individual, or document the reason why such efforts were not made;
 - (e) If the individual is under the jurisdiction of the PSRB or JPSRB, the provider must notify the PSRB or JPSRB immediately and provide a copy of the Transfer Summary within 30 days;
 - (f) The provider must report all instances of Transfer on the mandated state data system; and
 - (g) At a minimum, the provider's interdisciplinary team must:
 - (A) Integrate transfer planning into ongoing treatment planning and documentation from the time of entry, and specify the transfer criteria that must indicate resolution of the symptoms and behaviors that justified the entry;
 - (B) Review and, if needed, modify the transfer criteria in the Service Plan every 30 days;
 - (C) Notify the child's parent or guardian, and the provider to which the child must be transitioned of the anticipated transfer dates at the time of entry, and when the Service Plan is changed;
 - (D) Include the parent or guardian peer support when requested by the parent or guardian and provider to which the child must be transitioned in transfer planning and reflect their needs and desires to the extent clinically indicated;
 - (E) Finalize the transition plan prior to transfer and identify in the plan the continuum of services and the type and frequency of follow-up contacts recommended by the provider to assist in the child's successful transition to the next appropriate level of care;
 - (F) Assure that appropriate medical care and medication management must be provided to individuals who leave through a planned transfer. The last service provider's interdisciplinary team must identify the medical personnel who will provide continuing care and must arrange an initial appointment with that provider;
 - (G) Coordinate appropriate education services with applicable school district personnel; and
 - (H) Give a written transition plan to the child's parent or guardian and the next provider if applicable, on the date of transfer.
 - (3) Transfer Summary:
 - (a) A Transfer Summary must include:
 - (A) The date and reason for the transfer;
 - (B) A summary statement that describes the effectiveness of services in assisting the individual and his or her family to achieve intended outcomes identified in the Service Plan;

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(C) Where appropriate, a plan for personal wellness and resilience, including relapse prevention safety and suicide prevention planning; and

(D) Identification of resources to assist the individual and family including Peer Delivered Services, if applicable, in accessing recovery and resiliency services and supports.

(b) If the transfer is to services with another provider, all documentation contained in the Service Record requested by the receiving provider must be furnished, compliant with applicable confidentiality policies and procedures, within 14 days of receipt of a written request for the documentation.

(c) A complete transfer summary must be sent to the receiving provider within 30 days of the transfer.

Stat. Auth.: ORS 161.390, 413.042, 430.256, 426.490 - 426.500, 428.205 - 428.270, 430.640 & 443.45

Stats. Implemented: ORS 109.675, 161.390 - 161.400, 179.505, 413.520 - 413.522, 426.380 - 426.395, 426.490 - 426.500, 430.010, 430.205 - 430.210, 430.240 - 430.640, 430.850 - 430.955, 443.400 - 443.460, 443.991, 743A.168

Hist.: MHS 8-2013(Temp), f. 8-8-13, cert. ef. 8-9-13 thru 2-5-14; MHS 5-2014, f. & cert. ef. 2-3-14; MHS 27-2016(Temp), f. & cert. ef. 12-29-16 thru 6-26-17

309-022-0192

Variance

(1) Requirements and standards for requesting and granting variances or exceptions are found in OAR 309-008-1600.

(2) Division Review and Notification: The Chief Officer of the Division must approve or deny the request for a variance to these rules within the scope and authority The Division must be made in writing using the Division approved variance request form and following the variance request procedure compliant with OAR 309-008-1600.

(3) Granting a variance for one request does not set a precedent that must be followed by the Division when evaluating subsequent requests for variance.

Stat. Auth.: ORS 161.390, 413.042, 430.256, 428.205 - 428.270, 430.640

Stats. Implemented: ORS 109.675, 161.390 - 161.400, 179.505, 413.520 - 413.522, 430.010, 430.205 - 430.210, 430.240 - 430.640, 430.850 - 430.955, 461.549, 743A.168, 813.010 - 813.052 & 813.200 - 813.270

Hist.: MHS 27-2016(Temp), f. & cert. ef. 12-29-16 thru 6-26-17

309-022-0195

Licensure as a Children's Emergency Safety Intervention Specialist (CESIS)

To obtain a license as a CESIS, an agency that is certified by the Division to provide intensive mental health treatment services for individuals less than 21 years of age shall make an application on behalf of the licensure applicant. The Division shall issue a license as a CESIS to each applicant who furnishes satisfactory evidence to the Division that the applicant meets the following qualifications:

(1) Is employed by or providing services under contract with a provider that is certified by the Division to provide intensive mental health treatment services for individuals under 21 years of age;

(2) Meets qualifications established by the Division by rule for Qualified Mental Health Professionals;

(3) Has successfully completed an emergency safety intervention training program approved by the Division within the past 12 months;

(4) Demonstrates the ability to assess the psychological and physical well-being of individuals less than 21 years of age;

(5) Demonstrates knowledge of federal and state rules governing the use of seclusion and personal restraint in intensive mental health treatment programs for individuals under 21 years of age.

Stat. Auth.: ORS 413.042 & 426.415

Stats. Implemented: ORS 426.415

Hist.: MHS 8-2013(Temp), f. 8-8-13, cert. ef. 8-9-13 thru 2-5-14; MHS 5-2014, f. & cert. ef. 2-3-14; MHS 27-2016(Temp), f. & cert. ef. 12-29-16 thru 6-26-17

309-022-0200

CESIS Scope of Licensure

(1) A licensed CESIS is authorized to:

(a) Order the least restrictive intervention, including seclusion and personal restraint that is most likely to be effective in resolving an emergency safety situation if the treatment team physician is not available.

(b) Provide the federally mandated face-to-face assessment of an individual under 21 years of age's well-being within one hour of the initiation of the emergency safety intervention; and

(c) Accept verbal orders for seclusion and personal restraint from a physician or licensed practitioner who is authorized to order seclusion and personal restraint.

(2) Exclusions to Licensure:

(a) A licensed CESIS is not authorized to order or receive orders for the use of mechanical or chemical restraint.

(b) A CESIS license is only valid while the licensee is employed or contracted to provide services with the intensive mental health treatment services program that submitted the application on behalf of the licensee.

Stat. Auth.: ORS 413.042 & 426.415

Stats. Implemented: ORS 426.415

Hist.: MHS 8-2013(Temp), f. 8-8-13, cert. ef. 8-9-13 thru 2-5-14; MHS 5-2014, f. & cert. ef. 2-3-14; MHS 27-2016(Temp), f. & cert. ef. 12-29-16 thru 6-26-17

309-022-0205

CESIS License Applications

(1) Application for licensure as a CESIS shall be made to the Division and be on forms prescribed by the Division.

(2) Application for licensure shall be accompanied by a formal written request from a provider that is certified by the Division, pursuant to OAR 309-008-0100 to 309-008-1600, to provide intensive mental health treatment services for individuals under 21 years of age with which the applicant is employed or contracted. The request must include:

(a) Official transcripts and supporting documentation as necessary showing the applicant meets qualifications established by rule for a QMHP;

(b) Verification that an emergency safety intervention course approved by the Division has been successfully completed within the past 12 months;

(c) Verification of certification in CPR and First Aid by a recognized training agency;

(d) A signed Background Check Request form as described in OAR chapter 943 division 007. The Criminal Record Check form will request information regarding criminal history and other information;

(e) Verification of employment or contracted services with a provider that is certified by the Division to provide intensive mental health treatment services for individuals under 21 years of age;

(f) A copy of the completed examination or evaluation the provider used to determine the applicant's competence to assess the psychological and physical well-being of individuals under 21 years of age; and

(g) A copy of the completed examination or evaluation the provider used to determine the applicants knowledge of the federal and state rules governing the use of seclusion and personal restraint in intensive mental health treatment programs for individuals less than 21 years of age.

Stat. Auth.: ORS 413.042 & 426.415

Stats. Implemented: ORS 426.415

Hist.: MHS 8-2013(Temp), f. 8-8-13, cert. ef. 8-9-13 thru 2-5-14; MHS 5-2014, f. & cert. ef. 2-3-14; MHS 9-2016(Temp), f. 6-28-16, cert. ef. 7-1-16 thru 12-27-16; MHS 21-2016, f. & cert. ef. 12-1-16; MHS 27-2016(Temp), f. & cert. ef. 12-29-16 thru 6-26-17

309-022-0210

Issuance of a License

(1) The Division shall issue a license within 30 days of the submission of a completed application. The license shall state the name of the licensee, the provider and expiration date.

(2) The license shall be placed in the licensee's personnel file and be easily visible.

(3) An initial license is valid from the time of issuance until the expiration date, which will be September 30th of the following calendar year.

Stat. Auth.: ORS 413.042 & 426.415

Stats. Implemented: ORS 426.415

Hist.: MHS 8-2013(Temp), f. 8-8-13, cert. ef. 8-9-13 thru 2-5-14; MHS 5-2014, f. & cert. ef. 2-3-14; MHS 27-2016(Temp), f. & cert. ef. 12-29-16 thru 6-26-17

309-022-0215

Renewal and Expiration of License

(1) A license issued under these rules is subject to renewal every 2 years.

(a) All licenses will expire on September 30th. The issuance date of the licensee's first license will determine if the license expires on an odd or even year.

(b) At least 30 days prior to the expiration of a license, a reminder notice will be sent by the Division to the licensee and the provider.

(c) A licensee seeking renewal of a license shall have a provider with whom they are employed or contracted submit on their behalf:

(A) Proof of fulfillment of the following requirements;

(i) Verification of current certification in CPR and First aid by a recognized training agency;

(ii) A copy of the evaluation completed within the last year of the applicants competence to assess the psychological and physical well-being of individuals less than 21 years of age.

(iii) A copy of the evaluation completed within the last year demonstrating the applicant's knowledge of federal and state rules governing the use of seclusion and personal restraint in intensive mental health treatment services programs for individuals less than 21 years of age.

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(B) Proof of continued employment or contract with a facility certified by the Division to provide intensive mental health treatment services for individuals less than 21 years of age.

(2) A licensee may not continue to practice as a licensed CESIS after expiration of the license.

(3) A licensee may not continue to practice as a licensed CESIS upon discontinuation of employment or contract with the provider of intensive mental health treatment services specified on the license.

(4) If the person's previous license has expired, the person must apply and qualify for a new license in the same manner as a person who has never been licensed.

Stat. Auth.: ORS 413.042 & 426.415
Stats. Implemented: ORS 426.415
Hist.: MHS 8-2013(Temp), f. 8-8-13, cert. ef. 8-9-13 thru 2-5-14; MHS 5-2014, f. & cert. ef. 2-3-14; MHS 27-2016(Temp), f. & cert. ef. 12-29-16 thru 6-26-17

309-022-0220

Complaints

(1) Any person who believes these rules have been violated may file a complaint with the Division.

(2) The Division shall establish a protocol for investigation of complaints and make that information available to anyone who files a complaint or has a complaint filed against them. Following the Divisions investigation of a complaint, the Division may take action to:

- (a) Dismiss the complaint;
- (b) Issue a letter of reprimand;
- (c) Direct the Provider to draft a plan of correction with the licensee;

or

- (d) Institute disciplinary action.
Stat. Auth.: ORS 413.042 & 426.415
Stats. Implemented: ORS 426.415
Hist.: MHS 8-2013(Temp), f. 8-8-13, cert. ef. 8-9-13 thru 2-5-14; MHS 5-2014, f. & cert. ef. 2-3-14; MHS 27-2016(Temp), f. & cert. ef. 12-29-16 thru 6-26-17

309-022-0225

Denial, Suspension, Revocation or Non-renewal of License

(1) The Division may deny, suspend, revoke or refuse to issue or to renew any license issued under these rules upon proof that the applicant for licensure or the licensee:

- (a) Has been convicted of one or more crimes described in OAR 943-007 entitled "Criminal Records Checks".
- (b) Is unable to perform the duties of a CESIS by reason of mental illness, physical illness, drug addiction or alcohol abuse;
- (c) Has been grossly negligent in the duties of a CESIS;
- (d) Has violated one or more of the rules of the Division pertaining to the licensure of a CESIS;
- (e) Has practiced outside the scope of activities for which the licensee has individual training and qualification; or
- (f) Has been disciplined by a state licensing board or program in this or any other state for violation of competency or conduct standards.

(2) The Division may reprimand or impose probation on a licensee upon proof of any of the grounds for discipline provided in subsection (1) of this Section.

(3) If the Division elects to place a licensee on probation, the Division may impose:

- (a) Restrictions on the scope of practice of the licensee;
- (b) Requirements for specific training;
- (c) Supervision of the practice of the licensee; or
- (d) Other conditions the Division finds necessary for the protection of the public.

Stat. Auth.: ORS 413.042 & 426.415
Stats. Implemented: ORS 426.415
Hist.: MHS 8-2013(Temp), f. 8-8-13, cert. ef. 8-9-13 thru 2-5-14; MHS 5-2014, f. & cert. ef. 2-3-14; MHS 27-2016(Temp), f. & cert. ef. 12-29-16 thru 6-26-17

309-022-0230

Appeal Process

(1) An appeal of a denial, suspension, probation or revocation of a license may be requested in writing to the Division from a provider of intensive mental health treatment services for children less than 21 years of age on behalf of their employee or contractor.

(2) The Division's Director or designee shall review all material relating to the denial, suspension, revocation or non-renewal, including any written documentation submitted by the licensee and provider. Based on review of the material, the Director will decide whether to sustain the decision. If the decision is not sustained, the denial, suspension, revocation or non-renewal shall be rescinded immediately. The decision of the Division

is subject to a contested case hearing under ORS Chapter 183 if requested within 90 days of the decision.

Stat. Auth.: ORS 413.042 & 426.415
Stats. Implemented: ORS 426.415
Hist.: MHS 8-2013(Temp), f. 8-8-13, cert. ef. 8-9-13 thru 2-5-14; MHS 5-2014, f. & cert. ef. 2-3-14; MHS 27-2016(Temp), f. & cert. ef. 12-29-16 thru 6-26-17

Rule Caption: Permanent amendments to OAR 309-033 regarding involuntary commitment proceedings.

Adm. Order No.: MHS 28-2016

Filed with Sec. of State: 12-29-2016

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Subject: These rules prescribe general standards and procedures relating to the involuntary commitment of mentally ill persons.

Rules Coordinator: Nola Russell—(503) 945-7652

309-033-0210

Definitions

(1) "Administrator" means the chief of psychiatric services in a community hospital or the person in charge of treatment and rehabilitation programs at nonhospital facilities. "Administrator" has the same meaning as "director of the facility" as that term is defined in ORS 426.005. Whenever "administrator" appears it means the administrator or designee.

(2) "Assignment" means the designation, pursuant to ORS 426.060, by the Division or its designee of the hospital, facility or CMHP where the committed person is to receive care, custody and treatment during the commitment period.

(3) "Assistant Administrator" means the Assistant Administrator of Addictions and Mental Health Division.

(4) "Caregiver" means the person who is appointed by the court under ORS 426.125 to be allowed to care for a mentally ill person on conditional release.

(5) "Clinical record" means the record required by OAR 309-014-0035, General Standards for Delivery of Community Mental Health Services Elements, documenting the mental health services delivered to clients by a CMHP or subcontractor.

(6) Community Mental Health Program (CMHP) means the entity responsible for organization of various services for persons with a mental health diagnosis or addictive disorders, operated by, or contractually affiliated with, a local mental health authority and operated in a specific geographic area of the state under an agreement with the Division pursuant to OAR 309-014-0000.

(7) "Community hospital" means any hospital that is not a state hospital.

(8) "County governing body" means the county court or the board of county commissioners of one or more counties who operate a CMHP, 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 CMHP, the board of directors of a public or private corporation selected by the county.

(9) "County of residence" means the county where the person currently maintains a mailing address or, if the person has no current mailing address within the state, the county where the person was found or the county in which a committed person has been conditionally released as defined by ORS 426.241 to 426.255.

(10) "Court" means the circuit court acting pursuant to ORS Chapter 426.

(11) "Custody" means the prehearing physical retaining of a person taken into custody by:

- (a) A peace officer pursuant to ORS 426.070, 426.228, 426.233;
- (b) A peace officer at the direction of the director pursuant to ORS 426.233;
- (c) A health care facility licensed under ORS Chapter 441 and approved by the Division, pursuant to ORS 426.231;
- (d) A state hospital pursuant to ORS 426.180;
- (e) A hospital pursuant to ORS 426.070 or 426.232; or
- (f) A nonhospital facility pursuant to ORS 426.070 or 426.233.

(12) "Designee" means a QMHP designated by the director or a QMHP who is specifically authorized by the county governing body to order persons to be taken into custody pursuant to ORS 426.233.

(13) "Director" means the community mental health and developmental disabilities program director who has been authorized by the local

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mental health authority to direct the CMHP. "Director" also means a person who has been authorized by the director to act in the director's capacity for the purpose of this rule. In the case of the director ordering a peace officer to take a person into custody pursuant to ORS 426.233, the designee shall be a QMHP who is specifically authorized by the county governing body to order persons to be taken into custody.

(14) "Director of the county of commitment" means the director for the county where the person is committed.

(15) "Director of the county of placement" means the director for the county where the committed person is to be placed.

(16) "Director of the county of residence" means the director for the county of residence.

(17) "Diversion" means the 14 day period of intensive treatment when a director and a psychiatrist certify a person as a mentally ill person pursuant to the provision of ORS 426.237(1)(b).

(18) "Division" means the Addictions and Mental Health Division of the Oregon Health Authority.

(19) "Hospital hold" means the taking of a person into custody by order of a physician pursuant to ORS 426.232.

(20) "NMI" is the notification of mental illness required, pursuant to ORS 426.070, to be submitted by any two persons, a county health officer or a magistrate to the director and thereafter submitted by the director to the court or, pursuant to ORS 426.234, to be submitted by the physician or the director to the court. Pursuant to ORS 426.070 and 426.234, the court commences proceedings pursuant to ORS 426.070 to 426.130 upon receipt of the NMI.

(21) "Nonhospital hold" means the taking of a person into custody by order of a director pursuant to the provisions of ORS 426.233. A director's hold and a trial visit hold are variations of a nonhospital hold.

(22) "Peace officer" means a sheriff, constable, marshal, municipal policeman, member of the Oregon State Police or investigator of the Criminal Justice Division of the Department of Justice and such other persons as may be designated by law.

(23) "Placement of a committed person" means the physical act of removing a committed person from the courtroom to the place where the person has been assigned to receive care, custody and treatment, or the transfer of a committed person from one location where the person has been assigned to receive care, custody and treatment to another location for the same purpose.

(24) "Psychiatrist" means a physician licensed as provided pursuant to ORS 677.010 to 677.450 by the Board of Medical Examiners for the State of Oregon and who has completed an approved residency training program in psychiatry.

(25) "Psychologist" means a clinical psychologist licensed by the Oregon Board of Psychologist Examiners.

(26) "QMHP" means a qualified mental health professional that meets the following minimum qualifications:

- (a) Psychiatrist licensed to practice in the State of Oregon;
- (b) Physician licensed to practice in the State of Oregon;
- (c) Graduate degree in psychology;
- (d) Graduate degree in social work;
- (e) Graduate degree in psychiatric nursing and licensed in the State of Oregon;

- (f) Graduate degree in another mental health-related field; or
- (g) Any other person whose education and experience meet, in the judgment of the Division, a level of competence consistent with the responsibilities required by the Division.

(27) "Recertification" means the certification of continued commitment provided for under ORS 426.301.

(28) "Secure transport provider" means a secure transport provider approved according to OAR 309-033-0432, Standards for the Approval of a Secure Transport Provider to Transport a Person in Custody or on Diversion to an Approved Holding or Nonhospital Facility.

(29) "State hospital" means Oregon State Hospital in Salem and Portland, and Eastern Oregon Psychiatric Center in Pendleton.

(30) "Superintendent" means the chief executive officer of a state hospital, or designee, or a person authorized by the superintendent to act in the superintendent's capacity for the purpose of this rule.

Stat. Auth.: ORS 413.042, 426.005, 426.060, 426.110(2), 426.232 & 426.236
Stats. Implemented: ORS 426.005 - 426.395
Hist.: MHD 6-1998, f. 6-26-98, cert. ef. 7-1-98, Renumbered from 309-200-0010; MHD 2-2000(Temp), f. & cert. ef. 1-25-00 thru 7-22-00; MHD 9-2000, f. & cert. ef. 7-21-00; MHS 28-2016, f. & cert. ef. 12-29-16

309-033-0410

Definitions

(1) "Administrator" means the chief of psychiatric services in a community hospital or the person in charge of treatment and rehabilitation programs at nonhospital facilities. "Administrator" has the same meaning as "director of the facility" as that term is defined in ORS 426.005. Whenever "administrator" appears it means the administrator or designee.

(2) "CMHP" means the community mental health and developmental disabilities program which is operated by or contractually affiliated with a local mental health authority operating in a specific geographic area of the state under an intergovernmental agreement or direct contract with the Division.

(3) "Community hospital" means any hospital that is not a state hospital.

(4) "Court" means the circuit court acting pursuant to ORS Chapter 426.

(5) "Custody" means the prehearing physical retaining of a person taken into custody by:

(a) A peace officer or approved secure transport provider pursuant to ORS 426.070, 426.228, 426.233;

(b) A peace officer or approved secure transport provider at the direction of the director pursuant to ORS 426.233;

(c) A health care facility licensed under ORS Chapter 441 and approved by the Division, pursuant to ORS 426.231;

(d) A state hospital pursuant to ORS 426.180;

(e) A hospital pursuant to ORS 426.070 or 426.232; or

(f) A nonhospital facility pursuant to ORS 426.070 or 426.233.

(6) "Director" means the community mental health and developmental disabilities program director who has been authorized by the local mental health authority to direct the CMHP. "Director" also means a person who has been authorized by the director to act in the director's capacity for the purpose of this rule. In the case of the director ordering a peace officer or approved secure transport provider to take a person into custody pursuant to ORS 426.233, the designee shall be a QMHP who is specifically authorized by the county governing body to order persons to be taken into custody.

(7) "Director of the county of commitment" means the director for the county where the person is committed.

(8) "Division" means the Addictions and Mental Health Division of the Oregon Health Authority.

(9) "Mechanical Restraint" is any object or apparatus, device or contraption applied or affixed to the person to limit movement, and includes, but is not limited to handcuffs, leg irons, soft restraints or Posey Strait Jacket.

(10) "Secure transport provider" means any service which uses privately or publicly owned motor vehicles, other than city, county or state police, to transport Persons in Custody or on Diversion to an Approved Holding Hospital or Non-Hospital Facility.

(11) "State hospital" means Oregon State Hospital in Salem and Portland, and Eastern Oregon Psychiatric Center in Pendleton.

(12) "Superintendent" means the chief executive officer of a state hospital, or designee, or a person authorized by the superintendent to act in the superintendent's capacity for the purpose of this rule.

Stat. Auth.: ORS 413.042, 426.005, 426.060, 426.110(2), 426.232 & 426.236

Stats. Implemented: ORS 426.005 - 426.395

Hist.: MHD 7-1998, f. 6-26-98, cert. ef. 7-1-98, Renumbered from 309-205-0010; MHD 3-2000(Temp), f. 1-25-00, cert. ef. 1-25-00 thru 7-22-00; MHD 10-2000, f. & cert. ef. 7-21-00; MHS 28-2016, f. & cert. ef. 12-29-16

309-033-0432

Standards for the Approval of a Secure Transport Provider to Transport a Person in Custody or On Diversion to an Approved Holding Hospital or Nonhospital Facility

(1) A secure transport provider must be approved by the Division under this rule in order to transport a person pursuant to the provisions of ORS 426.228, 426.231, and 426.233. A Secure transport provider approved under this rule may transport the person only to a hospital or nonhospital facility approved under OAR 309-033-0530 (Approval of Hospitals and Nonhospital Facilities to Provide Services to Committed Persons and to Persons in Custody and on Diversion).

(2) A secure transport provider shall submit a letter of application to the Division. If approved, the Division shall issue a certificate of approval to provide transportation services. This approval shall be renewed every two years subject to the application of the secure transport provider and review by the Division.

(3) Requirements for approval include all of the following:

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(a) Secure transport providers must comply with the requirements in OAR 309-033-0435 (Client Rights with Regards to a Secure Transport Provider) and OAR 309-033-0437 (Mechanical Restraint by a Secure Transport Provider).

(b) The governing body of the county in which the secure transport is to be used shall submit a letter formally authorizing the secure transport provider to transport persons in custody or on diversion.

(c) The director in the county in which the secure transport is to be used shall submit a letter of recommendation for approval to the Division on behalf of the secure transport provider.

(d) The secure transport provider's vehicles must:

(A) Have a secured rear seat in an area separated from the driver;

(B) Have a safety shield that prohibits physical contact with the driver;

(C) Have plexiglass or secured window guards covering any windows in the secured area;

(D) Be washable and non-breakable in the secured area;

(E) Be absent of inside locks or door handles in the secured area;

(F) Have wrist and ankle restraints (preferably soft non-metal) for use when necessary to control violent or overt behavior;

(G) Be absent of any foreign items or instruments in the secured area that may be used by the client to inflict harm to self, attendant or person accompanying the client;

(H) Have an operating cellular phone or other communication device for use in transit;

(I) Have adequate ventilation and heating appropriate to the secured seating; or

(J) Be licensed as an ambulance service in accordance with OAR 333-250-0040, if providing transportation to a Psychiatric Emergency Services (PES) facility.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 426.005 - 426.395

Hist.: MHD 3-2000(Temp), f. 1-25-00, cert. ef. 1-25-00 thru 7-22-00; MHD 10-2000, f. & cert. ef. 7-21-00; MHS 28-2016, f. & cert. ef. 12-29-16

309-033-0510

Definitions

(1) "Administrator" means the chief of psychiatric services in a community hospital or the person in charge of treatment and rehabilitation programs at nonhospital facilities. "Administrator" has the same meaning as "director of the facility" as that term is defined in ORS 426.005. Whenever "administrator" appears it means the administrator or designee.

(2) "Assistant Administrator" means the Assistant Administrator of Addictions and Mental Health Division.

(3) "Certificate" means the document or documents issued by the Division, which identifies and declares certification of a provider pursuant to OAR 309-008-0100 to 309-008-1600. A letter accompanying issuance of the certificate will detail the scope and approved service delivery locations of the certificate.

(4) "Clinical record" means the record required by OAR 309-014-0035, General Standards for Delivery of Community Mental Health Service Elements, documenting the mental health services delivered to clients by a CMHP or subcontractor.

(5) "Community Mental Health Program" (CMHP) the entity responsible for organization of various services for persons with a mental health diagnosis or addictive disorders, operated by, or contractually affiliated with, a local mental health authority and operated in a specific geographic area of the state under an agreement with the Division pursuant to OAR 309-014-0000.

(6) "Community hospital" means any hospital that is not a state hospital.

(7) "Court" means the circuit court acting pursuant to ORS Chapter 426.

(8) "Custody" means the prehearing physical retaining of a person taken into custody by:

(a) A peace officer pursuant to ORS 426.070, 426.228, 426.233;

(b) A peace officer at the direction of the director pursuant to ORS 426.233;

(c) A health care facility licensed under ORS Chapter 441 and approved by the Division, pursuant to ORS 426.231;

(d) A state hospital pursuant to ORS 426.180;

(e) A hospital pursuant to ORS 426.070 or 426.232; or

(f) A nonhospital facility pursuant to ORS 426.070 or 426.233.

(9) "Designee" means a QMHP designated by the director or a QMHP who is specifically authorized by the county governing body to order persons to be taken into custody pursuant to ORS 426.233.

(10) "Director" means the community mental health and developmental disabilities program director who has been authorized by the local mental health authority to direct the CMHP. "Director" also means a person who has been authorized by the director to act in the director's capacity for the purpose of this rule. In the case of the director ordering a peace officer to take a person into custody pursuant to ORS 426.233, the designee shall be a QMHP who is specifically authorized by the county governing body to order persons to be taken into custody.

(11) "Diversion" means the 14 day period of intensive treatment when a director and a psychiatrist certify a person as a mentally ill person pursuant to the provision of ORS 426.237.

(12) "Division" means the Addictions and Mental Health Division of the Oregon Health Authority.

(13) "QMHP" means a qualified mental health professional that meets the following minimum qualifications:

(a) Psychiatrist licensed to practice in the State of Oregon;

(b) Physician licensed to practice in the State of Oregon;

(c) Graduate degree in psychology;

(d) Graduate degree in social work;

(e) Graduate degree in psychiatric nursing and licensed in the State of Oregon;

(f) Graduate degree in another mental health-related field; or

(g) Any other person whose education and experience meet, in the judgment of the Division, a level of competence consistent with the responsibilities required by the Division.

Stat. Auth.: ORS 413.042, 426.005, 426.060, 426.110(2), 426.232 & 426.236

Stats. Implemented: ORS 426.005 - 426.395

Hist.: MHD 8-1998, f. 6-26-98, cert. ef. 7-1-98, Renumbered from 309-210-0010; MHS 28-2016, f. & cert. ef. 12-29-16

309-033-0530

Approval of Hospitals and Nonhospital Facilities to Provide Services to Committed Persons and to Persons In Custody and On Diversion

This section establishes rules for approval of hospital and nonhospital facilities which provide service to a committed person or to a person in custody or on diversion.

(1) Approved hospitals and other facilities. Only hospitals and nonhospital facilities, approved by the Division under this rule, shall provide care and treatment services for committed persons or for persons in custody or on diversion.

(2) Application for approval. Approval of hospitals or nonhospital facilities shall be accomplished by submission of a letter of application pursuant to OAR 309-008-0100 to 309-008-1600. If approved, a Certificate pursuant to OAR 309-008-0100 to 309-008-1600 will be issued to the hospital or nonhospital facility to provide such services. This approval shall be reviewed on a biennial basis subject to application of the hospital or other facility and/or review by the Division.

(3) Requirements for approval. In undertaking review of the hospital or nonhospital facility for approval, the Division shall be satisfied that the hospital or nonhospital facility meets one of the following requirements:

(a) Approval to provide seclusion and restraint considered approval to provide services to committed persons and to persons in custody and on diversion. The Division shall approve, without further requirement, hospitals and nonhospital facilities currently approved under OAR 309-033-0700 through 309-033-0740, Standards for the Approval of Community Hospitals and Nonhospital Facilities to Provide Seclusion and Restraint to Committed Persons and to Persons in Custody or on Diversion.

(b) Requirements for facilities not approved to provide seclusion and restraint. The Division shall approve a nonhospital facility to serve committed persons and persons in custody and on diversion if the nonhospital facility is certified as a secure residential facility under Division rules and the nonhospital facility has the following:

(A) Written policies and procedures in place which assure that:

(i) The facility shall not admit a person who may require seclusion or physical restraint.

(ii) A person who develops the need for seclusion and restraint is immediately removed to a hospital or nonhospital facility approved under OAR 309-033-0700 through 309-033-0740, Standards for the Approval of Community Hospitals and Nonhospital Facilities to Provide Seclusion and Restraint to Committed Persons and to Persons in Custody or on Diversion.

(iii) Each person admitted to the facility has a physician who is responsible for treating the person during the person's stay at the facility and who examines the person within 24 hours of the person's admission to the facility.

(iv) A staff person shall provide direct care for consumers only when that staff person is trained in the curriculum approved by the psychiatrist or

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psychiatric nurse practitioner. The staff shall receive the training within the last six months prior to providing direct consumer care.

(v) A staff person shall participate in the training approved by the psychiatrist or psychiatric nurse practitioner quarterly.

(B) A psychiatrist or a licensed psychiatric nurse practitioner, who is employed by the facility or has a contract with the facility, to provide medical oversight of admission policies and procedures, and staff training.

(C) A staff training curriculum which is approved by the psychiatrist or nurse practitioner and includes:

(i) Criteria for the admission of a person who can safely be served by the nonhospital facility;

(ii) Recognition of indicators of violence or assault and criteria for the transfer of person to a more secure facility;

(iii) Indicators of medical problems, identification of medication side effects, and indicators of medical problems and medical crisis; and

(iv) Management of aggressive behavior and de-escalation techniques.

(D) Two qualified mental health associates who are available on-site 24 hours-a-day, seven days-a-week.

(E) Alarmed doors and windows which have been approved by the Division.

(F) A written agreement with a law enforcement agency to respond to emergencies that provides:

(i) Emergency response time within 15 minutes of the nonhospital facility's request.

(ii) Agreement by the law enforcement agency to retake a person who elopes and to return the person to the nonhospital facility or remove the person to a hospital or nonhospital facility approved under OAR 309-033-0700 through 309-033-0740, Standards for the Approval of Community Hospitals and Nonhospital Facilities to Provide Seclusion and Restraint to Committed Persons and to Persons in Custody or on Diversion, as directed by the administrator of the nonhospital facility.

(G) Documentation of fire marshal approval to operate as a secure facility.

Stat. Auth.: ORS 413.042, 426.228, 426.232, 426.233 & 426.236

Stats. Implemented: ORS 426.005 - 426.395

Hist.: MHD 8-1998, f. 6-26-98, cert. ef. 7-1-98, Renumbered from 309-210-0040; MHS 28-2016, f. & cert. ef. 12-29-16

309-033-0610

Definitions

(1) "Administrator" means the chief of psychiatric services in a community hospital or the person in charge of treatment and rehabilitation programs at nonhospital facilities. "Administrator" has the same meaning as "director of the facility" as that term is defined in ORS 426.005(1)(a). Whenever "administrator" appears it means the administrator or designee.

(2) "Assistant Administrator" means the Assistant Administrator of the Addictions and Mental Health Division.

(3) "Clinical record" means the record required by OAR 309-014-0035, General Standards for Delivery of Community Mental Health Services Elements, documenting the mental health services delivered to clients by a CMHP or subcontractor.

(4) "Community Mental Health Program" (CMHP) the entity responsible for organization of various services for persons with a mental health diagnosis or addictive disorders, operated by, or contractually affiliated with, a local mental health authority and operated in a specific geographic area of the state under an agreement with the Division pursuant to OAR 309-014-0000

(5) "Community hospital" means any hospital that is not a state hospital.

(6) "Court" means the circuit court acting pursuant to ORS Chapter 426.

(7) "Custody" means the prehearing physical retaining of a person taken into custody by:

(a) A peace officer pursuant to ORS 426.070, 426.228, 426.233;

(b) A peace officer at the direction of the director pursuant to ORS 426.233(1);

(c) A health care facility licensed under ORS Chapter 431 and approved by the Division, pursuant to ORS 426.231;

(d) A state hospital pursuant to ORS 426.180;

(e) A hospital pursuant to ORS 426.070 or 426.232; or

(f) A nonhospital facility pursuant to ORS 426.070 or 426.233.

(8) "Designee" means a QMHP designated by the director or a QMHP who is specifically authorized by the county governing body to order persons to be taken into custody pursuant to ORS 426.233.

(9) "Director" means the community mental health and developmental disabilities program director who has been authorized by the local mental health authority to direct the CMHP. "Director" also means a person who has been authorized by the director to act in the director's capacity for the purpose of this rule. In the case of the director ordering a peace officer to take a person into custody pursuant to ORS 426.233, the designee shall be a QMHP who is specifically authorized by the county governing body to order persons to be taken into custody.

(10) "Division" means the Addictions and Mental Health Division of the Oregon Health Authority.

(11) "Legally incapacitated person" means a person who has been found by the court to be unable to give informed consent to medical treatment and the court has appointed a guardian to make such decisions on the person's behalf pursuant to ORS 126.127.

(12) "Material risk" means the risk may have a substantial adverse effect on the patient's psychological and/or physical health. Tardive dyskinesia is a material risk of neuroleptic medication.

(13) "Nurse" means a registered nurse or a psychiatric nurse practitioner licensed by the Oregon Board of Nursing, but does not include a licensed practical nurse or a certified nurse assistant.

(14) "Person" means a consumer of mental health services committed to the Division who is admitted to a community hospital, nonhospital facility or residential facility for care, custody or treatment of mental illness.

(15) "Psychiatrist" means a physician licensed as provided pursuant to ORS 677.010 to 677.450 by the Board of Medical Examiners for the State of Oregon and who has completed an approved residency training program in psychiatry.

(16) "Psychologist" means a clinical psychologist licensed by the Oregon Board of Psychologist Examiners.

(17) "QMHP" means a qualified mental health professional that meets the following minimum qualifications:

(a) Psychiatrist licensed to practice in the State of Oregon;

(b) Physician licensed to practice in the State of Oregon;

(c) Graduate degree in psychology;

(d) Graduate degree in social work;

(e) Graduate degree in psychiatric nursing and licensed in the State of Oregon;

(f) Graduate degree in another mental health-related field; or

(g) Any other person whose education and experience meet, in the judgment of the Division, a level of competence consistent with the responsibilities required by the Division.

(18) "Significant procedure" means a diagnostic or treatment modality which poses a material risk of substantial pain or harm to the patient or resident such as, but not limited to, psychotropic medication and electroconvulsive therapy.

(19) "Superintendent" means the chief executive officer of a state hospital, or designee, or a person authorized by the superintendent to act in the superintendent's capacity for the purpose of this rule.

Stat. Auth.: ORS 413.042 & 426.385

Stats. Implemented: ORS 426.005 - 426.395

Hist.: MHD 9-1998, f. 6-26-98, cert. ef. 7-1-98, Renumbered from 309-215-0010; MHS 28-2016, f. & cert. ef. 12-29-16

309-033-0710

Definitions

(1) "Administrator" means the chief of psychiatric services in a community hospital or the person in charge of treatment and rehabilitation programs in a nonhospital facility. "Administrator" has the same meaning as "director of the facility" as that term is defined in ORS 426.005(1)(a). Whenever "administrator" appears it means the administrator or his or her designee.

(2) "Authority" means the Oregon Health Authority (OHA).

(3) "Certificate" means the document or documents issued by the Division, which identifies and declares certification of a provider pursuant to OAR 309-008-0100 to 309-008-1600. A letter accompanying issuance of the certificate will detail the scope and approved service delivery locations of the certificate.

(4) "Clinical Record" means the record required by OAR 309-014-0035, General Standards for Delivery of Community Mental Health Service Elements, documenting the mental health services delivered to clients by a CMHP or subcontractor.

(5) "Community Mental Health Program" (CMHP) the entity responsible for organization of various services for persons with a mental health diagnosis or addictive disorders, operated by, or contractually affiliated with, a local mental health authority and operated in a specific geographic

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area of the state under an agreement with the Division pursuant to OAR 309-014-0000

(6) "Community Hospital" means any hospital that is not a state hospital.

(7) "Council" means a regional acute care psychiatric facility organization with a mission statement and bylaws, comprised of facility representatives, consumers and family members. The council is advisory to the facility.

(8) "Court" means the circuit court acting pursuant to ORS Chapter 426.

(9) "Custody" means the prehearing physical retaining of a person taken into custody by:

(a) A peace officer pursuant to ORS 426.070, 426.228, 426.233(1);

(b) A health care facility licensed under ORS Chapter 431 and certified by the Division, pursuant to 426.231;

(c) A state hospital pursuant to ORS 426.232;

(d) A community hospital pursuant to ORS 426.072 or 426.232; or

(e) A regional acute care psychiatric or non-hospital facility pursuant to ORS 426.072 or 426.233.

(10) "Director" means the community mental health program director who has been authorized by the local mental health authority to direct the CMHP.

(11) "Diversion" means the 14 day period of intensive treatment when a director and a psychiatrist certify a person as a mentally ill person pursuant to the provision of ORS 426.237(1)(b).

(12) "Division" means the Health Systems Division of the Oregon Health Authority (OHA).

(13) "Emergency" means, in the opinion of the treating physician, immediate action is required to preserve the life or physical health of a person, or because the behaviors of that person creates a substantial likelihood of immediate physical harm to self, or to others in the facility. The fact that a person is in custody under the provisions of ORS 426.072, 426.232 or 426.233 must not be the sole justification that an emergency exists.

(14) "Hospital or Facility" means the community hospital, regional acute care psychiatric facility, or non-hospital facility eligible for, or presently certified for, the use of seclusion or restraints to committed persons and persons in custody or on diversion.

(15) "NMI" means "Notice of Mental Illness" required, pursuant to ORS 426.070, to be submitted by any two persons, a county health officer or a magistrate to the director and thereafter submitted by the director to the court or, pursuant to 426.234, to be submitted by the physician or the director to the court. Pursuant to 426.070 and 426.234, the court commences proceedings pursuant to 426.070 to 426.130 upon receipt of the NMI.

(16) "Non-Hospital Facility" means any facility, other than a hospital, that is certified by the Authority to provide adequate security, psychiatric, nursing and other services to persons under ORS 426.232 or 426.233.

(17) "Nurse" means a registered nurse or a psychiatric nurse practitioner licensed by the Oregon Board of Nursing, but does not include a licensed practical nurse or a certified nurse assistant.

(18) "P.R.N." (pro re nata) means that a medication or medical treatment has been ordered to be given as needed.

(19) "Patient Days" means the day of admission plus each additional day of stay, but not the day of discharge, unless it is also the day of admission.

(20) "Peace officer" means a sheriff, constable, marshal, municipal policeman, member of the Oregon State Police or investigator of the Criminal Justice Division of the Department of Justice and such other persons as may be designated by law.

(21) "Physician" means a person who holds a degree of Doctor of Medicine, Doctor of Osteopathy, or Doctor of Podiatric Medicine, if the context in which the term "physician" is used does not authorize or require the person to practice outside the scope of a license issued under ORS 677.805 through 677.840.

(22) "Physician Assistant" means a person who is licensed as such in accordance with ORS 677.265, 677.495, 677.505, 677.510, 677.515, 677.520, and 677.525.

(23) "Psychiatrist" means a physician licensed as provided pursuant to ORS 677.010 to 677.450 by the Board of Medical Examiners for the State of Oregon and who has completed an approved residency training program in psychiatry.

(24) "Regional Acute Care Psychiatric Facility" means a facility certified by the Division to provide services for adults as described in OAR 309-033-0850 through 309-033-0890, and is operated in cooperation with a regional or local council. A regional acute care psychiatric facility must include 24 hour per day psychiatric, multi-disciplinary, inpatient or resi-

dential stabilization, care and treatment, for adults aged 18 or older with severe psychiatric disabilities in a designated region of the state. For the purpose of these rules, a state hospital is not a regional acute care psychiatric service. The goal of a regional acute care service is the stabilization, control and/or amelioration of acute dysfunctional symptoms or behaviors that result in the earliest possible return of the person to a less restrictive environment.

(25) "Restraint" means any manual method, physical or mechanical device, material, or equipment that immobilizes or reduces the ability of a patient to move his or her arms, legs, body, or head freely. Restraint may be used only for the management of violent or self-destructive behavior that jeopardizes the immediate physical safety of the patient, a staff member, or others.

(26) "Seclusion" is the involuntary confinement of a patient alone in a room or area, from which the patient is physically prevented leaving. Seclusion may be used only for the management of violent or self-destructive behavior that jeopardizes the immediate physical safety of the patient, a staff member, or others.

(27) "State Hospital" means each campus of the Oregon State Hospital.

Stat. Auth.: ORS 413.042, 426.005, 426.060, 426.110, 426.232, 426.236

Stats. Implemented: ORS 426.005 - 426.395

Hist.: MHD 10-1998, f. 6-26-98, cert. ef. 7-1-98, Renumbered from 309-220-0010; MHS 5-2008, f. & cert. ef. 6-27-08; MHS 13-2014, f. & cert. ef. 9-29-14; MHS 28-2016, f. & cert. ef. 12-29-16

309-033-0720

Application, Training and Minimum Staffing Requirements

(1) Only the following facilities shall be certified pursuant to this rule and the procedures found OAR 309-008-0100 to 309-008-1600 to use seclusion or restraint:

(a) Community hospitals licensed by the Public Health Division;

(b) Regional acute care facilities for adults certified by the Division pursuant to OAR 309-032-0850 through 309-032-0890; and

(c) Non-hospital facilities certified by the Division pursuant to OAR 309-033-0500 through 309-033-0550.

(2) Applications. Certification for the use of seclusion and restraints must be accomplished by submission of an application, and by the application process described in OAR 309-008-0100 to 309-008-1600. Continued certification is subject to hospital or facility reviews at frequencies determined by the Division.

(3) Requirements for Certification. In order to be certified for the use of seclusion and restraint, the Division must be satisfied that the hospital or facility meets the following requirements:

(a) Medical staffing. An adequate number of nurses, direct care staff, physicians, nurse practitioners or physician assistants shall be available at the hospital or facility, to provide emergency medical services which may be required. For hospitals, a letter from the chief of the medical staff or medical director of the hospital or facility, ensuring such availability, shall constitute satisfaction of this requirement. For non-hospital facilities, a written agreement with a local hospital, to provide such medical services may fulfill this requirement. When such an agreement is not possible, a written agreement with a local physician to provide such medical services may fulfill this requirement.

(b) Direct Care Staff Training. A staff person must be trained and able to demonstrate competency in the application of restraints and implementation of seclusion during the following intervals:

(A) A new staff person must be trained within the six months prior to providing direct patient care or as part of orientation; and

(B) Subsequently on a periodic basis consistent with the hospital or facility policy.

(c) Documentation in the staff personnel records must indicate the training and demonstration of competency were successfully completed.

(d) Trainer Qualifications. Individuals providing staff training must be qualified as evidenced by education, training, and experience in techniques used to address a person's behaviors.

(e) Training Curriculum. The training required for direct care staff must include:

(A) Standards for the proper use of seclusion and restraints as described in OAR 309-033-0730;

(B) Identification of medication side effects;

(C) Indicators of medical problems and medical crisis;

(D) Techniques to identify staff and patient behaviors, events, and environmental factors that may trigger circumstances that require the use of a restraint or seclusion;

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(E) The use of non-physical intervention skills;

(F) Choosing the least restrictive intervention based on an individualized assessment of the person's medical, or behavioral status or condition;

(G) The safe application and use of all types of restraint or seclusion used in the hospital or facility, including training in how to recognize and respond to sign of physical or psychological distress;

(H) Clinical identification of specific behavioral changes that indicate that restraint or seclusion is no longer necessary;

(I) Monitoring the physical and psychological well-being of the patient who is restrained or secluded, including but not limited to respiratory and circulatory status, skin integrity, vital signs, and any special requirements specified by the hospital or facility policies and procedures; and

(J) The use of first aid techniques and certification in the use of cardio-pulmonary resuscitation, including periodic recertification.

Stat. Auth.: ORS 426.005, 426.060, 426.110(2), 426.232, 426.236 & 430.041

Stats. Implemented: ORS 426.005 - 426.395

Hist.: MHD 10-1998, f. 6-26-98, cert. ef. 7-1-98, Renumbered from 309-220-0030; MHS 13-2014, f. & cert. ef. 9-29-14; MHS 28-2016, f. & cert. ef. 12-29-16

309-033-0740

Variations

(1) Variations may be granted to a facility if there is a lack of resources to implement the standards required in this rule or if implementation of the proposed alternative services, methods, concepts or procedures would result in services or systems that meet or exceed the standards in these rules.

(2) Variance application. The facility requesting a variance shall submit, in writing, an application to the Division which contains the following:

(a) The section of the rule from which the variance is sought;

(b) The reason for the proposed variance;

(c) The alternative practice, service, method, concept or procedure proposed;

(d) A plan and timetable for compliance with the section of the rule from which the variance is sought; and

(e) Signed documentation from the Council indicating its position on the proposed variance.

(3) The HSD Director, or his or her designee, will approve or deny the request for a variance.

(4) Appeal application. Appeal of the denial of a variance request shall be made in writing to the HSD Director, whose decision shall be final.

(5) Written approval. The facility may implement a variance only after written approval from the Division. The Intergovernmental Agreement shall be amended to the extent that the variance changes a term in that agreement.

(6) Duration of variance. A variance shall be reviewed by the Division at least every 2 years.

Stat. Auth.: ORS 426.236, 426.385

Stats. Implemented: ORS 426.005 - 426.395

Hist.: MHD 10-1998, f. 6-26-98, cert. ef. 7-1-98, Renumbered from 309-220-0050; MHS 13-2014, f. & cert. ef. 9-29-14; MHS 28-2016, f. & cert. ef. 12-29-16

309-033-0910

Definitions

(1) "Administrator" means the chief of psychiatric services in a community hospital or the person in charge of treatment and rehabilitation programs at nonhospital facilities. "Administrator" has the same meaning as "director of the facility" as that term is defined in ORS 426.005. Whenever "administrator" appears it means the administrator or designee.

(2) "Assistant Administrator" means the Assistant Administrator of Addictions and Mental Health Division.

(3) "Clinical record" means the record required by OAR 309-014-0035, General Standards for Delivery of Community Mental Health Services Elements, documenting the mental health services delivered to clients by a CMHP or subcontractor.

(4) "Community Mental Health Program" (CMHP) the entity responsible for organization of various services for persons with a mental health diagnosis or addictive disorders, operated by, or contractually affiliated with, a local mental health authority and operated in a specific geographic area of the state under an agreement with the Division pursuant to OAR 309-014-0000

(5) "Community hospital" means any hospital that is not a state hospital.

(6) "Court" means the circuit court acting pursuant to ORS Chapter 426.

(7) "Custody" means the prehearing physical retaining of a person taken into custody by:

(a) A peace officer pursuant to ORS 426.070, 426.228, 426.233;

(b) A peace officer at the direction of the director pursuant to ORS 426.233(1);

(c) A health care facility licensed under ORS Chapter 441 and approved by the Division, pursuant to ORS 426.231;

(d) A state hospital pursuant to ORS 426.180;

(e) A hospital pursuant to ORS 426.070 or 426.232; or

(f) A nonhospital facility pursuant to ORS 426.070 or 426.233.

(8) "Designee" means a QMHP designated by the director or a QMHP who is specifically authorized by the county governing body to order persons to be taken into custody pursuant to ORS 426.233.

(9) "Director" means the community mental health and developmental disabilities program director who has been authorized by the local mental health authority to direct the CMHP. "Director" also means a person who has been authorized by the director to act in the director's capacity for the purpose of this rule. In the case of the director ordering a peace officer to take a person into custody pursuant to ORS 426.233, the designee shall be a QMHP who is specifically authorized by the county governing body to order persons to be taken into custody.

(10) "Diversion" means the 14 day period of intensive treatment when a director and a psychiatrist certify a person as a mentally ill person pursuant to the provision of ORS 426.237(1)(b).

(11) "Division" means the Addictions and Mental Health Division of the Oregon Health Authority.

(12) "NMI" is the notification of mental illness required, pursuant to ORS 426.070, to be submitted by any two persons, a county health officer or a magistrate to the director and thereafter submitted by the director to the court or, pursuant to ORS 426.234, to be submitted by the physician or the director to the court. Pursuant to ORS 426.070 and 426.234, the court commences proceedings pursuant to ORS 426.070 to 426.130 upon receipt of the NMI.

(13) "Peace officer" means a sheriff, constable, marshal, municipal policeman, member of the Oregon State Police or investigator of the Criminal Justice Division of the Department of Justice and such other persons as may be designated by law.

(14) "Psychiatrist" means a physician licensed as provided pursuant to ORS 677.010 to 677.450 by the Board of Medical Examiners for the State of Oregon and who has completed an approved residency training program in psychiatry.

(15) "QMHP" means a qualified mental health professional that meets the following minimum qualifications:

(a) Psychiatrist licensed to practice in the State of Oregon;

(b) Physician licensed to practice in the State of Oregon;

(c) Graduate degree in psychology;

(d) Graduate degree in social work;

(e) Graduate degree in psychiatric nursing and licensed in the State of Oregon;

(f) Graduate degree in another mental health-related field; or

(g) Any other person whose education and experience meet, in the judgment of the Division, a level of competence consistent with the responsibilities required by the Division.

Stat. Auth.: ORS 413.042, 426.060 - 426.500

Stats. Implemented: ORS 426.005 - 426.395

Hist.: MHD 12-1998, f. 6-26-98, cert. ef. 7-1-98, Renumbered from 309-230-0010; MHS 28-2016, f. & cert. ef. 12-29-16

309-033-0970

Variations

(1) Criteria for a variance. Variations may be granted to a facility if there is a lack of resources to implement the standards required in this rule or if implementation of the proposed alternative services, methods, concepts or procedures would result in services or systems that meet or exceed the standards in these rules.

(2) Variance application. Applications for variances to this rule are to be completed pursuant to OAR 309-008-0100 to 309-008-1600.

Stat. Auth.: ORS 426.060 - 426.500

Stats. Implemented: ORS 426.005 - 426.395

Hist.: MHD 12-1998, f. 6-26-98, cert. ef. 7-1-98, Renumbered from 309-230-0080; MHS 28-2016, f. & cert. ef. 12-29-16

Rule Caption: Permanent rules (OAR 309-023) titled Psychiatric Emergency Services.

Adm. Order No.: MHS 29-2016

Filed with Sec. of State: 12-29-2016

ADMINISTRATIVE RULES

Certified to be Effective: 12-29-16

Notice Publication Date: 10-1-2016

Rules Adopted: 309-023-0100, 309-023-0110, 309-023-0120, 309-023-0130, 309-023-0140, 309-023-0150, 309-023-0160, 309-023-0170, 309-023-0180

Subject: These rules prescribe standards of care and other requirements relating to psychiatric emergency services delivered in an emergency department at a licensed hospital or licensed hospital satellite.

Rules Coordinator: Nola Russell—(503) 945-7652

309-023-0100

Purpose and Scope

These rules prescribe standards of care and other requirements relating to psychiatric emergency services delivered in an emergency department at a licensed hospital or licensed hospital satellite.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.042

Hist.: MHS 15-2016(Temp), f. & cert. ef. 10-6-16 thru 4-3-17; MHS 29-2016, f. & cert. ef. 12-29-16

309-023-0110

Definitions

In addition to the definitions in OAR chapter 309 division 033 the following definitions apply to these rules:

(1) “Behavioral Health” means mental health, mental illness, substance use disorders, and gambling disorders.

(2) “Behavioral Health Assessment” means a process which determines a patient’s need for immediate crisis stabilization through evaluation of the patient’s strengths, goals, needs, and current level of functioning.

(3) “Best Practice Risk Assessment” means a research-informed methodology that provides guidelines or tools to determine an individual’s level of risk for attempting or completing self-inflicted injury or death and may include tools such as the Columbia Suicide Severity Rating Scale or other tools accepted for the Substance Abuse and Mental Health Services Administration National Registry of Evidence-based Programs and Practices or the Suicide Prevention Resource Center Best Practices Registry.

(4) “Care Coordination” means a process-oriented activity to facilitate ongoing communication and collaboration to meet multiple needs including facilitating communication between family, natural supports, community resources, and involved providers and agencies; organizing, facilitating and participating in team meetings; and providing for continuity of care by creating linkages to and managing transitions between levels of care.

(5) “Case Management” means the services provided to assist individuals, who reside in a community setting, or are transitioning to a community setting, in gaining access to needed medical, behavioral health, social, educational, government entitlement programs, and other applicable community services.

(6) “Crisis” means either an actual, or perceived, urgent or emergent situation that occurs when an individual’s stability or functioning is disrupted and there is an immediate need to resolve the situation to prevent a serious deterioration in the individual’s mental or physical health or to prevent referral to a significantly higher level of care.

(7) “Crisis Intervention” means short-term services to address an immediate crisis need.

(8) “Crisis Stabilization Plan” means an individualized written plan defining specific short-term rehabilitation objectives and proposed crisis interventions derived from the patient’s mental and physical health assessment.

(9) “Family” has the meaning given that term in 309-018-0150.

(10) “Hospital” has the meaning given that term in ORS 442.015.

(11) “Lethal Means Counseling” means providers implement counseling strategies to help patients at risk for suicide, and their families, reduce access to lethal means, including but not limited to firearms. It includes but is not limited to several components; background on suicide data and lethal means, introduction to firearms, video presentation that models the counseling strategy, presentation and discussion on conducting a counseling session, optional role plays, and a course evaluation. (<http://www.sprc.org/resources-programs/calm-counseling-access-lethal-means-0>).

(12) “Living Room Setting” means a care setting that reflects the relaxed, warm, welcoming and non-clinical qualities of a typical living room.

(13) “Medically Appropriate Treatment” has the meaning given that term in OAR 410-172-0630.

(14) “Mental Status Examination” means an overall assessment of an individual’s mental functioning.

(15) “Peer” has the meaning given that term in OAR 410-180-0305.

(16) “Peer Delivered Services” has the meaning given that term in OAR 309-019-0100.

(17) “Peer Support Specialist” has the meaning given that term in OAR 410-180-0300 and also means an individual who has completed a Division approved training program (see OAR 410-180-0312) and is providing peer delivered services to an individual or family member with similar life experience, under the supervision of a qualified clinical supervisor.

(18) “Psychiatric Emergency Services (PES)” means medical and behavioral health services provided to individuals experiencing an acute disturbance of thought, mood, behavior, or social relationship that requires an immediate intervention as defined by the patient, family or the community, to prevent harm to the patient or others.

(19) “Safety Plan” means a patient directed document developed through a collaborative process in which the provider assists the patient in listing strategies for the patient to use when suicide ideation is elevated or after a suicide attempt. A safety plan template is available from the Suicide Prevention Resource Center at <http://www.sprc.org/resources-programs/calm-counseling-access-lethal-means-0>.

(20) “Transition of Care Coordination” also known as a Warm Handoff, means the process of transferring a patient from one provider to another, prior to discharge.

(21) “Trauma Informed Services” has the meaning given that term in OAR 309-018-0105(77). The Authority’s trauma informed service policy may be found at <https://www.oregon.gov/oha/amh/pages/trauma.aspx>.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.042

Hist.: MHS 15-2016(Temp), f. & cert. ef. 10-6-16 thru 4-3-17; MHS 29-2016, f. & cert. ef. 12-29-16

309-023-0120

PES Facility Requirements

(1) For purposes of these rules, psychiatric emergency services shall be delivered in an emergency department through a hospital or hospital satellite licensed in accordance with OAR chapter 333 division 500.

(2) The PES facility shall comply with the following:

(a) Standards for Regional Acute Care Psychiatric Services for Adults pursuant to OAR 309-032-0850 to 0870.

(b) Be approved as a hospital hold facility pursuant to OAR 309-033-0500 to 0550.

(c) Meet the structural and physical requirements set forth in OAR chapter 333 division 535 and 309-033-0727.

(3) The facility shall offer food and drink at regularly scheduled intervals and as needed, to patients receiving services.

(4) The facility shall develop policies and procedures annually that demonstrate collaboration with all local licensed ambulance service agencies and police departments that specify the role of each responder in managing medical, psychiatric and other emergencies. The policies and procedures shall also include a requirement for first responder training to determine if the appropriate setting for the patient should be a PES.

(5) The facility shall develop policies and procedures that demonstrate collaboration with the local community and local Coordinated Care Organizations.

(6) The facility shall have phone access available for the patient, when appropriate.

(7) The facility shall offer a care setting that is appropriate to the patient’s wishes and safety needs. Care settings should include a living room setting, which may accommodate the option for lying down comfortably and allowing for more privacy. Living room settings include comfortable seating, soft lighting, and are designed to encourage a sense of safety and belonging.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.042

Hist.: MHS 15-2016(Temp), f. & cert. ef. 10-6-16 thru 4-3-17; MHS 29-2016, f. & cert. ef. 12-29-16

309-023-0130

Services

(1) Psychiatric emergency services may include up to 23 hours of triage and assessment, observation and supervision, crisis stabilization, crisis intervention, crisis counseling, case management, medication management, safety planning, lethal means counseling, and mobilization of peer and family support and community resources.

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(2) The facility shall deliver services that are individualized, recovery-oriented, trauma informed, developmentally and medically appropriate and consistent with best practices for suicide risk assessment, intervention and treatment.

(3) Staff must promptly conduct an assessment to determine the precipitating factors that lead to the crisis and a screening assessment which shall include a best practice evaluation of risk of harm to self or others, a mental status exam, need for immediate behavioral health assessment, including depression screening, need for emergency intervention, a medical screening exam, and collection of collateral information.

(4) Staff shall develop a crisis stabilization plan that provides the most effective treatment based on the patient's provisional psychiatric condition and, to the maximum extent possible, incorporates patient or family preferences. For purposes of these rules, the term families includes families of choice. The facility shall offer peer delivered services to the patient and family and, if accepted, shall be incorporated in care coordination and crisis stabilization plan.

(5) The facility shall provide access to existing community based rehabilitation, reasonable access to peer and family support and social services that may be used to help the patient transition to the community and provide documentation of other needed interventions including crisis counseling and family counseling.

(6) Transition of care coordination shall include to the extent possible and when the patient agrees:

(a) A face-to-face meeting with a community provider and the patient, and if possible, family, and hospital staff prior to discharge.

(b) A face-to-face meeting may be accomplished via technology that provides secure, unrecorded, audio video in a private setting with a community provider and the patient, and if possible, family and hospital staff.

(7) Transition of care coordination shall include:

(a) A transitional team at the PES facility to support the patient, serve as a bridge between the hospital and a community provider and to the extent possible ensure that the patient connects with a community provider, and peer and family support services if desired by the patient and their family.

(b) For patients discharged to their home or other living environment, a member of the transition team shall determine through interviews with the patient, family, peer or family support specialists or lay caregiver the safety of that environment, potential mitigating factors to reduce risk, provide discharge instructions, including a safety plan, and lethal means counseling to the patient, peer and family support specialist and family.

(8) Facilities shall ensure that the rights of individuals are provided pursuant to OAR 309-032-0341.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.042

Hist.: MHS 15-2016(Temp), f. & cert. ef. 10-6-16 thru 4-3-17; MHS 29-2016, f. & cert. ef. 12-29-16

309-023-0140

Seclusion and Restraint

(1) The facility shall be certified as a Class 1 facility pursuant to OAR 309-033-0520. A Class 1 facility is a facility that is approved under applicable administrative rules to be locked to prevent a patient from leaving the facility, to use seclusion and restraint, and to involuntarily administer psychiatric medication.

(2) The facility shall comply with seclusion and restraint requirements set forth in OAR chapter 309 division 33.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.042

Hist.: MHS 15-2016(Temp), f. & cert. ef. 10-6-16 thru 4-3-17; MHS 29-2016, f. & cert. ef. 12-29-16

309-023-0150

Involuntary Detainment & Informed Consent

(1) For individuals who are in custody, under a civil commitment, hospital hold or on diversion, the PES facility must comply with the administrative rules in OAR chapter 309, division 33 which govern the administration, standards of care, standards for obtaining informed consent, administration of emergency procedures without informed consent, and transportation of individuals being held in custody, whether the individual is under a civil commitment order, a hospital hold, or on diversion from a civil commitment.

(2) The facility shall have written policies concerning the care, custody, and treatment of individuals in custody or on diversion. These policies shall be reviewed as part of the Division's approval process, and be in accordance with OAR chapter 309 division 33.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.042

Hist.: MHS 15-2016(Temp), f. & cert. ef. 10-6-16 thru 4-3-17; MHS 29-2016, f. & cert. ef. 12-29-16

309-023-0160

Staffing Requirements

(1) An adequate number of clinical staff and on-site peer support specialists shall be available and specifically trained in psychiatric emergency services.

(2) A licensed psychiatrist shall be available to meet with patients as needed at any time and on site no less than 12 hours each day to assess individuals and initiate the development of a crisis stabilization plan and oversee patient care.

(3) At a minimum, one registered nurse, and one licensed mental health professional shall be on-site 24/7, and shall be dedicated to providing psychiatric emergency services to individuals in crisis.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.042

Hist.: MHS 15-2016(Temp), f. & cert. ef. 10-6-16 thru 4-3-17; MHS 29-2016, f. & cert. ef. 12-29-16

309-023-0170

Staff Training

(1) The facility shall have policies and procedures for ongoing educational programs to instruct staff regarding best practices in psychiatric emergency services.

(2) A staff training curriculum shall include, but is not limited to:

(a) Criteria for the admission of an individual who can safely be served by the facility;

(b) Recognition of indicators of violence to self or others, or assault and criteria for the transfer of the individual to or from the facility;

(c) Indicators of medical problems, identification of medication side effects, and indicators of medical problems and medical crisis;

(d) Management of aggressive behavior and de-escalation techniques;

(e) Trauma Informed care in accord with the Authority's Trauma Informed Policy at <https://www.oregon.gov/oha/amh/pages/trauma.aspx>;

(f) Practices to provide psychoeducation and post-discharge safety to patients and families;

(g) Best practice treatment for substance use disorders

(h) Staff training in best practices for:

(A) Lethal means counseling which may include the CALM (<http://www.sprc.org/resources-programs/calm-counseling-access-lethal-means>) or similar curriculum;

(B) Collaboration with patients on development of safety plans which may include guidelines established by the Suicide Prevention Resource Center, <http://www.sprc.org/sites/default/files/SafetyPlanningGuide%20Quick%20Guide%20for%20Clinicians.pdf>; and

(C) Risk assessment.

(3) At a minimum, staff training shall be provided at time of hire and required annually, or more often if necessary.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.042

Hist.: MHS 15-2016(Temp), f. & cert. ef. 10-6-16 thru 4-3-17; MHS 29-2016, f. & cert. ef. 12-29-16

309-023-0180

Quality Assessment and Improvement and Patient Outcomes

(1) Facilities must comply with the quality assessment and improvement requirements set forth in OAR 309-032-0870 (10).

(2) In addition to the quality assessment requirements in section (1) facilities shall maintain records of outcomes, for each patient, outlined in the PES provider manual.

(3) Facilities shall report annually to the Authority regarding quality assessment information set forth in OAR 309-032-0870 and outcomes described in the PES provider manual. The report shall use data to demonstrate the quality, cost-effectiveness, and patient satisfaction with PES. The Authority shall review the PES facility reports annually and may make changes to PES policy or payment based on outcome performance.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.042

Hist.: MHS 15-2016(Temp), f. & cert. ef. 10-6-16 thru 4-3-17; MHS 29-2016, f. & cert. ef. 12-29-16

Rule Caption: Clarify Procedural Detail and Process for Taking Action on a Behavioral Health Provider Certificate

Adm. Order No.: MHS 30-2016(Temp)

Filed with Sec. of State: 12-30-2016

Certified to be Effective: 1-1-17 thru 6-29-17

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ADMINISTRATIVE RULES

Rules Adopted: 309-008-0905

Rules Amended: 309-008-0800, 309-008-0900, 309-008-1100, 309-008-1200, 309-008-1300

Subject: Under Oregon Revised Statutes 413.032-413.033, 430.357, 430.335, and 430.637, the Oregon Health Authority certifies and has authority to regulate behavioral health treatment service providers who serve vulnerable people, including those with mental health issues and/or substance use disorders. These rules set the minimum standards for serving these vulnerable individuals and describe the process by which the Authority regulates the service providers.

On November 30, 2016, the Authority promulgated new Division 008 rules to regulate behavioral health provider certificates; the current temporary rule provides additional clarification and procedural detail regarding the circumstances and process in which the Authority may take an action on a certificate. The Authority needs to adopt these temporary rules to avoid delay in providers achieving compliance with administrative rules or in the Authority's response in situations to protect vulnerable persons being served by these providers. This rule amendment is necessary to provide for and clarify the Authority's practices and procedures regarding when and under what circumstances it may take action on a certificate, such as suspension, revocation, denial of an application, denial of a renewal, and imposing a condition on the certificate.

Rules Coordinator: Nola Russell—(503) 945-7652

309-008-0800

Conduct of Certification Reviews

(1) The Division shall employ review procedures deemed adequate to determine applicant or provider compliance with applicable administrative rules, statutes, other applicable regulations, and as necessary, contractual obligations. These procedures may include but are not limited to:

- (a) Entry and inspection of any service delivery location;
- (b) Review of documents pursuant to this rule; and

(c) Interviews with or a request for completion of a questionnaire, by individuals knowledgeable about the provider or applicant. Individuals interviewed may include program staff, managers, governing or advisory board members, allied agencies, individuals, their family members, and significant others.

(2) Program staff must cooperate with Division staff during a certification review.

(3) Within 30 days following the completion of each discretionary review, the Division may, at their discretion, issue a report and require a Plan of Correction congruent with section (4) of this rule.

(4) Within 30 days following the completion of each initial or renewal certification review, the Division shall issue a report that includes:

(a) A statement of any deficiency including a description of the review findings related to non-compliance with applicable administrative rules, statutes, other applicable regulations, and any required corrective actions where applicable;

(b) Pursuant to a certification review, when the Division determines a provider or applicant is not operating in substantial compliance with all applicable statutes, administrative rules, and other regulations, and the plan of correction (POC) process is appropriate, the Division may require the provider or applicant to submit a POC. The Division shall provide written notice of the requirement to submit a POC, and the provider or applicant shall prepare and submit a POC according to the following terms:

(A) The provider or applicant shall submit the POC to the Division within 30 days of receiving the statement of deficiency. The Division may issue up to a 90-day extension to the existing certification to allow the provider or applicant to complete the plan of correction process;

(B) The POC shall address each finding of non-compliance and shall include:

(i) The planned action already taken to correct each finding of non-compliance;

(ii) The anticipated or requested timeframe for the completion of each corrective action not yet complete at the time of POC submission to the Division;

(iii) A description of and plan for quality assurance activities intended to ensure ongoing compliance; and

(iv) The name of the individual responsible for ensuring the implementation of each corrective action within the plan of correction.

(c) If the Division finds that clarification or supplementation to the POC is required prior to approval, Division staff shall contact the provider

or applicant to provide notice of requested clarification or supplementation, and the provider or applicant shall submit an amended plan of correction within 14 calendars days of notification;

(d) The provider shall submit a sufficient POC approved by the Division prior to receiving a certificate. Upon the Division's approval of the POC, the Division shall issue the appropriate certification;

(e) The Division may deny, suspend, or revoke an applicant or provider's certification if the provider fails to submit an adequate POC within the timeframes established in this rule.

(5) When the Division determines that a provider or applicant is in substantial compliance with all applicable statutes, administrative rules, and other regulations, the Division shall not require a POC. For certification reviews conducted for purposes of initial certification or renewal of a certification, the Division shall issue a certificate pursuant to these rules.

Stat. Auth.: ORS 161.390, 161.392, 179.040, 179.505, 413.042, 413.032-413.033, 426.072, 426.175, 426.236, 426.500, 430.010, 430.021, 430.256, 430.357, 430.560, 430.640, 430.870, 743A.168, 743.556.

Stats. Implemented: 413.520, 426.060, 426.140, 430.010, 430.254, 430.335, 430.590, 430.620, 430.637, 813.021, & 813.260.

Hist.: MHS 6-2016(Temp), f. 6-28-16, cert. ef. 7-1-16 thru 12-27-16; MHS 16-2016, f. 11-28-16, cert. ef. 11-30-16; MHS 30-2016(Temp), f. 12-30-16, cert. ef. 1-1-17 thru 6-29-17

309-008-0900

Issuing Certificates

(1) Issuing Certificates. The Division will issue an approved applicant a certificate to provide behavioral health treatment services. Every certificate will:

(a) Be signed by the Director;

(b) Apply to all approved service delivery locations listed in the accompanying letter;

(c) List the service delivery rules under which the applicant or provider is approved to provide services;

(d) List the effective and expiration dates of the certificate;

(e) List any conditions applied to the certificate;

(f) List any variances approved by the Division; and

(g) Be accompanied by a letter from the Division noting:

(A) All service delivery locations approved under the certificate; and

(B) Approved alternative practices related to variances listed on the certificate.

(2) Initial Certification. After conduct of the certification review, the Division will issue initial certificates to new applicants that demonstrate substantial compliance with applicable administrative rules and statutes:

(a) For up to one calendar year from the date of initial certification;

and

(b) Initial certifications may be issued with conditions pursuant to this rule.

(3) Certification Renewal. After conduct of the certification review and the plan of correction process where applicable, the Division will renew the certificate of an applicant with a current certification that demonstrates substantial compliance with applicable administrative rules or statutes:

(a) For up to three calendar years from the date of renewal; and

(b) Renewal certifications may be issued with conditions pursuant to these rules.

Stat. Auth.: ORS 161.390, 161.392, 179.040, 179.505, 413.042, 413.032-413.033, 426.072, 426.175, 426.236, 426.500, 430.010, 430.021, 430.256, 430.357, 430.560, 430.640, 430.870, 743A.168, 743.556.

Stats. Implemented: 413.520, 426.060, 426.140, 430.010, 430.254, 430.335, 430.590, 430.620, 430.637, 813.021, & 813.260.

Hist.: MHS 6-2016(Temp), f. 6-28-16, cert. ef. 7-1-16 thru 12-27-16; MHS 16-2016, f. 11-28-16, cert. ef. 11-30-16; MHS 30-2016(Temp), f. 12-30-16, cert. ef. 1-1-17 thru 6-29-17

309-008-0905

Conditions

(1) Imposing Conditions. The Division may elect at any time and at its discretion to place conditions on a certificate upon a finding that:

(a) The applicant or provider employs or contracts with any program staff for whom there is reliable evidence of abuse, neglect, or mistreatment;

(b) The applicant or provider employs or contracts with any program staff that fails to meet relevant minimum qualifications described in these rules, service delivery rules, or other applicable law;

(c) There is reliable evidence of abuse, neglect, or mistreatment;

(d) The applicant or provider operates such that there is a threat to the health, welfare, or safety of an individual or the public;

(e) The applicant or provider has substantially failed to comply with these rules, service delivery rules, or other applicable law;

(f) The applicant or provider fails to fully implement a Plan of Correction or adequately maintain a corrective action;

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(g) The Division has issued the applicant or provider through two or more consecutive certification reviews substantially similar findings of non-compliance with these rules, service delivery rules, or other applicable administrative rules, statutes, or regulations;

(h) There is a need for increased regulatory oversight of the applicant or provider; or

(i) The applicant or provider fails to comply with any reporting requirements relating to funding certification.

(2) The Division will consider the sum of the circumstances, including but not limited to the following criteria, when deciding whether to impose conditions as opposed to denying, suspending, refusing to renew, or revoking a certificate:

(a) The expressed willingness and demonstrated ability of the applicant or provider to gain and maintain compliance with all applicable administrative rules and law;

(b) Submission of a POC prescribing reasonable, sustained and timely resolution to areas of non-compliance;

(c) The relative availability of alternative providers to address any service needs that would be unmet if the applicant or provider is not issued a certificate with conditions as an alternative to revocation or refusal to award a certificate; or

(d) The applicant or provider's historical compliance with Division rules, previous conditions placed on certificates, and previous POCs.

(3) Conditions to the certificate may include:

(a) Requiring corrective actions with associated timeframes for completion necessary for the applicant or provider to correct areas of non-compliance or concern identified by the Division;

(b) Limiting the total number of individuals enrolled in services or on a waitlist for services;

(c) Limiting the population, such as narrowing the age range of individuals, who the applicant or provider may serve;

(d) Limiting the scope and type of services that the applicant or provider may provide;

(e) Other conditions deemed necessary by the Division to ensure the health and safety of individuals and the public; and

(f) Other conditions deemed necessary by the Division for the purpose of ensuring regulatory compliance with this or other applicable administrative rules and law.

(4) Processes for imposing conditions on certificates: The Division may impose conditions on a certificate With Notice or Without Notice. In both processes, a provider or an applicant may request an informal conference:

(a) With Notice: The Division may issue the conditions With Notice by issuing a Notice of Impending Imposition of Certificate Condition (Notice) at least 48 hours prior to issuing an Order Imposing Certificate Condition (Order) to a provider or an applicant. After the Order is issued, the Division shall revise the certificate to indicate the conditions that have been ordered;

(b) Without Notice: The Division may impose the conditions Without Notice only if the Division determines that there is an imminent threat to individuals such that the Division determines that it is not safe or practical to give an applicant or a provider advance notice. The Division may impose the conditions without notice by issuing an Order Imposing Certificate Condition (Order) to a provider or an applicant. After the Order is issued, the Division shall revise the certificate to indicate the conditions that have been ordered.

(5) Notice of Impending Imposition of Certificate Condition (Notice). The Notice may be provided in writing or orally. When the Notice is provided in writing, it shall be sent by certified or registered mail or delivered in person to the applicant or provider. If the Notice is provided orally, it may be provided by telephone or in person to the applicant, provider, or person represented as being in charge of the program. When the Notice is delivered orally, the Division shall subsequently provide written notice to the applicant or provider by registered or certified mail. The Notice shall:

(a) Generally describe the acts or omissions of the applicant or provider and the circumstances that led to the finding that the imposition of a certificate condition is warranted;

(b) Generally describe why the acts or omissions and the circumstances create a situation for which the imposition of a condition is warranted;

(c) Provide a brief statement identifying the impending condition;

(d) Identify a person within the Division whom the applicant or provider may contact and who is authorized to enter the Order or to make recommendations regarding issuance of the Order;

(e) Specify the date and time the Order is scheduled to take effect; and

(f) Offer that the applicant or provider may request an informal conference prior to the issuance of the Order Imposing Certificate Condition, or if the provider has already requested an informal conference, specify the date and time that an informal conference will be held.

(6) Informal Conference Regarding Conditions. If an informal conference is requested regarding conditions, the conference will be held at a location designated by the Division. If determined to be appropriate by the Division, the conference may be held by telephone. Following the informal conference, the Division may modify the conditions. The timing of the informal conference is described as follows:

(a) For conditions to be imposed With Notice: If a Notice is issued, the applicant or provider may request an informal conference to object to the Division's proposed action before the condition is scheduled to take effect. The request for an informal conference shall be made prior to the date the conditions are intended to be effective. If timely requested, the informal conference shall be held within seven days of the request. The Order Imposing Condition may be issued at any time after the informal conference;

(b) For conditions imposed Without Notice: If an Order Imposing Condition is issued without a prior Notice, the applicant or provider may, within 48 hours of the issuance of the Order, request an informal conference. If timely requested, the informal conference will be held within two business days of receipt of the request. Following the informal conference, the Division at its discretion may modify the conditions.

(7) Order Imposing Condition. When an Order is issued, the Division must serve the Order either personally or by registered or certified mail. The Order must include the following statements:

(a) The authority and jurisdiction under which the condition is being issued;

(b) A reference to the particular sections of the statute and administrative rules involved;

(c) The effective date of the condition;

(d) A short and plain statement of the nature of the matters asserted or charged;

(e) The specific terms of the certificate condition;

(f) Right to request a contested case hearing under ORS Chapter 183;

(g) A statement that if a request for hearing is not received by the Division within 21 days of the date of the Order, the applicant or provider will have waived the right to a hearing under ORS Chapter 183;

(h) Findings of specific acts or omissions of the applicant or provider that are grounds for the condition and the reasons the acts or omissions create a situation for which the imposition of a certificate condition is warranted; and,

(i) A statement that the Division may combine the hearing on the Order with any other proceeding affecting the certificate. The procedures for the combined proceeding must be those applicable to the other proceedings affecting the certificate.

(8) Hearing:

(a) Right to Hearing. If the Division imposes an Order imposing conditions, the applicant or provider is entitled to a contested case hearing pursuant to ORS Chapter 183;

(b) Hearing Request. The Division must receive the request for a hearing within 21 days of the date of Order. If a request for hearing is not received by the Division within 21 days of the date of the Order, the applicant or provider will have waived the right to a hearing under ORS Chapter 183;

(c) The applicant or provider may request a contested case hearing ORS Chapter 183 regarding the imposition of the conditions in addition to, or in lieu of, an informal conference. Requesting a contested case hearing shall not delay the effective date of the conditions.

(9) Exceptions to Order Imposing Condition. When a restriction of enrollment or intake is in effect pursuant to an Order, the Division, in its sole discretion, may authorize the provider to admit or serve new individuals for whom the Division determines that alternate placement or provider is not feasible.

(10) Duration of Conditions. Conditions may be imposed for the duration of the certificate or limited to some other shorter period of time. If the condition corresponds to the certificate period, the reasons for the condition will be considered at the time of renewal to determine if the conditions are still appropriate. The effective date and expiration date of the condition shall be indicated on the certificate.

(11) Request for Re-inspection. When the applicant or provider determines that the circumstances leading to imposition of the condition no longer exist, and that effective systems are in place to ensure that similar

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deficiencies do not recur, the applicant or provider may make written request to the Division for re-inspection.

(12) Re-inspection.

(a) If the Division finds that the situation for which the condition was imposed has been corrected and finds that systems are in place to ensure that similar deficiencies do not recur, the condition will be withdrawn, and the Division must revise the certificate accordingly. Following re-inspection, the Division will notify the facility by telephone of the decision to withdraw the condition. Telephone notification will be followed by written notification;

(b) If the Division determines after a re-inspection that the situation for which the condition was imposed continues to exist or that there are not sufficient systems in place to prevent similar deficiencies, the certificate condition may not be withdrawn, and the Division is not obligated to re-inspect again for at least 45 days. A decision not to withdraw the Order shall be given to the applicant or provider in writing, and the applicant or provider shall be informed of the right to a contested case hearing pursuant to ORS Chapter 183. Nothing in this rule is intended to limit the Division's authority to conduct a certification review at any time.

(13) The Division may deny, suspend, and refuse to renew, or revoke the certificate where the provider or applicant fails to timely comply with the condition.

(14) When the Division orders a condition be placed on a certificate under the provisions of this rule, the applicant or provider is entitled to request a hearing in accordance with ORS Chapter 183.

Stat. Auth.: ORS 161.390, 161.392, 179.040, 179.505, 413.042, 413.032-413.033, 426.072, 426.236, 426.500, 430.010, 430.021, 430.256, 430.357, 430.560, 430.640, 430.870, 743A.168

Stats. Implemented: 413.520, 426.060, 426.140, 430.010, 430.254, 430.335, 430.590, 430.620, 430.637, 813.021, & 813.260.

Hist.: MHS 30-2016(Temp), f. 12-30-16, cert. ef. 1-1-17 thru 6-29-17

309-008-1100

Nonrenewal, Suspension, and Revocation of Certification

(1) Immediate Revocation or Suspension of a certificate:

(a) May occur when the Division finds there is substantial failure to comply with applicable statutes, administrative rules, service delivery rules, or other applicable regulations, such that, the Division finds there is a serious danger to the public health or safety;

(b) May occur when demonstrated substantial failure to comply with these administrative rules and other applicable regulations such that the health or safety of individuals is jeopardized to the degree that immediate cessation of services by the provider is considered necessary to prevent harm to the individual.

(2) Revocation, Suspension, and Refusal to Renew Certificates with Notice. The Division may revoke, suspend, or refuse to renew a certificate of one or more service delivery locations listed on the certificate when the Division determines that there is reliable evidence of abuse, neglect, or mistreatment or determines that a provider:

(a) Has demonstrated substantial failure to comply with these administrative rules or with applicable state or federal law;

(b) Has demonstrated a substantial failure to comply with applicable rules and regulations such that the health or safety of individuals is found to be jeopardized during two certification reviews within a six-year period;

(c) Has failed to maintain any State of Oregon license that is a prerequisite for providing services that were approved;

(d) Has a direct contract with the Division, and the Division has terminated its agreement or contract with the provider;

(e) Has failed to comply with the requirements of one or more conditions on the certificate;

(f) Has failed to submit and or implement a POC sufficient to come into substantial compliance with these and other applicable rules or regulations;

(g) Has submitted falsified or incorrect information to the Division;

(h) Has refused to allow access to information for the purpose of verifying compliance with applicable statutes, administrative rules or other applicable regulations within a specified date or fails to submit such information following the date specified for such a submission in the written notification;

(i) Has failed to maintain sufficient staffing or failed to comply with staff qualification requirements.

(3) When the Division determines the need to revoke, suspend, or deny renewal of a certificate issued under these rules, a notice of intent to take action on the certificate will be issued to the provider.

Stat. Auth.: ORS 161.390, 161.392, 179.040, 179.505, 413.042, 413.032-413.033, 426.072, 426.175, 426.236, 426.500, 430.010, 430.021, 430.256, 430.357, 430.560, 430.640, 430.870, 743A.168, 743.556.

Stats. Implemented: 413.520, 426.060, 426.140, 430.010, 430.254, 430.335, 430.590, 430.620, 430.637, 813.021, & 813.260.

Hist.: MHS 6-2016(Temp), f. 6-28-16, cert. ef. 7-1-16 thru 12-27-16; MHS 16-2016, f. 11-28-16, cert. ef. 11-30-16; MHS 30-2016(Temp), f. 12-30-16, cert. ef. 1-1-17 thru 6-29-17

309-008-1200

Informal Conference

(1) Informal Conference. Within ten calendar days of the Division issuance of an order of suspension, a notice of intent to revoke or notice of intent to nonrenew (refusal to renew) the certificate to an applicant or provider pursuant to these rules, the Division shall offer the applicant or provider an opportunity for an informal conference. The applicant or provider shall make its request for an informal conference in writing within seven days of the issuance of notice. Upon receipt of a timely written request, the Division will select a location and time for such a conference, provided that the conference occurs within 14 days of the Division's receipt of the request.

(2) Following such a conference, the Division may:

(a) Approve the application or renewal or initiate the process of imposing conditions to certification as described and allowed by these rules as an alternative to denying or revoking certification;

(b) Continue to proceed with action on the provider's certificate up to and including suspension, revocation, or refusal to renew the certificate; or

(c) Withdraw or amend the order of suspension, notice of intent to revoke, or notice of intent to nonrenew the certificate.

(3) The Division will provide written notice of its decision under subsection (2) of this rule within 14 calendar days of the informal conference.

(4) Informal conferences regarding conditions are not described in this rule, and instead are described in OAR 309-008-0905.

Stat. Auth.: ORS 161.390, 161.392, 179.040, 179.505, 413.042, 413.032-413.033, 426.072, 426.175, 426.236, 426.500, 430.010, 430.021, 430.256, 430.357, 430.560, 430.640, 430.870, 743A.168, 743.556.

Stats. Implemented: 413.520, 426.060, 426.140, 430.010, 430.254, 430.335, 430.590, 430.620, 430.637, 813.021, & 813.260.

Hist.: MHS 6-2016(Temp), f. 6-28-16, cert. ef. 7-1-16 thru 12-27-16; MHS 16-2016, f. 11-28-16, cert. ef. 11-30-16; MHS 30-2016(Temp), f. 12-30-16, cert. ef. 1-1-17 thru 6-29-17

309-008-1300

Hearings

(1) An applicant or provider who issued a notice of intent to revoke, suspend, or refusal to renew its certificate under these rules shall be entitled to request a hearing in accordance with ORS Chapter 183.

(2) When the Division orders the imposition of a condition or orders immediate suspension of a certificate under the provisions of this rule, the provider shall be entitled to request a hearing in accordance with ORS Chapter 183.

Stat. Auth.: ORS 161.390, 161.392, 179.040, 179.505, 413.042, 413.032-413.033, 426.072, 426.175, 426.236, 426.500, 430.010, 430.021, 430.256, 430.357, 430.560, 430.640, 430.870, 743A.168, 743.556.

Stats. Implemented: 413.520, 426.060, 426.140, 430.010, 430.254, 430.335, 430.590, 430.620, 430.637, 813.021, & 813.260.

Hist.: MHS 6-2016(Temp), f. 6-28-16, cert. ef. 7-1-16 thru 12-27-16; MHS 16-2016, f. 11-28-16, cert. ef. 11-30-16; MHS 30-2016(Temp), f. 12-30-16, cert. ef. 1-1-17 thru 6-29-17

Oregon Health Authority, Public Health Division Chapter 333

Rule Caption: Establishment of the Vaccines for Children (VFC) Program

Adm. Order No.: PH 39-2016

Filed with Sec. of State: 12-22-2016

Certified to be Effective: 12-22-16

Notice Publication Date: 11-1-2016

Rules Adopted: 333-046-0010, 333-046-0020, 333-046-0030, 333-046-0040, 333-046-0050, 333-046-0060, 333-046-0070, 333-046-0080, 333-046-0090, 333-046-0100, 333-046-0110, 333-046-0120, 333-046-0130

Subject: The Oregon Health Authority, Public Health Division is permanently adopting administrative rules in chapter 333, division 46 to establish the Vaccines for Children (VFC) Program. The VFC program is a federal entitlement program that provides vaccines to categorically eligible children at no cost. Free vaccines are delivered through public and private medical clinics throughout the state. In order to access these vaccines, clinics must enroll in a state-level VFC Program.

The administrative rules detail requirements for clinic enrollment, vaccine eligibility, administration fees and clinic compliance. They

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also outline the process for imposing sanctions including probation or removal from the VFC Program.

Rules Coordinator: Brittany Hall—(971) 673-1291

333-046-0010

Purpose

The VFC program is a federally funded program established in 1993 through the Omnibus Budget Reconciliation Act (OBRA). Known as section 1928 of the Social Security Act, the VFC program is an entitlement program for children, age 18 and younger who are categorically eligible. Categories of eligibility are limited to: enrollment in Medicaid; lack of health insurance; American Indian/Alaskan Native heritage; and in federally-qualified health centers and rural health clinics, insurance that does not cover immunizations. The VFC program provides vaccines recommended by the Advisory Committee on Immunization Practices (ACIP) at no cost, besides an administration fee, to the recipient.

Stat. Auth.: ORS 413.042, 431.250
Stats. Implemented: ORS 413.042, 431.250
Hist.: PH 39-2016, f. & cert. ef. 12-22-16

333-046-0020

Adoption by Reference

Outside standards, listings and publications referred to in these rules are by reference made a part of these rules as if fully set forth.

Stat. Auth.: ORS 413.042, 431.250
Stats. Implemented: ORS 413.042, 431.250
Hist.: PH 39-2016, f. & cert. ef. 12-22-16

333-046-0030

Definitions

(1) "ACIP" means the Advisory Committee on Immunization Practices, a group of experts convened by the Centers for Disease Control and Prevention to provide guidance and advice on the immunization of the civilian population.

(2) "Alaskan Native" means a person who self-identified as having Alaskan Native heritage.

(3) "ALERT IIS" means the ALERT Immunization Information System.

(4) "American Indian" means a person who self-identifies as having Native American heritage.

(5) "Authority" means the Oregon Health Authority.

(6) "CDC" means the Centers for Disease Control and Prevention.

(7) "Clinic" means a facility providing medical services to outpatients. A clinic may have a solo practitioner or be a group practice. Pharmacies that provide immunization services are also considered clinics for the purposes of this rule.

(8) "FQHC" means a federally-qualified health center.

(9) "Oregon Vaccine Management Guide" means a document produced by the Authority that describes provider requirements for vaccine inventory, management and storage of federally-supplied vaccines.

(10) "Prescriber" means a professional with prescription writing privileges currently licensed in Oregon.

(11) "RHC" means a federally-designated rural health clinic.

(12) "Underinsured" means a person that has health insurance that does not cover immunizations, or health insurance that covers some recommended immunizations but not all recommended immunizations.

(13) "Uninsured" means a person that does not have any kind of health insurance.

(14) "VFC Operations Guide" means the document produced annually by the Immunization Services Division of the CDC that outlines the policies and procedures that must be followed by states participating in the federal VFC program.

(15) "VFC Program Agreement" means a document provided by the Authority in compliance with CDC regulations that sets forth the requirements of the VFC program and allows clinics to indicate the number of patients served annually.

Stat. Auth.: ORS 413.042, 431.250
Stats. Implemented: ORS 413.042, 431.250
Hist.: PH 39-2016, f. & cert. ef. 12-22-16

333-046-0040

Clinic Enrollment

(1) Only prescribers authorized by the Authority may receive federally-purchased vaccines provided by the VFC program.

(2) Application for the VFC program requires the clinic's principal provider, medical director or clinic administrator to complete a VFC Program Agreement that estimates the number of patients served and doc-

uments the prescriber's agreement to ensure that the clinic, and all of its prescribers, complies with all VFC program requirements.

(3) In a solo practice, forms must be signed by the primary prescriber.

(4) In a group practice, forms must be signed by the medical director or clinic administrator. The signer will be held accountable for compliance of the entire organization and all prescribers using VFC vaccine in the practice.

(5) Prior to enrollment, clinics must have an enrollment site visit by the Authority.

(6) Clinics must re-submit an updated signed VFC Program Agreement:

(a) Annually; and

(b) When the number of children served changes enough to require an adjustment in the amount of vaccine needed; or

(c) The status of the clinic changes during a calendar year.

Stat. Auth.: ORS 413.042, 431.250
Stats. Implemented: ORS 413.042, 431.250
Hist.: PH 39-2016, f. & cert. ef. 12-22-16

333-046-0050

Vaccine Eligibility

(1) Enrolled clinics may only provide VFC vaccine to children under the age of 19 years.

(2) Enrolled clinics may only provide vaccine to children in one of the following categories:

(a) Children enrolled in the Oregon Health Plan; or

(b) Children with American Indian/Alaskan Native heritage; or

(c) Uninsured children; or

(d) In FQHCs or RHCs only, children who are underinsured.

(3) Clinics may not require patients eligible under subsections (2)(b) or (2)(c) of this rule to prove their eligibility for VFC vaccines.

(4) Clinics designated as an FQHC or RHC must vaccinate any VFC-eligible underinsured patients that present at the clinic for immunization. Clinics that are not FQHCs and RHCs may not be required to vaccinate patients that are not established with the clinic.

Stat. Auth.: ORS 413.042, 431.250
Stats. Implemented: ORS 413.042, 431.250
Hist.: PH 39-2016, f. & cert. ef. 12-22-16

333-046-0060

Patient Consent and Administration Fees

(1) Clinics may not bill any insurer or guarantor for the cost of vaccines provided by the VFC program.

(2) Clinics may charge a vaccine administration fee for each VFC vaccine provided. The administration fee may not exceed the limit set for Oregon by the United States Department of Health and Human Services.

(3) Vaccine administration fees may be billed to a patient's insurer, if applicable.

(4) If a regular patient of the clinic is unable to pay the administration fee, the prescriber must waive the charges for vaccine administration. Other applicable visit or office fees incurred do not have to be waived.

Stat. Auth.: ORS 413.042, 431.250
Stats. Implemented: ORS 413.042, 431.250
Hist.: PH 39-2016, f. & cert. ef. 12-22-16

333-046-0070

Program Compliance

(1) Clinics must adhere to all terms detailed in the VFC Program Agreement.

(a) The Authority may, at its discretion, revise the VFC Program Agreement as posted on the Oregon VFC website. The Authority will provide 30 days written notice, via listserv electronic mail, to prescribers of revisions to the VFC Program Agreement.

(b) A prescriber's submission of a vaccine order after receipt of such notice shall be considered the prescriber's acceptance of the agreement revisions. If a prescriber does not wish to accept and be bound by the revisions to VFC Program Agreement, the prescriber may contact the Oregon VFC program to arrange pick-up of any remaining state-supplied vaccine.

(2) Clinics must practice in compliance with the legal requirements of the federal National Childhood Vaccine Safety Act.

(3) Prescribers must chart all vaccinations administered in accordance with federal law.

(4) Prescribers must comply with all provisions of ORS 433.103 and OAR chapter 333, division 47.

(5) Clinics must participate in VFC compliance site visits conducted by the Authority. Participation includes making available, without unreasonable delay, any staff or documentation necessary to answer questions included on the site visit questionnaire provided by the CDC.

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(6) Clinics must cooperate with unannounced storage and handling site visits conducted by the Authority.

(7) Clinics must complete all necessary trainings as determined by the Authority.

Stat. Auth.: ORS 413.042, 431.250
Stats. Implemented: ORS 413.042, 431.250
Hist.: PH 39-2016, f. & cert. ef. 12-22-16

333-046-0080

Record Keeping

Clinics must keep all records related to the VFC program for a minimum of three years and make them available to the Authority for review upon request.

Stat. Auth.: ORS 413.042, 431.250
Stats. Implemented: ORS 413.042, 431.250
Hist.: PH 39-2016, f. & cert. ef. 12-22-16

333-046-0090

Provider Sanctions

The Authority may terminate a clinic's or prescriber's participation in the VFC program based on the following:

(1) Violation of the terms of the VFC Program Agreement.

(2) Conviction of fraud related to any federal, state, or locally financed health care program or commission of an act that is subject to criminal or civil penalties under Medicaid statutes.

(3) Conviction of interference with the investigation of health care fraud.

(4) An action by a state licensing authority relating to a prescriber's professional competence, professional conduct, or financial integrity, that results in the prescriber either:

(a) Having his or her license suspended or revoked; or

(b) Surrendering the license while a formal disciplinary proceeding was pending before a licensing authority.

(5) Suspension or exclusion from participation in a federal or state-administered health care program for reasons related to professional competence, professional performance, or other reason.

(6) Improper billing practices, including billing for the cost of state-supplied vaccines, excessive charges or unnecessary vaccination visits.

(7) Failure to correct deficiencies in operations after receiving written notice of the deficiencies from the Authority.

(8) The Authority shall consider the following factors in determining the sanctions to be imposed (this list includes but is not limited to these factors):

(a) Seriousness of the offenses;

(b) Extent of violations by the prescriber;

(c) History of prior violations by the prescriber;

(d) Prior imposition of sanctions;

(e) Prior education provided by the Authority; and

(f) Prescriber willingness to comply with VFC rules and procedures.

Stat. Auth.: ORS 413.042, 431.250
Stats. Implemented: ORS 413.042, 431.250
Hist.: PH 39-2016, f. & cert. ef. 12-22-16

333-046-0100

Clinic Probation

(1) Except in cases of suspected fraud, when a clinic is sanctioned by the Authority for the first time under OAR 333-046-0090 sections (1), (6) or (7), the Authority will offer a clinic the opportunity to voluntarily sign a probationary agreement before removing the clinic from the VFC program in accordance with OAR 333-046-0110.

(2) The terms of the probationary agreement will be determined by the violations that have been identified by the Authority. The final probationary agreement will be approved by the Immunization Program manager or their designee.

(3) Failure to return a signed copy of the final probationary agreement within 14 calendar days of receipt of the agreement by the clinic will forfeit any right to a probationary agreement under section (1) of this rule.

(4) A probationary agreement may be in effect for no longer than 12 months before a final resolution is determined. If the clinic has complied with all clauses of the agreement during the probationary period, the clinic will be returned to regular status with the VFC program. If the clinic has not complied with all clauses of the agreement during the probationary period, the clinic will be removed from the VFC program under OAR 333-046-0110.

Stat. Auth.: ORS 413.042, 431.250
Stats. Implemented: ORS 413.042, 431.250
Hist.: PH 39-2016, f. & cert. ef. 12-22-16

333-046-0110

Removal from the VFC Program

(1) When a clinic is sanctioned by the Authority under OAR 333-046-0090 sections (2) through (5), the Authority will immediately remove the clinic, and all associated prescribers, from the VFC program under the provisions of this rule.

(2) When the Authority determines that a clinic should be removed from the VFC program, written notification will be sent by certified mail to the prescriber who signed the VFC Program Agreement.

(3) Clinics and prescribers that have been removed from the VFC program may apply for conditional re-enrollment no sooner than 12 months after their removal from the program.

(4) The written notification will include the rationale behind the removal and inform the clinic of the right to appeal the decision within 60 calendar days.

Stat. Auth.: ORS 413.042, 431.250
Stats. Implemented: ORS 413.042, 431.250
Hist.: PH 39-2016, f. & cert. ef. 12-22-16

333-046-0120

Clinic Appeals

(1) A clinic may appeal an Authority decision in which the clinic is directly adversely affected such as the following:

(a) A denial of an application for new or continued participation in the VFC program.

(b) Sanctions imposed, or intended to be imposed, by the Authority on a clinic.

(2) A clinic appeal is initiated by filing a timely request in writing for review by the Authority.

(3) A clinic's appeal request is not required to follow a specific format as long as it provides a clear written rationale from a clinic expressing disagreement with the Authority's decision.

(4) The request must identify the decision made by the Authority that is being appealed and the reason the clinic disagrees with that decision.

(5) A clinic's appeal request is timely if it is received within 60 calendar days of the date of the appealed decision.

(6) In the event a clinic's request for appeal is not timely, the Authority shall determine whether the failure to file the request was caused by circumstances beyond the control of the clinic. In determining whether to accept a late appeal, the Authority requires the request to be supported by a written statement that explains why the request for review is late. In determining timeliness of filing a request for review, the amount of time the Authority determines accounts for circumstances beyond the control of the prescriber is not counted.

(7) The burden of presenting evidence to support a clinic's appeal is on the clinic.

(8) Agency appeal proceedings, if any, shall be held in Portland, unless otherwise stipulated to by all parties and agreed to by the Authority.

Stat. Auth.: ORS 413.042, 431.250
Stats. Implemented: ORS 413.042, 431.250
Hist.: PH 39-2016, f. & cert. ef. 12-22-16

333-046-0130

Conditional Re-enrollment

(1) Clinics and prescribers that have been removed from the VFC program under OAR 333-046-0110 may apply for conditional re-enrollment 12 months after the removal.

(2) Re-enrollment will be conditional on the clinic correcting any deficiencies that led to their removal from the VFC program.

(3) Clinics accepted for re-enrollment will be subject to a probationary agreement as detailed in OAR 333-046-0100 for a period of 12 months.

(4) Clinics that voluntarily disenroll from the VFC program in lieu of agreeing to a probationary agreement will be subject to a 12 month waiting period before requesting re-enrollment.

Stat. Auth.: ORS 413.042, 431.250
Stats. Implemented: ORS 413.042, 431.250
Hist.: PH 39-2016, f. & cert. ef. 12-22-16

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Rule Caption: Update the School-Based Health Center (SBHC) certification process and requirements

Adm. Order No.: PH 40-2016

Filed with Sec. of State: 12-22-2016

Certified to be Effective: 7-1-17

Notice Publication Date: 11-1-2016

Rules Adopted: 333-028-0234, 333-028-0238

ADMINISTRATIVE RULES

Rules Amended: 333-028-0220, 333-028-0230, 333-028-0240, 333-028-0250

Subject: The Oregon Health Authority, Public Health Division, Adolescent, Genetics and Reproductive Health section is permanently adopting and amending administrative rules in chapter 333, division 28 pertaining to the School-Based Health Center (SBHC) certification process and requirements. The changes update the SBHC Standards for Certification to (1) identify and address any areas in need of clarification; (2) revise sections to align with current best practice; and (3) continue to adapt the Standards for Certification to support operations and advance quality healthcare in a school setting.

Rules Coordinator: Brittany Hall—(971) 673-1291

333-028-0220

School-Based Health Center Program: Certification Requirements

In order to be certified as a SBHC, a SBHC must meet all requirements for certification in the following sections of the SBHC Standards for Certification, Version 4, incorporated by reference.

- (1) Sponsoring agency, section B.1;
- (2) Facility, section C.1;
- (3) Hours of operation and staffing, section D.1;
- (4) Eligibility for services, section D.2;
- (5) Policies and procedures, section D.3;
- (6) Comprehensive Services, section E.1;
- (7) Immunizations, section E.2;
- (8) Equipment, section E.3;
- (9) Medication, section E.4;
- (10) Laboratory, section E.5;
- (11) Data collection, section F.1;
- (12) Data variable, section F.2;
- (13) Data reporting, section F.3; and
- (14) Billing, section G.1.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 413.223

Stats. Implemented: ORS 413.223, 413.225

Hist.: PH 15-2013, f.12-26-13, cert. ef. 1-1-14; PH 9-2015(Temp), f. & cert. ef. 5-6-15 thru 11-1-15; PH 18-2015, f. 9-30-15, cert. ef. 10-1-15; PH 40-2016, f. 12-22-16, cert. ef. 7-1-17

333-028-0230

School-Based Health Center Program: Application and Certification Process; Renewal

(1) An individual with legal authority to act on behalf of the entity that administers a SBHC may apply for certification of a SBHC by submitting a SBHC Certification Application to the program via electronic mail to the program's electronic mail address posted on the program's website or by mail to the mailing address posted on the program's website, www.healthoregon.org/sbhc.

(a) Instructions and criteria for submitting a SBHC Certification Application is posted on the program's website.

(b) An individual may submit an application for more than one SBHC provided that each SBHC will be administered by the same entity and each SBHC individually meets the certification requirements.

(2) Within 30 days of receiving an application the program shall review the application to determine whether it is complete.

(3) If the program determines that the application is not complete, it will be returned to the applicant for completion and resubmission.

(4) If the program determines that the application is complete it will be reviewed to determine if it meets certification requirements described in OAR 333-028-0220. If the program determines that on the face of the application and in reviewing any other applicable documents that the SBHC meets the certification requirements the program shall:

(a) Inform the applicant in writing that the application has been approved and that the SBHC is certified; and

(b) Instruct the applicant to complete the program's online Operational Profile forms and a date by which the forms must be completed.

(5) Once the application has been approved the program will schedule an on-site verification review in accordance with OAR 333-028-0240.

(6) If a SBHC does not meet certification requirements in their certification application, the program may choose one of the following actions:

(a) The program may deny SBHC certification if the SBHC does not meet the requirements of these rules.

(A) The program will provide the applicant with a clear description of reasons for denial based on the certification requirements in the denial letter.

(B) An applicant may request that the program reconsider the denial of SBHC certification. A request for reconsideration must be submitted in writing to the program within 90 days of the date of the denial letter and must include a detailed explanation of why the applicant believes the program's decision is in error along with any supporting documentation.

(C) The program shall inform the applicant in writing whether it has reconsidered its decision; or

(b) The program may approve the applicant's SBHC certification based on an agreed upon timeline for a corrective action plan for the non-compliant requirements. The site must submit a waiver to the program that includes an explanation of the non-compliant requirements, a plan for corrective action and date for meeting compliance.

(7) A certified SBHC must renew its certification no later than October 1 each year by completing the program's online Operational Profile forms. A SBHC's certification expires if it is not renewed by October 1 of each year and the SBHC must reapply for certification under section (1) of this rule.

(8) The program will notify SBHCs of their certification renewal status by January 1 each year.

(9) Once a SBHC is certified, the certification status is effective for the following certification year.

Stat. Auth.: ORS 413.223

Stats. Implemented: ORS 413.223, 413.225

Hist.: PH 15-2013, f.12-26-13, cert. ef. 1-1-14; PH 40-2016, f. 12-22-16, cert. ef. 7-1-17

333-028-0234

School-Based Health Center Program: Required Training

At least one representative from a SBHC must attend a SBHC orientation, provided by the program, within one year of the program's approval of the SBHC's certification application.

Stat. Auth.: ORS 413.223

Stats. Implemented: ORS 413.223, 413.225

Hist.: PH 40-2016, f. 12-22-16, cert. ef. 7-1-17

333-028-0238

School-Based Health Center Program: Transfer of Medical Sponsorship

(1) A certified SBHC that wishes to transfer medical sponsorship to a new entity must submit a Transfer of Medical Sponsorship Application to provide medical oversight.

(2) The program will review Transfer of Medical Sponsorship Applications in accordance with OAR 333-028-0230.

Stat. Auth.: ORS 413.223

Stats. Implemented: ORS 413.223, 413.225

Hist.: PH 40-2016, f. 12-22-16, cert. ef. 7-1-17

333-028-0240

School-Based Health Center Program: Verification

(1) The program shall conduct one on-site verification review of each approved SBHC within one year of application approval to determine compliance with SBHC certification requirements.

(2) After the initial on-site verification review, the program shall conduct an on-site verification review every two years for a representative sample of certified SBHCs in each SBHC system.

(3) A SBHC will be notified, in writing, no less than 30 days before its scheduled verification review.

(4) A SBHC must permit program staff access to the site's place of business during the review.

(5) The verification review must include, but is not limited to:

(a) Review of documents, policies and procedures, and records;

(b) Review of electronic medical record systems, review of electronic health records systems, and review of practice management systems;

(c) Review of data reports from electronic systems or other patient registry and tracking systems;

(d) Interviews with practice management, clinical and administrative staff;

(e) On-site observation of practice staff with at a minimum two school-aged patients, with the consent of the patient, parent, or guardian; and

(f) On-site observation of patient environment and physical environment during business hours.

(6) Following a review, program staff may conduct an exit interview with SBHC representative(s). During the exit interview the program staff shall:

(a) Inform the SBHC representative(s) of the preliminary findings of the review; and

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(b) Give the SBHC representatives(s) a reasonable opportunity to submit additional facts or other information to the program staff in response to the findings.

(7) Within 14 calendar days of the on-site visit program staff must prepare and provide the SBHC with a written report of the findings from the on-site review.

(8) If no certification deficiencies are found during the review, the program shall issue written findings to the SBHC indicating no deficiencies were found.

(9) If certification deficiencies are found during the on-site review, the program may:

(a) Require corrective actions to be completed within a specified timeline; or

(b) Take action in accordance with OAR 333-028-0250.

(10) The program may conduct a review of a certified SBHC without prior notice of any or all selected certification requirements for compliance and perform a verification on-site review of a certified SBHC if the program is made aware of issues of compliance from any source.

(11) At any time, a SBHC may request an administrative review of compliance, which includes one on-site visit. The review will be considered a “no penalty” review with the exception of gross violation or negligence that may require site closure or temporary suspension of services.

Stat. Auth.: ORS 413.223

Stats. Implemented: ORS 413.223, 413.225

Hist.: PH 15-2013, f.12-26-13, cert. ef. 1-1-14; PH 40-2016, f. 12-22-16, cert. ef. 7-1-17

333-028-0250

School-Based Health Center Program: Compliance

(1) A SBHC must notify the program within 20 calendar days of any change that brings the SBHC out of compliance with the certification requirements. A SBHC must submit a waiver to the program that includes an explanation of the non-compliant requirement, a plan for corrective action and date for meeting compliance.

(2) The program will review the waiver request and inform the SBHC of approval or denial of the waiver within two weeks of submission.

(3) If the waiver is approved the SBHC must comply with certification requirements by the proposed date of compliance.

(4) If a waiver is denied; a SBHC does not come into compliance by the date of compliance stated on the waiver; or a SBHC is out of compliance with certification requirements and has not submitted a waiver, based on the program’s discretion, the program may:

(a) Require the SBHC to complete an additional waiver with an updated plan for corrective action and updated date for meeting compliance; or

(b) Issue a written warning with a timeline for corrective action; or

(c) Issue a letter of non-compliance with the notification of a suspension or decertification status.

(5) A SBHC with its certification status suspended may have its suspension lifted once the program determines that compliance with certification requirements has been achieved satisfactorily.

(6) A SBHC that had been decertified may reapply under OAR 333-028-0230 at any time.

(7) If these rules are amended in a manner that requires a SBHC to make any operational changes, the program will allow the SBHC until the beginning of the next certification year or a minimum of 90 days to come into compliance.

Stat. Auth.: ORS 413.223

Stats. Implemented: ORS 413.223, 413.225

Hist.: PH 15-2013, f.12-26-13, cert. ef. 1-1-14; PH 40-2016, f. 12-22-16, cert. ef. 7-1-17

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Rule Caption: Transfer of marijuana items from processor applicants to dispensaries; processor applicant requirements; dispensary ODA licensure

Adm. Order No.: PH 41-2016(Temp)

Filed with Sec. of State: 12-23-2016

Certified to be Effective: 12-31-16 thru 6-28-17

Notice Publication Date:

Rules Adopted: 333-008-9910

Rules Amended: 333-008-1200, 333-008-1230

Subject: The Oregon Health Authority, Public Health Division, Oregon Medical Marijuana Program is temporarily amending and adopting rules in OAR chapter 333, division 8 related to the transfers of cannabinoid products, concentrates and extracts from processing site applicants to registered dispensaries; date for Oregon Department of

Agriculture licensure for registered dispensaries; and application of processing site rules to applicants for processing site registration.

Under ORS 475B.435 the Oregon Health Authority (OHA) must accept applications for and register qualifying medical marijuana processors. The application process for processors opened on April 1, 2016. Under the current rules, in order for dispensaries to accept cannabinoid concentrates, extracts and products from processors, the processors had to be registered by January 1, 2017. At the time of this filing there were no registered processors. OHA is adopting temporary rules to amend Oregon Administrative Rules (OAR) 333-008-1200 and 333-008-1230 to permit a registered dispensary to continue to accept cannabinoid concentrates, extracts and products from a processor applicant who applied on or before October 1, 2016, but who has not yet been registered. On and after April 1, 2017, registered dispensaries will only be able to accept cannabinoid concentrates, extracts and products from an OHA registered processor. This change will ensure that processors have sufficient time to get registered and that medical marijuana patients have access to a sufficient supply of medical marijuana items from dispensaries. The temporary rules also give dispensaries until April 1, 2107 to be licensed for food safety by the Oregon Department of Agriculture.

In addition, OAR 333-008-9910 is being adopted to make it clear that those processors that applied for a registration on or before October 1, 2016 may continue operating, though they must operate in accordance with rules applicable to processors. A processor who applied after October 1, 2016 may not operate unless the application is approved for registration.

Rules Coordinator: Brittany Hall—(971) 673-1291

333-008-1200

Medical Marijuana Dispensaries: Operation of Registered Dispensaries

(1) Policies and Procedures. In order to obtain a registration and to retain registration a dispensary registrant must have written detailed policies and procedures and training for employees on the policies and procedures that, at a minimum, cover the following:

(a) Security;

(b) Transfers of marijuana items to and from the dispensary;

(c) Operation of a registered dispensary;

(d) Required record keeping;

(e) Testing requirements, including review of testing results prior to accepting transfers of marijuana items;

(f) Packaging and labeling requirements;

(g) Employee training;

(h) Compliance with these rules, including but not limited to violations and enforcement; and

(i) Roles and responsibilities for employees and PRDs in assisting the Authority during inspections or investigations.

(2) Employees. A registered dispensary may employ an individual between the ages of 18 and 20 if the individual is a patient. Otherwise, dispensary employees must be 21 years of age or older.

(3) Standardized Scales. In order to obtain a registration and to retain registration a dispensary registrant must own, maintain on the premises and use a weighing device that is licensed by the Oregon Department of Agriculture. Licensed weighing devices must be used by a registered dispensary whenever marijuana items are:

(a) Transferred to or from the dispensary and the transfer is by weight;

(b) Packaged for transfer by weight; or

(c) Weighed for purposes of documenting information required in OAR 333-008-1230, 333-008-1245, 333-008-1247 and 333-008-1248.

(4) Inventory Tracking and Point of Sale System: In order to obtain a registration and to retain registration a registered dispensary must have an installed and fully operational integrated inventory tracking and point of sale system that can and does, at a minimum:

(a) Produce bar codes or similar unique identification numbers for each marijuana item lot transferred to a registered dispensary;

(b) Trace back or link each transfer of a marijuana item to a patient or caregiver to the marijuana item lot;

(c) Capture all information electronically that is required to be documented in OAR 333-008-1230 and 333-008-1245;

(d) Generate inventory, transaction, and transfer reports viewable in excel format; and

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(e) Produce all the information required to be submitted to the Authority pursuant to OAR 333-0080-1248.

(5) Online Verification of Registration Status. A dispensary must verify an individual's registration status with the Authority when receiving or making the transfer of a marijuana item if the Authority has available an online system for such verification.

(6) Inventory On-Site. Marijuana items must be kept on-site at the dispensary. The Authority may take enforcement action against a dispensary registrant if during an inspection a dispensary registrant cannot account for its inventory or if the amount of usable marijuana at the registered dispensary is not within five percent of the documented inventory.

(7) Testing. A dispensary registrant may not:

(a) Accept a transfer of a marijuana item that has not been tested in accordance with OAR 333-007-0300 to 333-007-0490 or that has failed a test under OAR 333-007-0450.

(b) Transfer a marijuana item that has not been tested in accordance with OAR 333-007-0300 to 333-007-0490 or that has failed a test under OAR 333-007-0450 unless it was transferred to the dispensary prior to October 1, 2016 and is labeled in accordance with OAR 333-007-0300(5).

(c) Transfer a marijuana item that was received prior to October 1, 2016, that has not been tested in accordance with OAR 333-007-0300 to 333-007-0490, after December 31, 2016.

(8) Packaging and Labeling. A dispensary may not accept a transfer of a marijuana item or transfer a marijuana item that does not comply with the labeling requirements in OAR 333-007-0010 to 333-007-0100, or that does not comply with the packaging requirements in OAR 845-025-7000 to 845-025-7020 and 845-025-7060.

(9) Oregon Department of Agriculture Licensure. On and after April 1, 2017, a registered dispensary that sells or handles food, as that term is defined in ORS 616.695, or cannabinoid edibles, must be licensed by the Oregon Department of Agriculture under ORS 616.706.

(10) Industrial Hemp Products.

(a) A dispensary may only accept the transfer of and may only transfer a product that contains THC or CBD that is derived from marijuana.

(b) Nothing in this section prohibits a dispensary from buying or selling hemp products not intended for human application, consumption, inhalation, ingestion, or absorption, such as hemp clothing.

(11) Tobacco. A dispensary may not offer or sell tobacco products in any form including, but not limited to, loose tobacco, pipe tobacco, cigarettes as defined in ORS 323.010 and cigarillos as that is defined in OAR 333-015-0030.

(12) For purposes of this rule "marijuana item lot" means a quantity of seeds, immature plants, usable marijuana, medical cannabinoid products, concentrates or extracts transferred to a registered dispensary at one time and that is from the same harvest lot or process lot as those terms are defined in OAR 333-007-0020.

Stat. Auth.: ORS 475B.450 & 475B.525

Stats. Implemented: ORS 475B.450

Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14; PH 4-2015, f. & cert. ef. 1-28-15; PH 9-2016, f. 2-26-16, cert. ef. 3-1-16; PH 21-2016, f. 6-24-16, cert. ef. 6-28-16; PH 26-2016(Temp), f. & cert. ef. 9-9-16 thru 3-7-17; PH 27-2016(Temp), f. & cert. ef. 9-30-16 thru 3-1-17; PH 33-2016, f. & cert. ef. 11-28-16; PH 41-2016(Temp), f. 12-23-16, cert. ef. 12-31-16 thru 6-28-17

333-008-1230

Medical Marijuana Dispensaries: Transfers to a Registered Dispensary

(1) Transfer of Usable Marijuana, Seeds and Immature Plants. A patient, caregiver, or PRMG may transfer usable marijuana, seeds and immature plants produced by a PRMG to a registered dispensary, subject to the requirements in this rule.

(a) A registered dispensary may only accept a transfer of usable marijuana, seeds or immature marijuana plants from a caregiver or PRMG if the individual transferring the usable marijuana, seeds or immature plants provides the original or a copy of a valid:

(A) Authorization to Transfer form prescribed by the Authority; or

(B) Personal agreement as that is defined in OAR 333-008-0010.

(b) Authorization to Transfer Forms. In order to be valid an Authorization to Transfer form must include at least:

(A) The patient's name, OMMP card number or receipt number and expiration date and contact information;

(B) The name and contact information of the individual who is authorized to transfer the usable marijuana, seeds or immature marijuana plants to the registered dispensary and that individual's OMMP card number and expiration date;

(C) The name and address of the registered dispensary that is authorized to receive the usable marijuana, seeds or immature marijuana plants; and

(D) The date the authorization expires, if earlier than the expiration date of the patient's OMMP card.

(c) Personal Agreements. In order to be valid a personal agreement must include at least:

(A) The patient's name, OMMP card number and expiration date and contact information;

(B) The name and contact information of the PRMG to whom the patient's property rights have been assigned and the producer's OMMP card number and expiration date, and the grow site address;

(C) The portion of the patient's rights to possess seeds, immature plants and usable marijuana that is being assigned to the producer.

(2) Transfer of medical cannabinoid products, concentrates, and extracts.

(a) Beginning October 1, 2016, until April 1, 2017, a registered dispensary may accept the transfer of a medical cannabinoid product, concentrate or extract from an applicant that is listed on the Authority's website as having submitted a complete application for registration of a marijuana processing site on or before October 1, 2016.

(b) On and after April 1, 2017, a registered dispensary may only accept a transfer of a medical cannabinoid product, concentrate or extract from a registered medical marijuana processing site.

(3) A registered dispensary may only accept a transfer of cannabinoid products, concentrates or extracts from a registered processing site or an applicant as described in subsection (2)(a) of this rule if the individual transferring the products, concentrates or extracts provides the dispensary with a Processing Site Authorization to Transfer form prescribed by the Authority. In addition to retaining a copy of the Processing Site Authorization to Transfer form the dispensary must obtain a copy of the photo identification of the individual transferring the cannabinoid product, concentrate or extract as required in paragraph (4)(b)(B) of this rule.

(4) Transfer Records. At the time a marijuana item is transferred to a dispensary the dispensary registrant must:

(a) Document, on a form prescribed by the Authority, as applicable:

(A) The weight in metric units of all usable marijuana received by the registered dispensary;

(B) The number of seeds and immature plants received by the registered dispensary;

(C) The amount of a medical cannabinoid product, concentrate, or extract received by the registered dispensary, including, as applicable, the weight in metric units, or the number of units;

(D) The name of the marijuana item;

(E) The date the marijuana item was received;

(F) The harvest or process lot numbers, and batch numbers; and

(G) The amount paid by the registered dispensary.

(b) Obtain and maintain a copy of, as applicable:

(A) Documents required in section (1) of this rule including the date it was received;

(B) The photo identification of the individual transferring the marijuana item to the dispensary, if such a copy is not already on file;

(C) The OMMP card of the individual transferring usable marijuana, seeds or immature plants;

(D) The medical marijuana processing site registration; and

(E) Test results for marijuana items transferred to the dispensary.

(c) Review laboratory testing results and confirm that the:

(A) Test results are associated with the marijuana items being transferred; and

(B) Marijuana item has passed all required testing.

(5) Nothing in these rules requires a dispensary registrant to accept a transfer of a marijuana item.

(6) All documentation required in this rule must be maintained electronically in an integrated inventory tracking and point of sale system or the electronic data management system described in OAR 333-008-1247.

Stat. Auth.: ORS 475B.450 & 475B.525

Stats. Implemented: ORS 475B.450

Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14; PH 4-2015, f. & cert. ef. 1-28-15; PH 9-2016, f. 2-26-16, cert. ef. 3-1-16; PH 21-2016, f. 6-24-16, cert. ef. 6-28-16; PH 26-2016(Temp), f. & cert. ef. 9-9-16 thru 3-7-17; PH 33-2016, f. & cert. ef. 11-28-16; PH 41-2016(Temp), f. 12-23-16, cert. ef. 12-31-16 thru 6-28-17

333-008-9910

Processing Site Applicants

(1) A person who submitted a complete processing site application to the Authority on or before October 1, 2016, who is permitted to transfer

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cannabinoid products, concentrates or extracts to a medical marijuana dispensary under OAR 333-008-1230(2)(a) must comply with all applicable processing site rules while operating.

(2) Failure to comply with applicable processing site rules while operating may result in a denial of an application.

(3) A person who submitted a processing site application to the Authority after October 1, 2016 may not operate unless the application is approved.

Stat. Auth.: ORS 475B.435
Stats. Implemented: ORS 475B.435
Hist.: PH 41-2016(Temp), f. 12-23-16, cert. ef. 12-31-16 thru 6-28-17

Rule Caption: Licensed hospital satellite outpatient clinic building requirements

Adm. Order No.: PH 42-2016

Filed with Sec. of State: 12-23-2016

Certified to be Effective: 12-23-16

Notice Publication Date: 11-1-2016

Rules Amended: 333-535-0086

Subject: The Oregon Health Authority, Public Health Division is permanently amending OAR 333-535-0086 relating to licensed hospital satellite outpatient clinic building requirements in order to allow hospitals and health systems to pursue alternative approaches and process improvement strategies to create a more efficient hospital system.

Rules Coordinator: Brittany Hall—(971) 673-1291

333-535-0086

Hospital Licensed Outpatient Clinics

(1) This rule applies to outpatient clinics that are under the license of a general hospital and either physically connected or in freestanding, satellite locations, as defined by OAR 333-500-0010(46)(a). OAR 333-535-0085 shall apply except as follows:

(a) Subsection (1)(a) shall not apply except the entry shall be disabled accessible;

(b) Subsection (2)(d) shall not apply;

(c) Subsection (2)(j) shall not apply; and

(d) Subsection (2)(n) shall apply except in existing conditions where public toilet rooms do not exist, then patient toilets may be used for public when addressed by the hospital's Functional Program.

(2) The ventilation requirements of OAR 333-535-0300 and electrical requirements of 333-535-0310 shall not apply, but spaces shall conform to the requirements of the Oregon Mechanical Specialty Code, the Oregon Electrical Specialty Code, and the Oregon Structural Specialty Code as they are enforced by the Oregon Building Codes Division and Authorities having Jurisdiction.

(3) For Outpatient Clinics where only counseling or non-clinical services are provided, wheelchair storage space(s), examination room(s), treatment room(s), drug distribution station, clean workroom or clean holding room, and soiled workroom or soiled holding room may be omitted.

(4) A patient care unit in a satellite location that provides extended outpatient stay services for patients that do not require hospitalization, beyond an average length of stay of 24 hours, must, notwithstanding sections (1) through (3) of this rule, comply with:

(a) OAR 333-535-0025.

(b) OAR 333-535-0290.

(c) OAR 333-535-0300 including 333-535-0300(3)(d) where inpatient standards will apply.

(d) OAR 333-535-0310 including 333-535-0310(4)(c)(A) through (D) where inpatient standards will apply.

(e) OAR 333-535-0310(8)(b) except that the minimum number of hours to operate emergency electric services shall be equivalent to the maximum expected length of patients' stay specified in the functional program.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 441.060

Stats. Implemented: ORS 441.060

Hist.: OHD 2-2000, f. & cert. ef. 2-15-00; OHD 1-2002, f. & cert. ef. 2-28-02; PH 10-2009, f. & cert. ef. 10-1-09; PH 42-2016, f. & cert. ef. 12-23-16

Rule Caption: Oregon ContraceptiveCare (CCare)

Adm. Order No.: PH 1-2017

Filed with Sec. of State: 1-10-2017

Certified to be Effective: 1-10-17

Notice Publication Date: 12-1-2016

Rules Amended: 333-004-0000, 333-004-0010, 333-004-0020, 333-004-0030, 333-004-0040, 333-004-0050, 333-004-0060, 333-004-0070, 333-004-0080, 333-004-0110, 333-004-0120, 333-004-0130, 333-004-0140, 333-004-0150, 333-004-0160

Subject: The Oregon Health Authority, Public Health Division is permanently amending Oregon Administrative Rules related to the Oregon ContraceptiveCare Program (CCare). CCare is a Medicaid waiver demonstration project approved by the Centers for Medicare and Medicaid Services (CMS). At this time, the program is amending rules to reflect changes in program administration and operations, required in part by the most recently approved waiver renewal by CMS. Revisions include an expansion of the definitions section; changes to client eligibility verification processes for eligible immigrants; modifications related to covered services; and updates to the program's standards of care.

Rules Coordinator: Brittany Hall—(971) 673-1291

333-004-0000

Description of OregonContraceptiveCare

Oregon ContraceptiveCare (CCare) is a Medicaid waiver demonstration project approved by the Centers for Medicare and Medicaid Services (CMS) to provide a specific set of family planning services to eligible low-income Oregon residents statewide for the purposes of preventing unintended pregnancies. CCare extends Medicaid coverage for these services to Oregon residents with family incomes at or below 250 percent of the Federal Poverty Level (FPL) through a network of contracted agencies. The administrative rules set forth for this project apply only to agencies with an approved medical services agreement (MSA) to provide this set of family planning services through this project. Other reproductive health services and reimbursement covered by Medicaid are governed by the Oregon Health Authority, Health Systems Division's administrative rules and federal guidelines.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.032

Hist.: PH 4-2005, f. & cert. ef. 2-18-05; PH 5-2007, f. 4-9-07, cert. ef. 4-23-07; PH 19-2012, f. & cert. ef. 12-26-12; PH 1-2017, f. & cert. ef. 1-10-17

333-004-0010

Definitions

(1) "Acquisition cost" means the net amount paid per invoice line item to a pharmaceutical manufacturer, supplier or distributor for a contraceptive supply, plus any shipping and handling that is supported by the invoice.

(2) "Agency" means an entity enrolled by the Reproductive Health Program (RH) to provide CCare covered services at clinic site(s) to clients.

(3) "Authority" means the Oregon Health Authority.

(4) "CCare Eligibility Database" means the web-based database designed and managed by the Center for Prevention and Health Promotion (Center) for the statewide collection, tracking and storage of CCare client eligibility information.

(5) "CCare visit" means a visit in which the primary purpose is for family planning services and is coded with a primary diagnosis within the Z30 Contraceptive Management series of the International Classification of Diseases (ICD).

(6) "Center" means the Center for Prevention and Health Promotion, within the Public Health Division of the Authority.

(7) "Citizenship and eligible immigration status verification" means confirming a client's claim of U.S. citizenship or eligible immigration status through documentation of a certified birth record, passport, qualified non-citizenship status, as defined in OAR 461-120-0125, or other documents deemed acceptable proof of U.S. citizenship or eligible immigration status by the federal government.

(8) "CLIA" means the Clinical Laboratory Improvement Amendments of 1988, which establishes quality standards for all laboratory testing to ensure the accuracy, reliability and timeliness of patient test results, and allows for certification of clinical laboratories operating in accordance with these federal amendments.

(9) "Client" means a person who is enrolled in and receives family planning services from CCare.

(10) "Client-centered" means care that is respectful of, and responsive to, individual client preferences, needs, and values, and care where client values guide all clinical decisions.

(11) "Clinic" means a site within an agency that provides CCare billable services to eligible clients.

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(12) "Clinic Visit Record" or "CVR" means the form or set of information that is completed for each client visit, and that is used as a data collection instrument and a billing claim form for CCare.

(13) "CMS" means the Centers for Medicare and Medicaid Services, located within the federal Department of Health and Human Services.

(14) "Established client," for the purpose of mail ordered supplies, means a person who has been obtaining contraceptive services/supplies from the prescribing clinic.

(15) "Family planning services" means the following services provided to clients:

(a) FDA-approved methods of contraception;

(b) Laboratory tests done during a family planning visit for contraception, which may include a Pap test, screening tests for sexually transmitted infections (STIs)/HIV, blood count and pregnancy test, as indicated and according to nationally-recognized standards of care. Additional screening tests may be performed depending on the method of contraception desired and the protocol established by the clinic, program or provider. Additional laboratory tests may be needed to address a family planning problem or need during an inter-periodic family planning visit for contraception;

(c) Contraceptive management, client counseling and education; and

(d) Vasectomies for men over the age of 21.

(16) "FPL" means the federal poverty level guidelines established each year by the Department of Health and Human Services, used to determine eligibility for CCare and other federally funded programs.

(17) "Health Systems Division" means the Division within the Oregon Health Authority that administers the Oregon Health Plan.

(18) "Individual" means a person who has applied for CCare, but has not yet been verified as eligible for services.

(19) "Medical Services Agreement" or "MSA" means an agreement that sets forth the relationship between the Center and the enrolling agency regarding payment by the Center for family planning services, supplies, or devices.

(20) "Nationally-recognized standard of care" means a diagnostic, screening, or treatment process recognized by a national organization, including but not limited to the American Cancer Society (ACS), American College of Obstetrics and Gynecologists (ACOG), U.S. Preventative Services Task Force (USPSTF), or the U.S. Medical Eligibility Criteria (USMEC).

(21) "NVRA" means the National Voter Registration Act.

(22) "Oregon ContraceptiveCare" or "CCare" means the Medicaid waiver program that provides statewide family planning services to eligible clients that is administered by the Reproductive Health Program within the Authority.

(23) "Project number" means the administrative number assigned by the RH to an agency.

(24) "Provider" means a licensed health care professional operating within a scope of practice, who works for an agency that is authorized by the Authority to bill for family planning services for eligible CCare clients.

(25) "Reasonable opportunity period" or "ROP" means a 45-day period during which individuals that declare U.S. citizenship or eligible immigration status may receive services while documentation of such status is gathered and verified, under section 1903(x) of the Social Security Act.

(26) "Reproductive Health Program" or "RH" means the program within the Center for Prevention and Health Promotion that administers CCare.

(27) "RH Coordinator" means an agency staff person assigned to ensure CCare program compliance at all clinic sites within each agency and to be the primary liaison between state RH Program staff and the agency.

(28) "RH Program Manual" means the reference guide provided by RH to agencies, outlining the scope and policies of the CCare program, available online at www.healthoregon.org/rhmanual.

(29) "School-Based Health Center" means a health center certified by the School-Based Health Center State Program, as defined in OAR 333-028-0210.

(30) "Site number" means the administrative number assigned by RH to each clinic within a participating CCare agency.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.032

Hist.: PH 4-2005, f. & cert. ef. 2-18-05; PH 3-2007(Temp), f. 2-23-07, cert. ef. 4-1-07 thru 9-28-07; PH 5-2007, f. 4-9-07, cert. ef. 4-23-07; PH 2-2009, f. & cert. ef. 3-2-09; PH 10-2010, f. & cert. ef. 6-30-10; PH 5-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; PH 11-2011, f. & cert. ef. 10-27-11; PH 19-2012, f. & cert. ef. 12-26-12; PH 1-2017, f. & cert. ef. 1-10-17

333-004-0020

Client Eligibility

(1) In order to be eligible for CCare, an individual must:

(a) Have a household income and size at or below 250 percent of the FPL;

(b) Reside in Oregon as described in OAR 461-120-0010;

(c) Not be sterile, have an unconfirmed sterilization status, or have been sterilized less than six months prior to eligibility determination;

(d) Be of reproductive capacity;

(e) Provide a valid Social Security Number (SSN) as required by 42 USC 1320b-7; and

(f) Be a citizen of the United States, with acceptable proof of citizenship verification and identity; or

(g) Hold eligible immigration status with acceptable proof of eligible immigration verification and identity.

(2) The collection of citizenship and eligible immigration status information must be conducted by the CCare agency in a manner that:

(a) Is responsive to the beliefs, interpersonal styles, attitudes, languages and behaviors of the client requesting services;

(b) Emphasizes no punitive action will be taken if a client is determined ineligible; and

(c) Emphasizes that alternative programs are available for clients ineligible for CCare.

(3) The following individuals are not eligible for CCare:

(a) An individual who is in the custody of a law enforcement agency or is an inmate of a public institution, including a juvenile detention facility.

(b) An individual who receives or who is eligible for the Citizen/Alien-Waived Emergency Medical benefit package under Title XIX.

(c) An individual enrolled in another Medicaid program that provides family planning benefits.

(4) Eligibility for CCare does not constitute eligibility for any other medical assistance program.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.032

Hist.: PH 4-2005, f. & cert. ef. 2-18-05; PH 5-2007, f. 4-9-07, cert. ef. 4-23-07; PH 2-2009, f. & cert. ef. 3-2-09; PH 19-2012, f. & cert. ef. 12-26-12; PH 1-2017, f. & cert. ef. 1-10-17

333-004-0030

Client Enrollment

(1) An individual is considered eligible for CCare upon submission of the following items to the CCare agency:

(a) A signed, completed, and dated CCare enrollment form that includes: SSN, appropriate residency, U.S. citizenship or eligible immigration status, and income information; applicants can be enrolled based solely on their own income, whether living at home or on their own; and

(b) Acceptable proof of U.S. citizenship or eligible immigration status and identity.

(2) All CCare client eligibility information must be recorded in the CCare Eligibility Database by the enrolling CCare agency.

(3) Final determination of eligibility and enrollment into CCare is made by RH based on the information recorded in the CCare Eligibility Database.

(a) An individual's enrollment in CCare shall be suspended by RH if it determines that the individual's SSN is invalid or their income is above the eligibility threshold.

(b) An individual shall have 45 days to submit a valid SSN and income information to the CCare agency or the individual's enrollment in CCare shall be terminated by RH.

(4) An enrolling CCare agency must retain a current, signed enrollment form and a copy of any citizenship, immigration or identity documents provided by the client as described in OAR 333-004-0120(3).

(5) If a CCare agency enrolls an individual who is deemed ineligible by RH, the individual's eligibility shall be terminated by RH.

(6) A client's eligibility is effective for one year from the date of enrollment. The date of enrollment is the date the enrollment form is signed and must be on or before the first date of service.

(7) CCare enrollment forms may not be backdated. An individual or enrolling agency that backdates a form shall be considered by RH to have committed fraud.

(8) An individual who meets all eligibility criteria apart from acceptable proof of U.S. citizenship or eligible immigration status verification may be granted, by RH, a ROP of 45 days during which time the individual may receive services. An individual must have U.S. citizenship or eli-

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gible immigration status verified before the individual can be fully enrolled in CCare.

(9) An individual enrolling or re-enrolling in CCare shall be given the opportunity to register to vote through completion of the CCare enrollment form. Agencies are required to comply with all relevant NVRA rules in OAR 165-005-0060 through 165-005-0070.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.032

Hist.: PH 4-2005, f. & cert. ef. 2-18-05; PH 5-2007, f. 4-9-07, cert. ef. 4-23-07; PH 2-2009, f. & cert. ef. 3-2-09; PH 19-2012, f. & cert. ef. 12-26-12; PH 1-2017, f. & cert. ef. 1-10-17

333-004-0040

Covered Services

(1) CCare covers a specific set of family planning services that result in preventing unintended pregnancies. CCare agencies shall only be reimbursed for CCare visits, and not for excluded services described in OAR 333-004-0050.

(2) Covered services include:

(a) Initial and annual preventive reproductive health visits that support effective contraceptive use as described in OAR 333-004-0060(6) and 333-004-0060(7);

(b) Clinically indicated follow-up visits to evaluate effectiveness of a contraceptive method;

(c) Management of side effects related to a contraceptive method;

(d) Changing a contraceptive method if medically necessary or requested by the client, including the removal of contraceptive devices;

(e) Counseling and education to support effective contraceptive use; and

(f) Health screenings, laboratory tests, medical procedures (including vasectomy), and pharmaceutical supplies and devices directly related to effective contraceptive use as documented in clinic protocol.

(3) As described in OAR 333-004-0050, abortions are not covered under CCare. However, contraceptive supplies and devices provided immediately after an abortion are covered as long as the client is determined eligible for and enrolled in CCare.

(4) Each client may receive up to a one-year supply of contraceptives from the CCare agency.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.032

Hist.: PH 4-2005, f. & cert. ef. 2-18-05; PH 5-2007, f. 4-9-07, cert. ef. 4-23-07; PH 2-2009, f. & cert. ef. 3-2-09; PH 19-2012, f. & cert. ef. 12-26-12; PH 1-2017, f. & cert. ef. 1-10-17

333-004-0050

Excluded Services

(1) Services and laboratory tests not described in OAR 333-004-0040 are not covered by CCare for any eligible client. If a client accepts financial responsibility for a non-covered service that is received during a visit, payment arrangements are between the agency and the client.

(2) RH shall not pay for any expense incurred for any of the following services or items:

(a) Sterilizations for female clients;

(b) Treatment for infections;

(c) Prenatal care, including pregnancy confirmations;

(d) Stand-alone visits for repeat Pap tests;

(e) Hysterectomies or abortions;

(f) Transportation to or from a clinic appointment;

(g) Procedures performed for medical reasons, whether or not the procedure results in preventing or delaying pregnancy or restoring fertility;

(h) Human papillomavirus (HPV) vaccinations; and

(i) Any other medical service or laboratory test that is not described in OAR 333-004-0060(6) and whose primary purpose is other than family planning.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.032

Hist.: PH 4-2005, f. & cert. ef. 2-18-05; PH 5-2007, f. 4-9-07, cert. ef. 4-23-07; PH 2-2009, f. & cert. ef. 3-2-09; PH 19-2012, f. & cert. ef. 12-26-12; PH 1-2017, f. & cert. ef. 1-10-17

333-004-0060

Standards of Care for Contraceptive Management Services

Participating CCare agencies shall provide family planning services according to the following standards.

(1) Informed Consent. The client's decision to participate in and consent to receive family planning services must be voluntary and without bias or coercion.

(a) The informed consent process, provided verbally and supplemented with written materials, must be presented in a language and style the client understands.

(b) A signed consent must be obtained from the client before receiving family planning services.

(2) Confidentiality. Services must be provided in a manner that respects the client's privacy and dignity in accordance with OAR 333-004-0060(7)(b)(B).

(a) Clients must be assured of the confidentiality of services and of their medical and legal records.

(b) Records cannot be released without written client consent, except as may be required by law, or otherwise permitted by the Health Insurance Portability and Accountability Act (HIPAA).

(3) Availability of Contraceptive Services. A broad range of Federal Drug Administration (FDA)-approved contraceptive methods and their applications, consistent with recognized medical practice standards, as well as fertility awareness methods must be available on-site at the clinic for dispensing to the client at the time of the visit.

(a) Clients shall be able to get their first choice of contraceptive method during their visits unless there are specific contraindications.

(b) Contraceptive methods, including emergency contraception, must be available at the clinic site and available to the client at the time of service, except as provided in OAR 333-004-0060(8)(a).

(c) If the agency's clinical staff lack the specialized skills to provide vasectomies, intrauterine devices or intrauterine contraceptive systems (IUDs/IUSs) or subdermal implants, or if there is insufficient volume to ensure and maintain high skill level for these procedures, clients must be referred to another qualified provider for these procedures.

(4) Linguistic and Cultural Competence. All services, support and other assistance must be provided in a manner that is responsive to the beliefs, interpersonal styles, attitudes, languages and behaviors of the client receiving services, and in a manner that has the greatest likelihood of ensuring maximum program participation.

(a) The agency must make interpretation services available to all clients needing or requesting such assistance at no cost to the client. The agency must notify clients in need of interpretation services of the availability of such services in accordance with the Civil Rights Act of 1964 and sections 1557, 1331 and 1001 of the Affordable Care Act (ACA).

(A) All persons providing interpretation services must adhere to confidentiality guidelines.

(B) Family and friends shall not be used to provide interpretation services, unless requested by the client.

(C) Individuals under age 18 shall never be used as interpreters for clinic encounters for clients with limited English proficiency or who otherwise need this level of assistance.

(D) The agency shall employ bilingual staff, personnel or volunteers skilled or certified in the provision of medical and clinical interpretation that meets the needs of the client during all clinic encounters for clients with limited English proficiency or who otherwise need this level of assistance.

(b) The agency shall make easily understandable print materials available to clients and post signage in the languages of groups represented or commonly encountered in the service area.

(c) All print, electronic and audiovisual materials shall be appropriate in terms of the client's language and literacy level. A client's need for alternate formats must be accommodated.

(5) Access to Care. Services covered by CCare must be provided without cost to eligible clients. Clients must be informed of the scope of services available through the program.

(a) Appointments for established clients shall be available within a reasonable time period, generally less than two weeks. New clients who cannot be seen within this time period shall be given the option to be referred to other qualified provider agencies in the area.

(b) Clinics may offer established clients the option of receiving their contraceptive methods by mail.

(A) Use of this option is at the discretion of the client; it cannot be offered as the only way in which to receive contraceptive methods.

(B) Contraceptive methods that require a written prescription may only be mailed to established clients who have been using the method with no problems or contraindications.

(C) Non-prescription methods may be mailed to any established client, regardless of the client's previous use of the method.

(D) Clients must not incur any cost for the option of receiving contraceptive methods through the mail.

(E) Clinics must package and mail supplies in a manner that ensures the integrity of the contraceptive packaging and effectiveness of the method upon delivery.

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(c) Although not covered by CCare, treatment and supplies for sexually transmitted infections must be available at the clinic site, or by referral.

(d) Clients in need of additional medical or psychosocial services beyond the scope of the agency must be provided with information about available local resources, including domestic violence and substance abuse related services.

(e) Clients must be offered information about where to access free or low cost primary care services.

(f) Clients in need of full-benefit health insurance coverage, private or public, must be given information about how to obtain health insurance enrollment assistance.

(g) All services must be provided to eligible clients without regard to race, color, national origin, religion, sex, sexual orientation, gender identity, marital status, age, parity or disability in accordance with applicable laws, including Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, section 504 of the Rehabilitation Act of 1973, and Oregon Revised Statutes chapter 659A.

(h) All counseling and referral-to-care options appropriate to a pregnancy test result during an authorized CCare visit must be provided in a client-centered, unbiased manner, allowing the client full freedom of choice between prenatal care, adoption counseling or pregnancy termination services.

(6) Clinical and Preventive Services.

(a) The scope of services available to clients at each CCare clinic site must include:

(A) A comprehensive health history, including health risk behaviors and a complete contraceptive, personal, sexual health, and family medical history; and reproductive health assessment in conjunction with contraceptive counseling;

(B) Routine laboratory tests, which may include a Pap test, blood count, and pregnancy test, and health screenings related to the decision-making process for contraceptive choices;

(C) Provision of a broad range of FDA-approved contraceptive methods, devices, supplies, and procedures, including emergency contraception;

(D) Vasectomy counseling, including a comprehensive health history that includes health risk behaviors, a complete contraceptive, personal and family medical history, and a sexual health history;

(E) Vasectomy or referral for vasectomy;

(F) Follow-up care for maintenance of a client's current contraceptive method or to change their method, including removal of a method;

(G) Information about providers available for meeting primary care needs and direct referral for medical services not covered by CCare, including management of high-risk conditions and specialty consultation if needed; and

(H) Preventive services for communicable diseases, provided within the context of a CCare visit, including:

(i) Screening tests for sexually transmitted infections (STIs) as indicated; and

(ii) Reporting of STIs, as required, to appropriate public health agencies for contact management, prevention, and control.

(b) All services must be documented in the client's medical record.

(7) Education and Counseling Services.

(a) All education and counseling services must be provided using a client-centered approach to help the client clarify their needs and wants, promote personal choice and risk reduction.

(b) The following elements comprise the required client-centered education and counseling services that must be provided to all family planning clients:

(A) Initial clinical assessment and re-assessment as needed, of the client's educational needs and knowledge about reproductive health, including:

(i) Relevant reproductive anatomy and physiology;

(ii) Counseling and education about a broad range of FDA-approved contraceptive methods, devices, supplies, and procedures, including emergency contraception;

(iii) A description of services and clinic procedures;

(iv) Preventive health care, nutrition, preconception health, pregnancy intention, and STI and HIV prevention;

(v) Psychosocial issues, such as partner relationship and communication, risk-taking, and decision-making; and

(vi) An explanation of how to locate and access primary care services not covered by CCare.

(B) Initial and all subsequent education and counseling sessions must be provided in a way that is understandable to the client and conducted in

a manner that respects the dignity and privacy of the client and facilitates the client's ability to make informed decisions about reproductive health behaviors and goals, and must include:

(i) An explanation of the results of the physical examination and the laboratory tests;

(ii) Information on where to obtain 24-hour emergency care services;

(iii) The option of including a client's partner in an education and counseling session, and other services at the client's discretion; and

(iv) Effective educational information that takes into account diverse cultural and socioeconomic factors of the client and the psychosocial aspects of reproductive health.

(C) Using a client-centered approach, each client must be provided with adequate information to make an informed choice about contraceptive methods, including:

(i) A general verbal or written review of all FDA-approved contraceptive methods, including sterilizations and emergency contraception, along with the opportunity for the client to ask questions. Documentation of this method education must be maintained in the client record;

(ii) A description of the implications and consequences of sterilization procedures, if provided;

(iii) The opportunity for questions concerning procedures or methods; and

(iv) Written information about how to obtain services for contraceptive-related complications or emergencies.

(D) Specific instructions for care, use, and possible danger signs for the selected method each time the method is dispensed.

(E) Clinicians and other agency staff persons providing education and counseling must be knowledgeable about the psychosocial and medical aspects of reproductive health, and trained in client-centered counseling techniques. Agency staff must make referrals for more intensive counseling as indicated.

(8) Exceptions:

(a) School-Based Health Centers are exempt from the requirement to make contraceptive methods available for on-site dispensing described in section (3) and subsection (5)(b) of this rule. School-Based Health Centers may offer contraceptive methods to clients either on-site or by referral. When offered by referral, School-Based Health Centers must have an established referral agreement in place, preferably with another CCare clinic. RH must be notified of the parties involved in order to ensure proper billing and audit practices. When the referral clinic participates in CCare, that clinic may submit claims directly to CCare for reimbursement of the dispensed supplies. When referral clinics do not participate in CCare, payment arrangements must be made between the referring and receiving clinics. Dispensing by any provider must not result in a charge to the client.

(b) Non-School-Based Health Center sites:

(A) Agencies may bill CCare for family planning services conducted and contraceptive supplies dispensed at a school site, grade 12 and under, if the site meets the following criteria:

(i) The school site must be within a RH-approved distance from the enrolled CCare agency to ensure adequate access to client contraceptive method of choice; and

(ii) The school site must have a dedicated, private room for services to be conducted.

(B) Agencies that wish to bill CCare for client counseling and education services conducted at school sites must adhere to the following standards:

(i) The agency must notify RH of the school site to be enrolled and must request from RH a unique site number for the school site;

(ii) The agency must receive written approval from the school site to conduct services;

(iii) For newly enrolling clients, the agency must ensure that clients meet all eligibility criteria described in OAR 333-004-0020 and are enrolled according to OAR 333-004-0030 at the school site;

(iv) For clients already enrolled in CCare, the agency must ensure that clients have active eligibility;

(v) The agency must follow all standards of care for family planning services described in OAR 333-004-0060 with the exception of OAR 333-004-0060(3) (supplies dispensed on-site) and OAR 333-004-0060(6) (clinical and preventive services);

(vi) The agency must offer clients a written referral to an enrolled CCare clinic for supply pick-up, if not dispensed on-site, and full array of clinical services; and

(vii) The agency must submit claims for services conducted at the school site using the assigned project and site number of the school site.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.032

ADMINISTRATIVE RULES

Hist.: PH 4-2005, f. & cert. ef. 2-18-05; PH 5-2007, f. 4-9-07, cert. ef. 4-23-07; PH 2-2009, f. & cert. ef. 3-2-09; PH 10-2010, f. & cert. ef. 6-30-10; PH 19-2012, f. & cert. ef. 12-26-12; PH 1-2017, f. & cert. ef. 1-10-17

333-004-0070

Agency Enrollment, Responsibilities, and Termination

(1) Agency enrollment:

(a) An agency and its providers must meet applicable licensing or regulatory requirements set forth by federal and state statutes, regulations, and rules to be enrolled and to bill as an agency. In addition, all agencies and its providers within the state of Oregon must have a valid Oregon business license if such a license is a requirement of the state, federal, county or city government to operate a business or to provide services.

(b) Signing a MSA constitutes agreement by agencies to comply with all applicable rules of RH, the Health Systems Division, and federal and state laws and regulations.

(c) Signing a MSA constitutes agreement by agencies to serve both CCare and Oregon Health Plan covered clients.

(d) An agency or any of its providers that are currently subject to sanctions by the Authority or the federal government are not eligible for enrollment as a CCare agency.

(e) A CCare project number and site number shall be issued to an agency and any applicable clinics upon:

(A) Completion of the MSA and submission of the required documents;

(B) The signing of the MSA and related forms by the person authorized by the agency to bind the agency and its providers to compliance with these rules;

(C) Verification of business licensing and CLIA certification; and

(D) Approval of the application by RH and the Health Systems Division.

(f) An agency must notify RH within 30 days of a change in address, business affiliation, clinic location or closure, licensure, ownership, certification, billing agents or Federal Tax Identification Number (TIN). Failure to notify RH of a change of Federal Tax Identification Number may result in a sanction. Changes in business affiliation, ownership, and Federal Tax Identification Number may require the submission of a new application. In the event of bankruptcy proceedings, the agency must immediately notify RH in writing. RH may recover payments made to agencies who have not notified RH of changes as required by this subsection.

(g) Agencies outside the state of Oregon may be enrolled under the following conditions:

(A) The agency is appropriately licensed or certified and meets standards established within the provider's state for participation in Medicaid; and

(B) The agency is located in a state contiguous to Oregon, and is within 75 miles of the Oregon border.

(2) Agency responsibilities:

(a) Agencies perform all services and provide all items as an independent contractor. Agencies are not officers, employees, or agents of RH.

(b) The agency is responsible for its employees, and for providing employment-related benefits and deductions that are required by law. The agency is solely responsible for its acts or omissions, including the acts or omissions of its own officers, employees or agents. RH's responsibility is limited to its authorization and payment obligations for covered services or items provided in accordance with OAR 333-004-0000 through 333-004-0230.

(c) Enrolled agencies must designate a single agency staff person to serve as the RH Coordinator. The RH Coordinator is responsible for:

(A) Having an understanding of all aspects of CCare and how it is operationalized within clinic sites, including client enrollment, clinical services, and billing and data submission;

(B) Ensuring program compliance at all clinic sites, including:

(i) Ensuring personnel at all clinic sites understand and implement CCare requirements, policies and procedures;

(ii) Responding to requests for information from RH in a timely manner;

(iii) Notifying RH of any changes in clinics or key personnel, including but not limited to address changes, clinic closures, staff hires or departures;

(iv) Requesting trainings from RH as needed; and

(v) Attending the annual Reproductive Health Coordinators' Meeting, and other required trainings and meetings provided by RH.

(d) If the agency's designated RH Coordinator does not comply with the responsibilities of subsection (2)(c) of this rule RH may request that a different agency staff person be designated.

(3) Agency termination:

(a) An agency may terminate enrollment at any time. The notice must be made to RH in writing, via certified mail, return-receipt requested. The notice shall specify the provider number to be terminated and the effective date of termination. Termination of agency enrollment does not terminate any obligations of the agency for dates of services during which the enrollment was in effect.

(b) RH may terminate CCare agency enrollment due to inactivity. After 12 months of no claims activity, agencies may be contacted by RH with a written notice by certified mail, return-receipt requested, regarding inactivity and pending termination of agency enrollment. The notice shall specify the effective date of termination unless the agency notifies RH within 30 days upon receipt of notice of intention to resume claims activity.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.032

Hist.: PH 4-2005, f. & cert. ef. 2-18-05; PH 5-2007, f. 4-9-07, cert. ef. 4-23-07; PH 2-2009, f. & cert. ef. 3-2-09; PH 10-2010, f. & cert. ef. 6-30-10; PH 19-2012, f. & cert. ef. 12-26-12; PH 1-2017, f. & cert. ef. 1-10-17

333-004-0080

Billing and Claims

(1) Only clinics providing services pursuant to an approved MSA, and who have been assigned a project number and site number may submit claims for CCare services.

(2) An agency may bill for family planning services by submitting CVR data or by submitting the CVR form to RH via RH's contracted data and claims processor. A claim is considered valid only if all required data are submitted.

(3) An agency may bill RH for supplies through the CVR at actual acquisition cost; that is, the amount or unit cost of the contraceptive supply the agency actually pays to the pharmaceutical manufacturer, supplier or distributor for the contraceptive supplies, after applying any discounts, promotions or other reductions. Shipping and handling may be included in the acquisition cost only if supported by an invoice.

(4) An agency shall include a primary diagnosis code on all claims. All billings must be coded with the most recent and appropriate International Classification of Diseases. All billings must be coded with the diagnosis codes in the Z30 Contraceptive Management series to the highest level of specificity. No other primary diagnosis code can be billed.

(5) An agency may bill RH for laboratory services provided during a family planning visit for contraception through a fixed rate that includes clinical and laboratory services. The exception to this is the combined gonorrhea/Chlamydia (GC/CT) test occurring in the context of a CCare family planning visit. The combined GC/CT test shall be reimbursed separately from the fixed rate only if the appropriate medical service is indicated on the CVR.

(6) Birth control supplies billable to CCare must be approved by the Authority, be FDA approved, and may include IUDs or IUSs, cervical caps, oral contraceptives, subdermal implants, condoms, diaphragms, spermicides, patches, rings, injectables, and emergency contraception.

(7) An agency must ensure that all laboratory tests done at the clinic site or by an outside clinic are conducted by CLIA certified laboratories.

(8) An agency enrolled with CCare must not seek payment from an eligible client, or from a financially responsible relative or representative of that client, for any services covered by CCare. The agency shall accept RH reimbursement for any CCare-covered services, pharmaceuticals, devices, or supplies as payment in full.

(a) If an agency has misrepresented client eligibility for services, the agency must assume responsibility for the full cost of services provided.

(b) A client may be billed for services that are not covered by CCare as outlined in the CCare enrollment form.

(9) Upon submission of a claim to RH for payment, the agency attests that it has complied with all rules of CCare.

(a) Except for services performed by a CLIA certified laboratory outside of the clinic, all billings must be for services provided within the agency and its provider's licensure or certification.

(b) It is the responsibility of an agency to submit true and accurate information when billing CCare.

(c) A claim may not be submitted prior to providing services.

(10) No agency shall submit to RH:

(a) Any false claim for payment;

(b) Any claim altered in such a way as to result in a payment for a service that has already been paid; or

(c) Any claim upon which payment has been made by another source unless the amount paid is clearly entered on the claim form.

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(11) An agency is required to correct the billing error or to refund the amount of the overpayment, on any claim where the agency identifies an overpayment made by RH.

(12) An agency that, after having been previously warned in writing by the Authority or the Department of Justice regarding findings of improper billing practices as described in OAR 333-004-0140, is found to have continued such improper billing practices and has had an opportunity for a contested case hearing, shall be liable to RH for up to triple the amount of the established overpayment received as a result of such violation.

(13) Third Party Resources. The following subsections apply only to clients with private insurance coverage.

(a) Federal law requires that all reasonable efforts be taken to ensure that CCare is the payor of last resort, unless a client requests special confidentiality which must be documented on the CCare enrollment form. A client's request for special confidentiality ensures that the agency must not bill third party resources, but instead must bill CCare directly.

(b) An agency must make reasonable efforts to obtain payment from other resources before billing CCare. For the purposes of this rule reasonable efforts include:

(A) Determining the existence of insurance or other resource by asking the client.

(B) When third party coverage is known to the agency, prior to billing CCare, the agency must bill the third party resource.

(c) If the client has private insurance that has been billed for CCare services and the reimbursement from the insurance is less than the CCare reimbursement rate, the balance may be billed to CCare.

(d) An agency must report the reimbursement received from insurance, including both services and supplies. The exact amount received from the insurance company must be reported in total.

(e) The CCare payment to the agency after the agency has received third party payment may not exceed the total of what CCare would pay for both services and supplies. The total amount of service and supply minus the amount paid by the primary insurance is the amount the agency shall be reimbursed.

(f) If third-party payment is received after CCare has been billed, agencies are required to submit a billing correction showing the amount of the third party payment or to refund the amount received from another source within 30 days of the date the payment is received. Failure to submit a billing correction within 30 days of receipt of the third party payment or to refund the appropriate amount within this time frame is considered concealment of material facts and grounds for recovery or sanction.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.032

Hist.: PH 4-2005, f. & cert. ef. 2-18-05; PH 3-2007(Temp), f. 2-23-07, cert. ef. 4-1-07 thru 9-28-07; PH 5-2007, f. 4-9-07, cert. ef. 4-23-07; PH 2-2009, f. & cert. ef. 3-2-09; PH 19-2012, f. & cert. ef. 12-26-12; PH 17-2015, f. 9-30-15, cert. ef. 10-1-15; PH 1-2017, f. & cert. ef. 1-10-17

333-004-0110

Payment

(1) RH shall make payment only to an enrolled agency that actually performs the services for eligible clients.

(2) The reimbursement rates for CCare visits are set by RH and are available online at www.healthoregon.org/rhmanual. Claims are reimbursed at the rates in effect on the date of service.

(3) Contraceptive pharmaceuticals, devices and supplies are separately reimbursed at acquisition cost as described in OAR 333-004-0080(3), up to a set maximum amount, and are available online at www.healthoregon.org/rhmanual.

(4) The combined gonorrhea/Chlamydia (GC/CT) test is reimbursed separately from the visit.

(5) RH may not make payment on claims that have been assigned, sold, or otherwise transferred, or on which an agency of billing services receives a percentage of the amount billed or payment authorized. This includes, but is not limited to, transfer to a collection agency or party who advances money to an agency for accounts receivable.

(6) RH shall only pay for services that are adequately documented and for contraceptive supply costs that are supported by invoice.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.032

Hist.: PH 4-2005, f. & cert. ef. 2-18-05; PH 3-2007(Temp), f. 2-23-07, cert. ef. 4-1-07 thru 9-28-07; PH 5-2007, f. 4-9-07, cert. ef. 4-23-07; PH 2-2009, f. & cert. ef. 3-2-09; PH 19-2012, f. & cert. ef. 12-26-12; PH 1-2017, f. & cert. ef. 1-10-17

333-004-0120

Requirements for Financial, Clinical and Other Records

(1) RH is responsible for analyzing and monitoring the operation of CCare and for auditing and verifying the accuracy and appropriateness of

payment, utilization of services, the quality of care, and access to care. An agency shall:

(a) Develop and maintain adequate financial and clinical records and other documentation that supports the services for which payment has been requested.

(b) Document the service provided, primary diagnosis code for the services, the date on which the service was provided, and the agency staff who provided the services in every medical record. Client account and financial records must also include documentation of charges, identification of other payment resources pursued, the date and amount of all debit or credit billing actions, and support the appropriateness of the amount billed and paid. The records must be accurate and in sufficient detail to substantiate the data reported.

(c) Sufficiently document that the primary purpose of the visit was for family planning services and that the primary diagnosis was within the ICD-10 Z30 series. The client's record must be annotated each time a service is provided and signed or initialed by the agency staff that provided the service or must clearly indicate the agency staff that provided the service. Information contained in the record must meet the standards of care for family planning services as described in OAR 333-004-0060, and must be appropriate in quality and quantity to meet the professional standards applicable to the provider and any additional standards for documentation found in this rule.

(2) An agency must have policies and procedures to ensure the maintenance of the confidentiality of medical record information. These procedures must ensure that the agency may release such information in accordance with federal and state statutes, including but not limited to ORS 179.505 through 179.507, 413.175, 42 CFR part 2, if applicable, 42 CFR subpart F, and ORS 433.045 with respect to HIV test information.

(3) An agency must retain clinical records for seven years and financial and other records described in this rule for at least five years from the date of service. Original enrollment records must be retained for seven years.

(4) Upon written request from RH, the Health Systems Division, the Authority, the Oregon Department of Justice Medicaid Fraud Unit, the Oregon Secretary of State or their authorized representatives (requestor), an agency must furnish requested documentation, without charge, immediately or within the time-frame specified in the written request.

(5) If an agency fails to comply with requests for records within the specified timeframes it may result in the Authority deeming those records not to exist for purposes of verifying appropriateness of payment, medical appropriateness, the quality of care, and the access to care in an audit or overpayment determination, and accordingly subjects the agency to possible denial or recovery of payments made by the Authority, or to sanctions.

(6) The agency, and any officers, employees, agents, and subcontractors of the agency shall comply with the following requirements for the CCare Eligibility Database:

(a) Implement security measures that reasonably and appropriately provide administrative, physical and technical safeguards that protect the confidentiality, integrity and availability of the CCare Eligibility Database. The agency's security measures must be documented in writing and be available for review by RH upon request. RH review of the reasonableness of security measures, as well as the agency's compliance with RH assigned access control or security requirements, shall take into account the agency's physical, administrative, and technical capabilities related to security measures and the potential risk of unauthorized use or disclosure of the CCare Eligibility Database by the agency, its officers, employees, agents or subcontractors;

(b) Prevent any unauthorized access to or disclosure of information from the CCare Eligibility Database;

(c) Take necessary actions to comply with RH determinations of the level of access that may be granted, as well as changes in level of access, or suspension or termination of access as determined by RH;

(d) Keep any RH-assigned access control requirements such as identification of authorized users and access-control information in a secure location until access is terminated; monitor and securely maintain access by the agency and its agents or subcontractors in accordance with security requirements or access controls assigned by RH; and make available to RH upon request all information about the agency's use or application of the CCare Eligibility Database; and

(e) Report any privacy or security incidents by the agency, its officers, employees, agents or subcontractors that compromise, damage, or cause a loss of protection to the CCare Eligibility Database, as follows:

(A) Report to RH in writing within five business days of the date on which the agency becomes aware of such incident; and

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(B) Provide RH the results of the incident assessment findings and resolution strategies.

(7) The agency must comply with RH requests for corrective action concerning a privacy or security incident, and with laws requiring mitigation of harm caused by the unauthorized use or disclosure of confidential information, if any.

(8) If RH determines that the agency's security measures or actions required under section (7) of this rule are inadequate to address the security requirements, RH shall notify the agency. RH and the agency may meet to discuss appropriate security measures or action. If security measures or corrective actions acceptable to RH cannot be agreed upon, RH reserves the right to take such actions as it determines appropriate under the circumstances. Actions may include, but are not limited to, restricting access, or amending or terminating the agency agreement.

(9) RH reserves the right to request additional information from the agency related to security measures, and to change, suspend or terminate access to or use of the CCare Eligibility Database by the agency, its officers, employees, agents or subcontractors.

(10) Wrongful use or disclosure of the CCare Eligibility Database by the agency, officers, its employees, agents or its subcontractors may cause the immediate suspension or revocation of any access granted, in the sole discretion of RH. RH may also pursue any other legal remedies provided under the law.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.032

Hist.: PH 4-2005, f. & cert. ef. 2-18-05; PH 5-2007, f. 4-9-07, cert. ef. 4-23-07; PH 2-2009, f. & cert. ef. 3-2-09; PH 19-2012, f. & cert. ef. 12-26-12; PH 1-2017, f. & cert. ef. 1-10-17

333-004-0130

Compliance with Federal and State Statutes

(1) Submission of a claim for medical services or supplies provided to a CCare client shall be deemed a representation by the agency to RH of the agency's compliance with the applicable sections of the federal and state statutes referenced in this rule:

(a) 45 CFR Part 84 that implements Title V, section 504 of the Rehabilitation Act of 1973;

(b) Title II and Title III of the Americans with Disabilities Act of 1991;

(c) Title VI of the Civil Rights Act of 1964; and

(d) 42 CFR Part 493 Laboratory Requirements and ORS chapter 438 (Clinical Laboratories).

(2) Agencies are required to comply with the Health Insurance Portability and Accountability Act (HIPAA) regarding the confidentiality of client records.

(3) Providers described in ORS chapter 419B are required to report suspected child abuse to their local child welfare office of the Department of Human Services or police, in the manner described in ORS chapter 419B.

(4) The Clinical Laboratory Improvement Act (CLIA), requires all entities that perform even one laboratory test, including waived tests, on materials derived from the human body for the purpose of providing information for the diagnosis, prevention or treatment of any disease or impairment of, or the assessment of the health of, human beings to meet certain federal requirements. If an entity performs tests for these purposes, it is considered under CLIA to be a laboratory.

(5) Clinics that dispense medications may require registration and compliance with applicable rules of the Oregon Board of Pharmacy, OAR 855-043-0002 through 855-043-0750.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.032

Hist.: PH 4-2005, f. & cert. ef. 2-18-05; PH 5-2007, f. 4-9-07, cert. ef. 4-23-07; PH 19-2012, f. & cert. ef. 12-26-12; PH 1-2017, f. & cert. ef. 1-10-17

333-004-0140

Review or Audit of Claims

(1) RH staff, contractor or auditor may review a claim for assurance that:

(a) Specific medical services or contraceptive devices or supplies were provided to clients enrolled in and determined eligible for CCare by an agency in accordance with OAR 333-004-0000 through 333-004-0230; and

(b) The Standards of Care for Family Planning Services were adhered to as set forth in OAR 333-004-0060.

(2) To determine the number of inappropriate claims, and subsequently the overpayment amount, RH may review a statistically valid random sample of claims with sufficient sample size for a confidence interval of 95 percent.

(3) RH may deny payment or seek recovery of payment if a review or audit determines the service does not meet RH rules or the Standards of Care for Family Planning Services set forth in OAR 333-004-0060.

(4) RH shall notify the agency, in writing, of the improper billing findings and subsequent actions to be taken by the agency to correct the identified findings and any sanctions that may be imposed by RH.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.042

Hist.: PH 4-2005, f. & cert. ef. 2-18-05; PH 5-2007, f. 4-9-07, cert. ef. 4-23-07; PH 2-2009, f. & cert. ef. 3-2-09; PH 19-2012, f. & cert. ef. 12-26-12; PH 1-2017, f. & cert. ef. 1-10-17

333-004-0150

Recovery of Overpayments to Agencies Resulting from Review or Audit

(1) When RH determines that an overpayment has been made to an agency, the amount of overpayment is subject to recovery.

(a) If RH determines an overpayment amount by the random sampling method set forth in OAR 333-004-0140(2), an agency may request a 100 percent audit of all billings submitted to CCare for family planning services provided during the period in question.

(b) If an agency requests a 100 percent audit:

(A) The agency is responsible for payment and arrangement; and

(B) The audit must be conducted by a certified public accountant who is knowledgeable with the Oregon Administrative Rules covering the payments in question, and must be conducted within 120 calendar days of the request to use such audit in lieu of RH's random sample.

(2) The amount of the review or audit overpayment to be recovered:

(a) Is the entire amount determined by RH or the amount agreed to by RH and the agency;

(b) Is not limited to amounts determined by criminal or civil proceedings; and

(c) Includes interest charged at allowable state rates.

(3) RH shall deliver to an agency by registered or certified mail or in person a request for repayment of the overpayment and the documentation to support the overpayment amount.

(4) The overpayment is due and payable 30 calendar days from the date of the decision by RH:

(a) An agency may request an additional 30-day grace period from RH.

(b) A request for a hearing does not change the date the repayment of the overpayment is due.

(5) RH may extend the reimbursement period for an agency or accept an offer of repayment terms from an agency. Any change in reimbursement period or terms must be made in writing by the RH.

(6) If the agency refuses to reimburse the overpayment or does not adhere to an agreed upon payment schedule, RH may:

(a) Recoup future agency payments up to the amount of the overpayment;

(b) Suspend or terminate the agency's enrollment in CCare; or

(c) Pursue civil action to recover the overpayment.

(7) RH may, at any time, change the amount of the overpayment upon receipt of additional information. RH shall notify an agency in writing of any changes. Any monies paid to RH by an agency that exceed an overpayment shall be refunded to the agency.

(8) If an agency is terminated or sanctioned for any reason, RH may pursue civil action to recover any amounts due and payable to CCare.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.032

Hist.: PH 4-2005, f. & cert. ef. 2-18-05; PH 5-2007, f. 4-9-07, cert. ef. 4-23-07; PH 2-2009, f. & cert. ef. 3-2-09; PH 19-2012, f. & cert. ef. 12-26-12; PH 1-2017, f. & cert. ef. 1-10-17

333-004-0160

Provider Sanctions

The following are conditions that may result in the imposition of a sanction on an agency.

(1) Basis for sanction:

(a) Conviction of a provider of a felony or misdemeanor related to a crime or violation of Title XVIII, XIX, or XX of the Social Security Act or related state laws (or entered a plea of nolo contendere);

(b) Conviction of fraud related to any federal, state, or locally financed health care program or commission of an act that is subject to criminal or civil penalties under Medicaid statutes;

(c) Conviction of interference with the investigation of health care fraud;

(d) Conviction of unlawfully manufacturing, distributing, prescribing, or dispensing a controlled substance;

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(e) Failure to comply with the state and federal statutory requirements set forth in OAR 333-004-0130;

(f) An action by a state licensing authority relating to a provider's professional competence, professional conduct, or financial integrity, that results in the provider either:

(A) Having his or her license suspended or revoked; or

(B) Surrendering the license while a formal disciplinary proceeding was pending before a licensing authority.

(g) Suspension or exclusion from participation in a federal or state-administered health care program for reasons related to professional competence, professional performance, or other reason;

(h) Improper billing practices, including billing for excessive charges or visits, furnishing items or services substantially in excess of the client's family planning needs, or of a quality that fails to meet professionally recognized standards;

(i) Failure to furnish services as required by law or contract with the RH;

(j) Failure to supply requested information on subcontractors and suppliers of goods or services;

(k) Failure to supply requested payment information;

(l) Failure to grant access or to furnish as requested, records, or to grant access to facilities upon request of RH or a designated requestor;

(m) Receiving payments for services provided to persons who were not eligible;

(n) Establishing multiple claims using procedure codes that overstate or misrepresent the level, amount or type of health care provided;

(o) Failure to develop, maintain, and retain in accordance with relevant rules and standards adequate clinical or other records that document the medical appropriateness, nature, and extent of the health care provided;

(p) Failure to develop, maintain, and retain in accordance with relevant rules and standards adequate financial records that document charges incurred by a client and payments received from any source;

(q) Failure to follow generally accepted accounting principles or accounting standards or cost principles required by federal or state laws, rule, or regulation;

(r) Submission of claims or written orders contrary to generally accepted standards of medical practice;

(s) Submission of claims for services that exceed that requested or agreed to by the client or the responsible relative or guardian or requested by another medical practitioner;

(t) Breach of the terms of the medical services agreement;

(u) Failure to correct deficiencies in operations after receiving written notice of the deficiencies from RH;

(v) Submission of any claim for payment for which payment has already been made by RH;

(w) Provision of or billing for services provided by ineligible or unsupervised staff; or

(x) Alteration of clinical or billing records that have been requested by RH or a designated requestor.

(2) An agency or any of its providers who have been suspended, terminated, or excluded from participation in a federal or state-administered medical program, such as Medicare or Medicaid, or whose license to practice has been suspended or revoked by a state licensing board, shall not submit claims for payment, either personally or through claims submitted by any billing agency or other agency, for any services or supplies provided under CCare, except those services or supplies provided prior to the date of suspension or termination.

(3) No agency shall submit claims for payment to RH for any services or supplies provided by a person or agency that has been suspended or terminated from participation in a federal or state-administered medical program, such as Medicare or Medicaid, or whose license to practice has been suspended or revoked by a state licensing board, except for those services or supplies provided prior to the date of suspension or termination.

(4) When the provisions of sections (2) or (3) of this rule are violated, RH may suspend or terminate the agency who is responsible for the violation.

(5) Agency sanctions shall be imposed at the discretion of RH or the director of the office whose budget includes payment for the services involved. RH shall notify an agency in writing of any sanction proposed to be imposed that shall explain the agency's appeal rights in accordance with OAR 333-004-0200 through 333-004-0230.

(6) RH shall consider the following factors in determining the sanction(s) to be imposed (this list includes but is not limited to these factors):

(a) Seriousness of the offense(s);

(b) Extent of violations by the agency;

(c) History of prior violations by the agency;

(d) Prior imposition of sanctions;

(e) Prior agency education; and

(f) Agency willingness to comply with RH rules.

(7) The Health Systems Division shall be notified whenever a sanction is imposed on an agency.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.032

Hist.: PH 4-2005, f. & cert. ef. 2-18-05; PH 5-2007, f. 4-9-07, cert. ef. 4-23-07; PH 2-2009, f. & cert. ef. 3-2-09; PH 19-2012, f. & cert. ef. 12-26-12; PH 1-2017, f. & cert. ef. 1-10-17

Rule Caption: Prescription drug monitoring and health information technology systems

Adm. Order No.: PH 2-2017

Filed with Sec. of State: 1-10-2017

Certified to be Effective: 1-10-17

Notice Publication Date: 12-1-2016

Rules Adopted: 333-023-0830

Rules Amended: 333-023-0805, 333-023-0820

Subject: The Oregon Health Authority, Public Health Division is permanently adopting and amending administrative rules in chapter 333, division 23 pertaining to prescription drug monitoring and health information technology systems. The rule adoption modifies the Prescription Drug Monitoring Program (PDMP) to allow authorized practitioners or pharmacists and their delegates to access PDMP information through health information technology systems. The rule amendments are to address the approval process and compliance of health information technology systems with privacy and security requirements in accordance with state and federal laws.

Rules Coordinator: Brittany Hall — (971) 673-1291

333-023-0805

Definitions

Unless otherwise stated in OAR 333-023-0800 through 333-023-0830, or the context of OAR 333-023-0800 through 333-023-0830 requires otherwise, the following definitions apply to OAR 333-023-0800 through 333-023-0830:

(1) "Approved entity" means an eligible entity that has been approved by the Authority to connect a health information technology system to the prescription monitoring data integration solution.

(2) "Authority" means the Oregon Health Authority.

(3) "Controlled substance" means a prescription drug classified in Schedules II through IV under the Federal Controlled Substances Act, 21 U.S.C. 811 and 812, as modified under ORS 475.035.

(4) "Delegate" means a member of staff of a practitioner or pharmacist who is authorized by the practitioner or pharmacist to access the system on his or her behalf.

(5) "Dispense" and "dispensing" have the meaning given those terms in ORS 689.005.

(6) "Eligible entity" means an organization or entity that operates, or provides or makes available a health information technology system to a practitioner or pharmacist or a member of the practitioner's or pharmacist's staff.

(7) "Health information technology system" means an information processing application using computer hardware and software for the storage, retrieval, sharing and use of health care information, data and knowledge for communication, decision-making, quality, safety and efficiency of a clinical practice.

(8) "Health professional regulatory board" has the meaning given that term in ORS 676.160.

(9) "Patient record" means a collection of documents, either paper or electronically, that provides an account of patient care.

(10) "Pharmacy" has the meaning given that term in ORS 689.005 but does not include a pharmacy in an institution as defined in ORS 179.010.

(11) "Practitioner" has the meaning given that term in ORS 431.960.

(12) "Prescription drug" has the meaning given that term in ORS 689.005.

(13) "System" means the secure electronic system used to monitor reported prescription drug information.

(14) "Unsecure data" means data that is electronic and is not encrypted at the level established by the National Institute of Standards and Technology.

(15) "Vendor" means the private entity under contract with the Authority to operate the system.

ADMINISTRATIVE RULES

Stat. Auth.: ORS 431.962
Stats. Implemented: ORS 431.962 - 431.978 & 431.992
Hist.: DMAP 6-2011, f. & cert. ef. 5-5-11; DMAP 64-2013, f. & cert. ef. 11-19-13;
Renumbered from 410-121-4005, PH 28-2015, f. 12-29-15, cert. ef. 1-1-16; PH 2-2017, f. &
cert. ef. 1-10-17

333-023-0820

Information Access

(1) System Access. Only the following individuals or entities may access the system:

- (a) Practitioners and pharmacists authorized to prescribe or dispense controlled substances;
- (b) Delegates;
- (c) Designated representatives of the Authority and any vendor contracted to establish or maintain the system;
- (d) State Medical Examiner and designees of the State Medical Examiner.

(2) All entities or individuals who request access from the Authority for the creation of user accounts shall agree to terms and conditions of use of the system.

(3) All delegates must be authorized by a practitioner or pharmacist with an active system account.

(4) The Authority shall monitor the system for unusual and potentially unauthorized use. When such use is detected, the user account shall be immediately deactivated.

(5) The vendor, a practitioner, a pharmacist, a pharmacy, or an approved entity shall report to the Authority within 24 hours any suspected breach of the system or unauthorized access.

(6) When the Authority is informed of any suspected breach of the system or unauthorized access, the Authority shall notify the Authority's Information Security Office and investigate.

(7) If patient data is determined to have been breached or accessed without proper authorization, the Authority shall notify all affected patients, the Attorney General, and the applicable health professional regulatory board as soon as possible but no later than 30 days from the date of the final determination that a breach or unauthorized access occurred. Notice shall be made by first class mail to a patient or a patient's next of kin if the patient is deceased. The notice shall include:

- (a) The date the breach or unauthorized access was discovered and the date the Authority believes the breach or unauthorized access occurred;
- (b) The data that was breached or accessed without proper authorization;
- (c) Steps the individual can take to protect him or herself from identity or medical identity theft;
- (d) Mitigation steps taken by the Authority; and
- (e) Steps the Authority will take to reasonably ensure such a breach does not occur in the future.

(8) Practitioner, Pharmacist, and Delegate Access. A practitioner, pharmacist, or delegate who chooses to request access to the system shall apply for a user account as follows:

- (a) Complete and submit an application provided by the Authority that includes identifying information and credentials;
- (b) Agree to terms and conditions of use of the system that defines the limits of access, allowable use of patient information, and penalties for misuse of the system; and
- (c) Mail to the Authority an application.

(9) State Medical Examiner Access. The State Medical Examiner or his or her designee shall apply for a user account as required in section (8) of this rule and indicate their license type as Medical Examiner.

(10) The Authority shall compare the licensure requirements between Oregon practitioners and similarly licensed professionals in California, Idaho, and Washington. The Authority's determination of similar licensure requirements shall be based upon scope of practice and formulary.

(11) The Authority shall review each application to authenticate before granting approval of a new account.

(12) If the Authority learns that an applicant has provided inaccurate or false information on an application, the Authority shall deny access to the system or terminate access to the system if access has already been established. The Authority may send written notification to the appropriate health professional regulatory board or oversight entity.

(13) A practitioner or pharmacist who is an authorized system user shall notify the Authority when his or her license or DEA registration has been limited, revoked, or voluntarily retired. A practitioner or pharmacist who changes or terminates employment shall notify the Authority of that change.

(14) When the Authority learns that a practitioner or pharmacist's license has been limited or revoked, the Authority shall deny further access to the system.

(15) When a delegate for any reason is no longer authorized as a delegate by a practitioner or pharmacist, the practitioner or pharmacist shall revoke the delegation and notify the Authority.

(16) When the account of a delegate is inactive for more than six months, the account shall be deactivated by the Authority.

(17) When for any reason access of a designee of the State Medical Examiner must be revoked, the State Medical Examiner shall notify the Authority.

(18) Each time a practitioner or pharmacist makes a patient query he or she shall certify that requests are in connection with the treatment of a patient in his or her care and agree to terms and conditions of use of the system.

(19) Each time the State Medical Examiner or designee of the State Medical Examiner makes a patient query he or she shall certify that requests are for the purpose of conducting a specific medicolegal investigation or autopsy where there is reason to believe controlled substances contributed to the death and agree to terms and conditions of use of the system.

(20) Each time a delegate makes a patient query he or she shall certify that requests are in connection with the treatment of a patient of the practitioner or pharmacist for whom the delegate is conducting the query, agree to terms and conditions of use, and indicate the authorizing practitioner or pharmacist for whom the delegate is conducting the query.

(21) Practitioners and pharmacists with delegates must conduct monthly audits of delegate use to monitor for potential misuse of the system.

(22) When a practitioner or pharmacist learns of any potential unauthorized use of the system or system data by a delegate, the practitioner or pharmacist shall:

- (a) Revoke the delegation; and
- (b) Notify the Authority of the potential unauthorized use.

(23) When the State Medical Examiner learns of any potential unauthorized use of the system or system data by a designee, the State Medical Examiner shall notify the Authority.

(24) When the Authority learns of any potential unauthorized use of the system or system data, the Authority shall revoke the user's access to the system, notify the Authority's Information Security Office, and investigate.

(a) If the Authority determines unauthorized use occurred, the Authority shall send written notification to the appropriate health professional regulatory board, the Attorney General and all affected individuals.

(b) If the Authority determines unauthorized use did not occur, the Authority shall reinstate access to the system.

(25) The Authority shall send written notification to a user or a potential user when an account has been deactivated or access has been denied.

(26) Patient Access. A patient may request a report of the patient's own controlled substance record. The patient shall mail to the Authority a request that contains the following documents:

- (a) A signed and dated patient request form provided by the Authority; and
- (b) A copy of the patient's current valid U.S. driver's license or other valid government issued photo identification.

(27) The Authority shall review the personal information submitted and verify that the patient's identification and request match before taking further action.

(28) If the Authority cannot verify the information, the Authority shall send written notification to the patient explaining why the request cannot be processed.

(29) After the Authority has verified the request, the Authority shall query the system based upon the patient information provided in the request and securely send the report to the patient at no cost to the patient. The report shall include:

- (a) A list of controlled substances dispensed to the patient including the dates of dispensation, the practitioners who prescribed the controlled substances, and the pharmacies that dispensed them; and
- (b) A list of users who accessed the system for information on that specific patient with the date of each instance of access.

(30) If no data is found that matches the patient identified in the request, the Authority shall send written notification to the patient explaining possible reasons why no patient data was identified.

(31) A patient may send written notification to the Authority if he or she believes unauthorized access to his or her information has occurred.

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The notification shall include the patient's name, who is suspected to have gained unauthorized access to the patient's information, what information is suspected to have been accessed by unauthorized use, when the suspected unauthorized access occurred, and why the patient suspects the access was unauthorized. The Authority shall treat such patient notifications as potential unauthorized use of the system.

(32) A patient may request that the Authority correct information in a patient record report as follows:

(a) The patient shall specify in writing to the Authority what information in the report the patient considers incorrect.

(b) When the Authority receives a request to correct a patient's information in the system, the Authority shall make a note in the system that the information is contested and verify the accuracy of the system data with the vendor. The vendor shall verify that the data obtained from the query is the same data received from the pharmacy.

(c) If the data is verified incorrect, the Authority shall correct the errors in consultation with the vendor and document the correction. The Authority shall send to the patient the corrected report.

(d) If the vendor verifies the data is correct, the Authority shall send written notification informing the patient that the request for correction is denied. The notice shall inform the patient of his or her rights as are applicable to the prescription drug monitoring program, the process for filing an appeal, and if there are no appeal rights, how to otherwise address or resolve the issue.

(33) The Authority shall respond to all patient requests within 10 business days after the Authority receives a request. Each response shall include information that informs the patient of his or her rights as are applicable to the prescription drug monitoring program.

(34) If the Authority denies a patient's request to correct information, or fails to grant a patient's request within 10 business days after the Authority receives the request, a patient may appeal the denial or failure by requesting a contested case hearing. The appeal shall be filed within 30 days after the request to correct information is denied. The appeal process is conducted pursuant to ORS chapter 183 and the Attorney General's Uniform and Model Rules of Procedure for the Office of Administrative Hearings (OAH), OAR 137-003-0501 through 137-003-0700.

(35) Law Enforcement Access. A federal, state, or local law enforcement agency engaged in an authorized drug-related investigation of an individual may request from the Authority controlled substance information pertaining to the individual to whom the information pertains. The request shall be pursuant to a valid court order based on probable cause.

(36) A law enforcement agency shall submit to the Authority a request that contains the following:

(a) A form provided by the Authority specifying the information requested; and

(b) A copy of the court order documents.

(37) The Authority shall review the law enforcement request.

(a) If the form is complete and the court order is valid, the Authority shall query the system for the requested information and securely provide a report to the law enforcement agency.

(b) If the request or court order is not valid, the Authority shall respond to the law enforcement agency providing an explanation for the denial.

(38) Health Professional Regulatory Board Access. A health professional regulatory board investigating an individual regulated by the board may request from the Authority controlled substance information pertaining to the member.

(a) A health professional regulatory board shall submit to the Authority a form provided by the Authority specifying the information requested. The board's executive director shall certify that the requested information is necessary for an investigation related to licensure, renewal, or disciplinary action involving the applicant, licensee, or registrant to whom the requested information pertains.

(b) The Authority shall review the regulatory board request.

(A) If a request is valid, the Authority shall query the system for the requested information and securely provide a report to the health professional regulatory board.

(B) If a request is not valid, the Authority shall respond to the health professional regulatory board providing an explanation for the denial.

(39) Researcher Access. The Authority may provide de-identified data for research purposes to a researcher. A researcher shall submit a research data request form provided by the Authority.

(a) The request shall include but is not limited to a thorough description of the study aims, data use, data storage, data destruction, and publishing guidelines.

(b) The Authority shall approve or deny research data requests based on application merit.

(c) If a request is approved, the requestor shall sign a data use agreement provided by the Authority.

(d) The Authority shall provide the minimum data set necessary that does not identify individuals.

(e) The Authority may charge researchers a reasonable fee for services involved in data access.

Stat. Auth.: ORS 431.962

Stats. Implemented: ORS 431.962 & 431.966

Hist.: DMAP 6-2011, f. & cert. ef. 5-5-11; DMAP 64-2013, f. & cert. ef. 11-19-13;

Renumbered from 410-121-4020, PH 28-2015, f. 12-29-15, cert. ef. 1-1-16; PH 2-2017, f. & cert. ef. 1-10-17

333-023-0830

Approval of Health Information Technology Systems

(1) An eligible entity may apply to the Authority to allow its Health Information Technology System access to the Prescription Drug Monitoring Program data. To apply for approval, an eligible entity must complete and provide the following to the Prescription Drug Monitoring Program:

(a) An application provided by the Authority that includes contact information for the eligible entity's Chief Information Officer, his or her designee, or equivalent, and the Compliance Officer, his or her designee, or equivalent that oversees the Health Information Technology System;

(b) An attestation that:

(A) The eligible entity's Health Information Technology System complies with state and federal privacy and security regulations;

(B) The eligible entity provides users training on the Health Information Technology System related to the limits of access and allowable use of Prescription Drug Monitoring Program data;

(C) The eligible entity agrees to periodic participation in audit activities with the Authority; and

(D) The eligible entity agrees to terms and conditions of use of the system that defines the limits of access, allowable use of patient information, and penalties for misuse of the system;

(2) The Authority shall review the application and accompanying materials and notify the applicant whether the application has been approved.

(3) The Authority may deny an application if an eligible entity does not meet criteria. Prior to issuing a denial the Authority will work with the eligible entity to resolve any eligibility issues.

(4) An approved entity may not retain patient prescription monitoring information in the Health Information Technology System or other places except for the purpose of audits and the maintenance of patient records.

(a) For the purpose of audits, patient prescription monitoring information retrieved by the Health Information Technology System may be retained in static form only, and not retained in formats that may be accessible for future inquiry unrelated to audit purposes.

(b) For the maintenance of patient records, authorized Prescription Drug Monitoring Program users accessing patient prescription records through Health Information Technology Systems may capture and record patient prescription monitoring information in the patient record.

(5) The Authority will ensure that Health Information Technology Systems that connect with the Prescription Drug Monitoring Program meet privacy and security requirements by requiring approved entities provide an annual attestation that:

(a) Their Health Information Technology System and users meet the Health Insurance Portability and Accountability Act of 1996 and other state and federal privacy and security laws.

(b) Periodic privacy and security training is provided to users of Health Information Technology Systems that connect with the Prescription Drug Monitoring Program.

(6) Only individuals authorized by rule and who hold active Prescription Drug Monitoring Program accounts are authorized to receive results from the Prescription Drug Monitoring Program using a Health Information Technology System.

(7) The Authority may suspend or revoke approval of an approved entity that does not adhere to the Authority's terms and conditions, including the security and privacy requirements set forth by the Authority. The Authority will notify the approved entity of a suspension or revocation of approval.

Stat. Auth.: ORS 431A.855

Stats. Implemented: ORS 431A.855 – 431A.900

Hist.: PH 2-2017, f. & cert. ef. 1-10-17

ADMINISTRATIVE RULES

Oregon Housing and Community Services Department Chapter 813

Rule Caption: Amends the purpose rule for public contracts and provides clarification relating to competitive recruitment

Adm. Order No.: OHCS 16-2016

Filed with Sec. of State: 12-19-2016

Certified to be Effective: 12-19-16

Notice Publication Date: 11-1-2016

Rules Amended: 813-006-0005, 813-006-0010

Rules Repealed: 813-006-0005(T), 813-006-0010(T)

Subject: Division 6 establishes the general procedures for public contracts by the department as well as other contracting and procurement activities. The amended temporary rules reflect a change in the title of this set of rules. The purpose rule has been amended to clarify that these are the general procedures adopted by the agency. The rules for basic policy and approach have been amended to reflect that the department will ensure competition and include performance standards to the maximum extent practicable to include contracts for goods and services as the department deems appropriate or otherwise required by law. The rules are also amended to clarify that a preference will be given to maximizing program objectives in a selection process between two or more equally qualified bidders in a competitive procurement.

Rules Coordinator: Sandy McDonnell—(503) 986-2012

813-006-0005

Purpose

OAR chapter 813, division 6 is promulgated to establish general procedures for public contracts and procurements by the Department as well as its other contracting and procurement activities. The Department is exempt from all provisions of the Oregon Public Contracting Code as contained in ORS Chapters 279A, 279B and 279C, except with respect to certain aspects relating to the procurement of goods and services under ORS Chapter 279B. And, the Department has all authority to procure or supervise the procurement, inter alia, of goods, services and personal services for which it is subject to ORS Chapter 279B. Also, most contracting by the Department is not covered by the Oregon Public Contracting Code even if the code were applicable to the Department. Accordingly, the Department has chosen to fashion its own standards, considerations and procedures with respect to its procurement and contracting activities.

Stat. Auth.: ORS 90.800 – 90.840, 91.886, 317.097, 279A.025, 279A.065, ORS 456.515–456.725 & 458.210 – 458.650

Stats. Implemented: ORS 90.800 – 90.840, 92.886, 279B, 317.097, 456.515 - 456.725, 307.651 & 458.005 –458.740

Hist.: HSG 14-1987, f. & ef. 12-21-87; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; OHCS 12-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 24-2013, f. & cert. ef. 12-18-13; OHCS 7-2016(Temp), f. & cert. ef. 6-29-16 thru 12-25-16; OHCS 16-2016, f. & cert. ef. 12-19-16

813-006-0010

Basic Policy and Approach

(1) The model rules of the Attorney General adopted pursuant to ORS 279A.065 do not apply to the Department. The Department will, however, consider the Attorney General's model rules for guidance in exercising its contracting and procurement discretion, particularly with respect to procurements of goods and services under ORS Chapter 279B. Other factors that the Department may consider include, but are not limited to:

(a) The subject matter of the proposed contract and appropriate means to ensure successful performance at competitive costs where practical;

(b) Specificity with respect to communication and reservation of rights in any procurement;

(c) Clarity in the naming and description of parties as well as consideration of appropriate preferences;

(d) Ascertaining and obtaining appropriate representations and warranties as to the qualifications of parties;

(e) Specificity with respect to consideration and applicable time periods;

(f) Specificity with respect to terms and covenants, particularly as to standards applicable to the performance of all work or delivery of goods;

(g) Identification of remedies and their suitability to protect Department and program interests;

(h) Identification of insurance and other risk mitigation terms and the appropriate balance of such measures with potential risks and costs;

(i) Requirements for compliance with applicable laws, including those applicable to funding sources and nondiscrimination;

(j) Use of appropriate terms with respect to standard provisions such as governing law, venue, waiver, exhibits, merger, etc.

(2) Contracting and procurement procedures, requirements and standards with respect to program loans and similar extensions or advances of funds or other funding awards may be more fully set forth in the divisions of OAR chapter 813 that specifically address those programs. Relevant general procedures, requirements and standards are set forth herein and in Divisions 001–005, particularly Division 005.

(3) Contracting and procurement procedures related to the investment of Department funds and other financial transactions that cannot practically be established, including with resort to the competitive contractor selection procedures of ORS 279B.050 to 279B.085, will be accomplished in consultation with financial advisors, legal counsel and other appropriate professionals. As a general standard, the Department will seek to employ procedures as are practical to introduce competitive efficiencies and sound selections given the particular circumstances, complex regulations and governing law applicable to such financial and investment transactions.

(4) In contracting for consultant or other personal services, as well as goods or other services, the Department will consider factors including those described above in subsection (1) and employ the following procedures as applicable, except when the Director determines that an emergency or other good cause exists to excuse the Department from one or more of those procedures, such as when the personal services contract involves data processing services. The Department will comply with Executive Department OAR 122-031-0005 or 122-036-0005 for data processing personal services contracts.

(5) The Department will contract for consultant and other personal services: (i) when the specialized skills, knowledge, and resources are not available within the Department; (ii) when the work cannot be done in a reasonable time within the Department's own work force; (iii) when an independent and impartial evaluation of a situation is required by a consultant or other provider with recognized professional expertise and stature in a field; (iv) when it will be less expensive to contract for the work; (v) when the Department is directed by statute or otherwise to contract for services; or (vi) when the Department otherwise determines that contracting for a consultant or other personal services will best serve the purpose of fulfilling its statutory or other duties. The Department may contract for other goods and services necessary or appropriate for the operation of the Department. Contracts will be awarded only after the approval of the Director or his/her designee, subject to minimum limit exceptions.

(6) Agreements for the services of a contractor who is a member of the Public Employees' Retirement System and who is employed in another public department usually will be by interagency agreement. Exceptions may be granted by the Director or his/her designee when such an agreement is impractical and when the work will be done on the contractor's own time. Such exceptions normally will be processed as a personal services contract.

(7) The Department will seek to ensure competition and include performance standards to the maximum extent practicable when awarding contracts for goods and services, personal services contracts and, as the department deems appropriate or otherwise required by law, financial assistance awards and related funding agreements (particularly when designed, inter alia, to obtain services in furtherance of a Department-supervised program).

(8) In selecting between two or more equally qualified bidders in a competitive procurement, preference will be given to maximizing program objectives, individuals residing in Oregon and businesses that have an office in Oregon.

Stat. Auth.: ORS 90.800 – 90.840, 91.886, 317.097, 279A.025, 279A.065, ORS 456.515–456.725 & 458.210 – 458.650

Stats. Implemented: ORS 90.800 – 90.840, 92.886, 279B, 317.097, 456.515 - 456.725, 307.651 & 458.005 –458.740

Hist.: HSG 14-1987, f. & ef. 12-21-87; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 6-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; OHCS 12-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 24-2013, f. & cert. ef. 12-18-13; OHCS 7-2016(Temp), f. & cert. ef. 6-29-16 thru 12-25-16; OHCS 16-2016, f. & cert. ef. 12-19-16

Oregon Liquor Control Commission Chapter 845

Rule Caption: The amendments revise Division 25 rules with both technical and 2016 legislative revisions.

Adm. Order No.: OLCC 22-2016

Filed with Sec. of State: 12-22-2016

Certified to be Effective: 12-27-16

Notice Publication Date: 11-1-2016

ADMINISTRATIVE RULES

Rules Adopted: 845-025-2100, 845-025-2900, 845-025-2910, 845-025-3300, 845-025-3310, 845-025-3510, 845-025-3600, 845-025-8750

Rules Amended: 845-025-1015, 845-025-1030, 845-025-1045, 845-025-1060, 845-025-1090, 845-025-1100, 845-025-1115, 845-025-1160, 845-025-1175, 845-025-1230, 845-025-1360, 845-025-1410, 845-025-1420, 845-025-1440, 845-025-1450, 845-025-1470, 845-025-2020, 845-025-2030, 845-025-2040, 845-025-2060, 845-025-2800, 845-025-2840, 845-025-3215, 845-025-3260, 845-025-3500, 845-025-5000, 845-025-5300, 845-025-5350, 845-025-5500, 845-025-5540, 845-025-5700, 845-025-7000, 845-025-7020, 845-025-7030, 845-025-7060, 845-025-7520, 845-025-7580, 845-025-7700, 845-025-7750, 845-025-8040, 845-025-8060, 845-025-8520, 845-025-8560

Rules Repealed: 845-025-5700(T)

Subject: The 2016 Oregon Legislature made adjustments to ORS 475B via several legislative bills (HB 4014, SB 1511 & SB 1598). As each of those bills contained an emergency clause, the Commission implemented temporary rules to align the rules with statutory changes in June of 2016. Over the course of the next several months, staff evaluated both temporary and the permanent Division 25 rules which also had been adopted at the June 2016 Commission meeting.

Then in August of 2016, the Commission initiated rulemaking to amend Division 25 for both housekeeping and technical purposes. This was done to allow staff to correct errors and make revisions where lessons had been learned from regulating the new industry. Staff then coupled these changes together with the amendments made in response to HB 4014, SB1511 & 1598.

Rules Coordinator: Bryant Haley—(503) 872-5136

845-025-1015

Definitions

For the purposes of OAR 845-025-1000 to 845-025-8590, unless otherwise specified, the following definitions apply:

(1) “Adulterated” means to make a marijuana item impure by adding foreign or inferior ingredients or substances. A marijuana item may be considered to be adulterated if:

(a) It bears or contains any poisonous or deleterious substance in a quantity rendering the marijuana item injurious to health, including but not limited to tobacco or nicotine;

(b) It bears or contains any added poisonous or deleterious substance exceeding a safe tolerance if such tolerance has been established;

(c) It consists in whole or in part of any filthy, putrid, or decomposed substance, or otherwise is unfit for human consumption;

(d) It is processed, prepared, packaged, or is held under improper time-temperature conditions or under other conditions increasing the probability of contamination with excessive microorganisms or physical contaminants;

(e) It is processed, prepared, packaged, or held under insanitary conditions increasing the probability of contamination or cross-contamination;

(f) It is held or packaged in containers composed, in whole or in part, of any poisonous or deleterious substance rendering the contents potentially injurious to health;

(g) Any substance has been substituted wholly or in part therefor;

(h) Damage or inferiority has been concealed in any manner; or

(i) Any substance has been added thereto or mixed or packaged therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is.

(2) “Authority” means the Oregon Health Authority.

(3) “Business day” means Monday through Friday excluding legal holidays.

(4) “Cannabinoid” means any of the chemical compounds that are the active constituents of marijuana.

(5) “Cannabinoid concentrate” means a substance obtained by separating cannabinoids from marijuana by:

(a) A mechanical extraction process;

(b) A chemical extraction process using a nonhydrocarbon-based or other solvent, such as water, vegetable glycerin, vegetable oils, animal fats, isopropyl alcohol or ethanol; or

(c) A chemical extraction process using the solvent carbon dioxide, provided that the process does not involve the use of high heat or pressure; or

(d) Any other process identified by the Commission, in consultation with the Authority, by rule.

(6) “Cannabinoid edible” means food or potable liquid into which a cannabinoid concentrate, cannabinoid extract or dried marijuana leaves or flowers have been incorporated.

(7) “Cannabinoid extract” means a substance obtained by separating cannabinoids from marijuana by:

(a) A chemical extraction process using a hydrocarbon-based solvent, such as butane, hexane or propane;

(b) A chemical extraction process using the solvent carbon dioxide, if the process uses high heat or pressure; or

(c) Any other process identified by the Commission, in consultation with the authority, by rule.

(8) Cannabinoid Product

(a) “Cannabinoid product” means a cannabinoid edible and any other product intended for human consumption or use, including a product intended to be applied to the skin or hair, that contains cannabinoids or dried marijuana leaves or flowers.

(b) “Cannabinoid product” does not include:

(A) Usable marijuana by itself;

(B) A cannabinoid concentrate by itself;

(C) A cannabinoid extract by itself; or

(D) Industrial hemp, as defined in ORS 571.300.

(9) “Cannabis Tracking System” or “CTS” means the system for tracking the transfer of marijuana items and other information as authorized by ORS 475B.150.

(10) “Common Ownership” means any commonality between individuals or legal entities named as applicants or persons with a financial interest in a license or business proposed to be licensed.

(11) “Compliance transaction” means a single covert, on-site visit in which a Commission authorized representative poses as an authorized representative of a licensee or a consumer and attempts to purchase or purchases a marijuana item from a licensee, or attempts to sell or sells a marijuana item to a licensee.

(12) “Container” means a sealed, hard or soft-bodied receptacle in which a marijuana item is placed prior to being sold to a consumer.

(13) “Contractor” means a person, other than a license representative, who temporarily visits the licensed premises to perform a service, maintenance or repair.

(14) “Commission” means the Oregon Liquor Control Commission.

(15) “Commissioner” means a member of the Oregon Liquor Control Commission.

(16) “Consumer” means a person who purchases, acquires, owns, holds or uses marijuana items other than for the purpose of resale.

(17) “Date of Harvest” means the date the mature marijuana plants in a harvest lot were cut, picked or removed from the soil or other growing media. If the harvest occurred on more than one day, the “date of harvest” is the day the last mature marijuana plant in the harvest lot was cut, picked or removed from the soil or other growing media.

(18) “Designated primary caregiver” has the meaning given that term in ORS 475B.410.

(19) (a) “Financial consideration” means value that is given or received either directly or indirectly through sales, barter, trade, fees, charges, dues, contributions or donations.

(b) “Financial consideration” does not include marijuana, cannabinoid products or cannabinoid concentrates that are delivered within the scope of and in compliance with ORS 475B.245.

(20) “Financial interest” means having an interest in the business such that the performance of the business causes, or is capable of causing, an individual, or a legal entity with which the individual is affiliated, to benefit or suffer financially.

(a) Financial interest includes but is not limited to:

(A) Receiving, as an employee or agent, out-of-the-ordinary compensation, either in the form of overcompensation or under compensation;

(B) Lending money, real property or personal property to an applicant or licensee for use in the business at a commercially unreasonable rate;

(C) Giving money, real property or personal property to an applicant or licensee for use in the business; or

(D) Being the spouse or domestic partner of an applicant or licensee. For purposes of this subsection, “domestic partners” includes adults who qualify for a “domestic partnership” as defined under ORS 106.310.

(b) Financial interest does not include any investment that the investor does not control in nature, amount or timing.

(21) “Flowering” means that a marijuana plant has formed a mass of pistils measuring greater than two centimeters wide at its widest point.

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(22) "Harvest lot" means a specifically identified quantity of marijuana that is, cultivated utilizing the same growing practices and harvested within a 48 hour period at the same location and cured under uniform conditions.

(23) "Immature marijuana plant" means a marijuana plant that is not flowering.

(24) "Intended for human consumption" means intended for a human to eat, drink, or otherwise put in the mouth but does not mean intended for human inhalation.

(25) "Invited guests" means family member and close associates of the licensee, not members of the general public.

(26) "Laboratory" means a laboratory certified by the Authority under ORS 438.605 to 438.620 and authorized to sample or test marijuana items for purposes specified in these rules.

(27) "Licensee" means any person who holds a license issued under ORS 475B.070, 475B.090, 475B.100, 475B.110, or 475B.560 and includes:

(a) Each applicant listed on an application that the Commission has approved;

(b) Each individual who meets the qualification described in OAR 845-025-1045 and who the Commission has added to the license under OAR 845-025-1030; or

(c) Each individual who has a financial interest in the licensed business and who the Commission has added to the license under OAR 845-025-1030.

(28) "Licensee representative" means an owner, director, officer, manager, employee, agent, or other representative of a licensee, to the extent that the person acts in a representative capacity.

(29) "Limited access area" means a building, room, or other contiguous area on a licensed premises where a marijuana item is produced, processed, stored, weighed, packaged, labeled, or sold, but does not include a consumer sales area on a licensed retailer premises.

(30) "Marijuana"

(a) "Marijuana" means the plant Cannabis family Cannabaceae, any part of the plant Cannabis family Cannabaceae and the seeds of the plant Cannabis family Cannabaceae.

(b) "Marijuana" does not include industrial hemp, as defined in ORS 571.300.

(31) "Marijuana flowers" means the flowers of the plant genus Cannabis within the plant family Cannabaceae.

(32) "Marijuana items" means marijuana, cannabinoid products, cannabinoid concentrates and cannabinoid extracts.

(33) "Marijuana leaves" means the leaves of the plant genus Cannabis within the plant family Cannabaceae.

(34) "Marijuana processor" means a person who processes marijuana items in this state.

(35) "Marijuana producer" means a person who produces marijuana in this state.

(36) "Marijuana retailer" means a person who sells marijuana items to a consumer in this state.

(37) "Marijuana wholesaler" means a person who purchases marijuana items in this state for resale to a person other than a consumer.

(38) "Mature marijuana plant" means a marijuana plant that is not an immature marijuana plant.

(39) "Medical grade cannabinoid product, cannabinoid concentrate or cannabinoid extract" means a cannabinoid product, cannabinoid concentrate or cannabinoid extract that has a concentration of tetrahydrocannabinol that is permitted under ORS 475B.625 for consumers who hold a valid registry identification card issued under ORS 475B.415.

(40) "Micro-Wholesaler" means a marijuana wholesaler licensed by the Commission that only purchases or receives seeds, immature plants or usable marijuana from a producer with a micro tier I or tier II canopy.

(41) "Minor" means any person under 21 years of age.

(42) "Non-Toxic" means not causing illness, disability or death to persons who are exposed.

(43) "Non-profit Dispensary" means a medical marijuana dispensary registered under ORS 475B.450, owned by a nonprofit corporation organized under ORS chapter 65, and that is in compliance with the Authority's rules governing non-profit dispensaries in OAR 333, Division 8.

(44) "ORELAP" means the Oregon Environmental Laboratory Accreditation Program administered by the Authority pursuant to ORS 438.605 to 438.620.

(45) "Permittee" means any person who holds a Marijuana Workers Permit.

(46) "Person" has the meaning given that term in ORS 174.100.

(47) "Person responsible for a marijuana grow site" or "PRMG" has the meaning given that term in OAR 333-008-0010.

(48) "Premises" or "licensed premises" includes the following areas of a location licensed under section ORS 475B.070, 475B.090, 475B.100, 475B.110 or 475B.560:

(a) All public and private enclosed areas at the location that are used in the business operated at the location, including offices, kitchens, rest rooms and storerooms;

(b) All areas outside a building that the Commission has specifically licensed for the production, processing, wholesale sale or retail sale of marijuana items; and

(c) "Premises" or "licensed premises" does not include a primary residence.

(49) "Primary Residence" means real property inhabited for the majority of a calendar year by an owner, renter or tenant, including manufactured homes and vehicles used as domiciles.

(50) "Processes"

(a) "Processes" means the processing, compounding or conversion of marijuana into cannabinoid products, cannabinoid concentrates or cannabinoid extracts;

(b) "Processes" does not include packaging or labeling.

(51) "Process lot" means:

(a) Any amount of cannabinoid 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 different harvest lots; or

(b) Any amount of cannabinoid products of the same type and processed at the same time using the same ingredients, standard operating procedures and batches from the same or different harvest lots or process lots of cannabinoid concentrate or extract.

(52) "Producer" means a marijuana producer licensed by the Commission.

(53) "Produces"

(a) "Produces" means the manufacture, planting, cultivation, growing or harvesting of marijuana.

(b) "Produces" does not include:

(A) The drying of marijuana by a marijuana processor, if the marijuana processor is not otherwise producing marijuana; or

(B) The cultivation and growing of an immature marijuana plant by a marijuana processor, marijuana wholesaler or marijuana retailer if the marijuana processor, marijuana wholesaler or marijuana retailer purchased or otherwise received the plant from a licensed marijuana producer.

(54) "Propagate" means to grow immature marijuana plants or to breed or produce the seeds of the plant Cannabis family Cannabaceae.

(55) "Public place" means a place to which the general public has access and includes, but is not limited to, hallways, lobbies and other parts of apartment houses and hotels not constituting rooms or apartments designed for actual residence, and highways, streets, schools, places of amusement, parks, playgrounds and areas used in connection with public passenger transportation.

(56) "Regulatory specialist" means a full-time employee of the Commission who is authorized to act as an agent of the Commission in conducting inspections or investigations, making arrests and seizures, aiding in prosecutions for offenses, issuing citations for violations and otherwise enforcing chapter 471, ORS 474.005 to 474.095, 474.115, 475B.010 to 475B.395, 475B.550 to 475B.590 and 475B.600 to 475B.655, Commission rules and any other statutes the Commission considers related to regulating liquor or marijuana.

(57) "Registry identification cardholder" or "patient" has the meaning given that term in ORS 475B.410.

(58) "Retailer" means a marijuana retailer licensed by the Commission.

(59) "Safe" means:

(a) A metal receptacle with a locking mechanism capable of storing all marijuana items on a licensed premises that:

(A) Is rendered immobile by being securely anchored to a permanent structure of an enclosed area; or

(B) Weighs more than 750 pounds.

(b) A "vault"; or

(c) A refrigerator or freezer capable of being locked for storing marijuana items that require cold storage that:

(A) Is rendered immobile by being securely anchored to a permanent structure of an enclosed area; or

(B) Weighs more than 750 pounds.

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(60) "Sampling laboratory" means a laboratory that only has an ORE-LAP accredited scope item for sampling under ORS 438.605 to 438.620 and is not accredited to perform cannabis testing.

(61) "Security plan" means a plan as described in OAR 845-025-1030(4)(f) that fully describes how an applicant will comply with applicable laws and rules regarding security.

(62) "Shipping Container" means any container or wrapping used solely for the transport of a marijuana items in bulk to a marijuana licensee as permitted in these rules.

(63) "These rules" means OAR 845-025-1000 to 845-025-8590.

(64) "UID" means unique identification.

(65)(a) "Usable Marijuana" means the dried leaves and flowers of marijuana.

(b) "Usable Marijuana" includes pre-rolled marijuana as long as the pre-roll consists of only dried marijuana leaves and flowers, an unflavored rolling paper and a filter or tip.

(c) "Usable marijuana" does not include:

(A) The seeds, stalks and roots of marijuana; or

(B) Waste material that is a by-product of producing or processing marijuana.

(66) "Vault" means an enclosed area or room that is constructed of steel-reinforced or block concrete and has a door that contains a multiple-position combination lock or the equivalent, a relocking device or equivalent, and a steel plate with a thickness of at least one-half inch.

(67) "Wholesaler" means a marijuana wholesaler licensed by the Commission.

Stat. Auth.: ORS 475B.025

Stats. Implemented: ORS 475B.015 & 475B.025

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 9-2016(Temp), f. 6-28-16, cert. ef. 6-30-16 thru 12-26-16; OLCC 22-2016, f. 12-22-16, cert. ef. 12-27-16

845-025-1030

Application Process

(1) A person may submit an application to the Commission, on a form prescribed by the Commission, for a marijuana producer, processor, wholesaler, retail, or laboratory license.

(2) An application for a license and all documentation required in the application instructions and in section (4) of this rule must be submitted in a manner specified by the Commission. The application fee specified in OAR 845-025-1060 must also be paid in a manner specified by the Commission.

(3) The following individuals and legal entities are applicants:

(a) Any individual or legal entity with a financial interest, as defined in these rules, who holds or controls an interest of ten percent or more in the business proposed to be licensed.

(b) Any individual or legal entity that has an ownership interest in the business proposed to be licensed as described in OAR 845-025-1045.

(4) If a legal entity is an applicant, the following individuals within a legal entity are also applicants:

(a) All general partners in a limited partnership;

(b) Limited partners whose investment commitment is ten percent or more of the total investment commitment;

(c) All members in a limited liability company or partnership whose investment commitment or membership interest is ten percent or more;

(d) All directors who own or control three percent or more of the voting stock;

(e) Principal officers of corporate applicants and;

(f) All natural person stockholders owning or controlling ten percent or more of the voting stock of a corporate entity.

(5) An application must include the names and other required information for all individuals and legal entities who are applicants as described in this rule and the names and other required information for all individuals and legal entities who are not applicants but who have a "financial interest" in the business, as defined in OAR 845-025-1015.

(6) Applicants must submit the following:

(a) Information or fingerprints for individual applicants and individuals within a legal entity who have been identified as applicants in order to perform a criminal background check in accordance with OAR 845-025-1080;

(b) Any forms required by the Commission and any information identified in the form that is required to be submitted;

(c) A map or sketch of the premises proposed for licensure, including the defined boundaries of the premises and the location of any primary residence located on the same tax lot as the licensed premises;

(d) A scaled floor or plot plan sketch of all enclosed areas with clear identification of walls, partitions, counters, windows, all areas of ingress and egress, and all limited access areas;

(e) Proof of right to occupy the premises proposed for licensure;

(f) An operating plan that demonstrates at a minimum, how the applicant's proposed premises and business will comply with the applicable laws and rules regarding:

(A) Security;

(B) Employee qualifications and training;

(C) Transportation of product;

(D) Preventing minors from entering the licensed premises; and

(E) Preventing minors from obtaining or attempting to obtain marijuana items.

(g) For producers:

(A) The proposed canopy size and tier as described in OAR 845-025-2040 and a designation of the canopy area within the license premises.

(B) A report describing the applicant's electricity and water usage, on a form prescribed by the Commission.

(i) For initial licensure and renewal, the report must describe the estimated electricity and water usage taking into account all portions of the premises and expected requirements of the operation for the next twelve months.

(ii) In addition to requirements of section (6f)(B)(i), for renewal, the report must describe the actual electricity and water usage for the previous year taking into account all portions of the premises.

(C) A description of the growing operation including growing media, a description of equipment to be used in the production, and whether production will be indoor, outdoor or both.

(D) Proof of a legal source of water as evidenced by:

(i) A copy of a water right permit, certificate, or other water use authorization from the Oregon Water Resources Department;

(ii) A statement that water is supplied from a public or private water provider, along with the name and contact information of the water provider; or

(iii) Proof from the Oregon Water Resources Department that the water to be used for production is from a source that does not require a water right.

(h) For processors:

(A) On a form prescribed by the Commission, the proposed endorsements as described in OAR 845-025-3210.

(B) A description of the type of products to be processed, a description of equipment to be used, including any solvents, gases, chemicals or other compounds used to create extracts or concentrates.

(7) In addition to submitting the application form and the items described in section (5) of this rule, the Commission may require the following to be submitted:

(a) For an individual identified as a person with a financial interest, who holds or controls an interest of less than ten percent in the business proposed to be licensed:

(A) Information or fingerprints for a criminal background check in accordance with OAR 845-025-1080; and

(B) Any forms required by the Commission and any information identified in the form that is required to be submitted.

(b) For a legal entity that is identified as having a financial interest of less than ten percent of the business proposed to be licensed:

(A) Information or fingerprints for any individual within the legal entity for a criminal background check in accordance with OAR 845-025-1080; and

(B) Any forms required by the Commission and any information identified in the form that is required to be submitted.

(c) Any additional information if there is a reason to believe that the information is needed to determine the merits of the license application.

(8) The Commission must review an application to determine if it is complete. An application will be considered incomplete if an application form is not complete, the full application fee has not been paid, or some or all of the additional information required under these rules is not submitted.

(9) An applicant may submit a written request for reconsideration of a decision that an application is incomplete. Such a request must be received by the Commission within ten days of the date the incomplete notice was mailed to the applicant. The Commission shall give the applicants the opportunity to be heard if an application is rejected. A hearing under this subsection is not subject to the requirements for contested case proceedings under ORS 183.310 to 183.550.

(10) If, prior to an application being acted upon by the Commission, there is a change with regard to who is an applicant or who is a person with

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a financial interest in the proposed business, the new applicant or person with a financial interest must submit a form, prescribed by the Commission, that:

- (a) Identifies the individual or person;
- (b) Describes the individual's or person's financial interest in the business proposed for licensure; and
- (c) Includes any additional information required by the Commission, including but not limited to information and fingerprints required for a criminal background check.

(11) Failure to comply with subsection (8) of this rule may result in an application being denied.

Stat. Auth.: ORS 475B.025 & 2016 OL Ch. 24, Sec. 1, 17 & 18

Stats. Implemented: ORS 475B.040, 475B.045, 475B.060, 475B.070, 475B.090, 475B.100, 475B.110 & 475B.560

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 9-2016(Temp), f. 6-28-16, cert. ef. 6-30-16 thru 12-26-16; OLCC 22-2016, f. 12-22-16, cert. ef. 12-27-16

845-025-1045

True Name on Application; Interest in Business

(1) True name on application. An application for a license must specify the real and true names of all individuals and legal entities that have an ownership interest in the business proposed to be licensed by identifying all such persons and legal entities as applicants.

(2) License privileges. License privileges are available only to the applicants identified in the application and their authorized representatives and only for the premises designated on the license.

(3) Ownership interest. The Commission may refuse to issue a license if the applicant is not the owner of the business proposed to be licensed, a person with an ownership interest is not identified as an applicant, or an undisclosed ownership interest exists. For purposes of this rule, an "ownership interest" is indicated by the following behaviors, benefits or obligations:

(a) Any person or legal entity, other than an employee acting under the direction of the owner, that exercises control over, or is entitled to exercise control over, the business;

(b) Any person or legal entity, other than an employee acting under the direction of the owner, that incurs, or is entitled to incur, debt or similar obligations on behalf of the business;

(c) Any person or legal entity, other than an employee acting under the direction of the owner, that enters into, or is entitled to enter into, a contract or similar obligations on behalf of the business; or

(d) Any person or legal entity identified as the lessee of the premises proposed to be licensed.

Stat. Auth.: ORS 475B.025

Stats. Implemented: ORS 475B.045, 475B.070, 475B.090, 475B.100, 475B.110, 475B.560 & 2016 OL Ch. 24, Sec. 1, 2, 3 & 4

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 9-2016(Temp), f. 6-28-16, cert. ef. 6-30-16 thru 12-26-16; OLCC 22-2016, f. 12-22-16, cert. ef. 12-27-16

845-025-1060

Fees

(1) At the time of initial license or certificate application an applicant must pay a \$250 non-refundable application fee.

(2) If the Commission approves an application and grants an annual license, the following fees must be paid, prorated for an initial license that is issued for six months or less:

(a) Producers:

(A) Micro Tier I \$1,000.

(B) Micro Tier II \$2,000.

(C) Tier I \$3,750.

(D) Tier II \$5,750

(b) Processors: \$4,750.

(c) Wholesalers: \$4,750.

(d) Micro Wholesalers: \$1,000.

(e) Retailers: \$4,750.

(f) Laboratories: \$4,750.

(g) Sampling Laboratory: \$2,250.

(3) If the Commission approves an application and grants a research certificate, the fee is \$4,750 for a three-year term.

(4) At the time of license or certificate application renewal, an applicant must pay a \$250 non-refundable application fee.

(5) If the Commission approves a renewal application the renewal license or certificate fees must be paid in the amounts specified in subsections (2) and (3) of this rule.

(6) If the Commission approves an initial or renewal application and grants a marijuana worker permit, the individual must pay a \$100 permit fee.

(7) The Commission shall charge the following fees:

(a) Criminal background checks: \$50 per individual listed on a license application (if the background check is not part of an initial or renewal application).

(b) Transfer of location of premises review: \$1000 per license.

(c) Packaging preapproval: \$100.

(d) Labeling preapproval: \$100.

(e) Change to previously approved package or label: \$25.

Stat. Auth.: ORS 475B.025

Stats. Implemented: ORS 475B.025, 475B.070, 475B.090, 475B.100, 475B.110, 475B.218, 475B.560, 475B.610 & 475B.620, & 2016 OL Ch. 24 Sec. 1

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 9-2016(Temp), f. 6-28-16, cert. ef. 6-30-16 thru 12-26-16; OLCC 22-2016, f. 12-22-16, cert. ef. 12-27-16

845-025-1090

Application Review

(1) Once the Commission has determined that an application is complete it must review the application to determine compliance with ORS Chapter 475B and these rules.

(2) The Commission:

(a) Must, prior to acting on an application for a new license, a change to a larger producer canopy designation, a change to producer cultivation method designation or change in processor endorsement type, receive a land use compatibility statement from the city or county that authorizes land use in the city or county in which the applicant's proposed premises is located.

(b) May, in its discretion, prior to acting on an application:

(A) Contact any applicant or individual with a financial interest and request additional documentation or information; and

(B) Verify any information submitted by the applicant.

(3) The requirements of section (2)(a) of this rule do not apply to applicants for a producer license if the applicant demonstrates in a form and manner specified by the Commission that:

(a) The applicant is applying for a license at an address where a marijuana grow site registered under ORS 475B.420 is located;

(b) The address is outside of city limits;

(c) At least one person responsible for a marijuana grow site located at the address first registered with the Authority under ORS 475B.420 before January 1, 2015;

(d) Each person responsible for a marijuana grow site located at the address first registered with the Authority under ORS 475B.420 before February 1, 2016; and

(e) The applicant is applying for a mature marijuana plant grow canopy of:

(A) 5,000 square feet or less, if the marijuana is produced outdoors;

or

(B) 1,250 square feet or less, if the marijuana is produced indoors.

(4) The Commission must inspect the proposed premises prior to issuing a license.

(5) If during an inspection the Commission determines the applicant is not in compliance with these rules, the applicant will be provided with a notice of the failed inspection and the requirements that have not been met.

(a) An applicant that fails an inspection will have 15 calendar days from the date the notice was sent to submit a written response that demonstrates the deficiencies have been corrected.

(b) An applicant may request in writing one extension of the 15-day time limit in subsection (a) of this section, not to exceed 30 days.

(6) If an applicant does not submit a timely plan of correction or if the plan of correction does not correct the deficiencies in a manner that would bring the applicant into compliance, the Commission may deny the application.

(7) If the plan of correction appears, on its face, to correct the deficiencies, the Commission will schedule another inspection.

(8) If an applicant fails a second inspection, the Commission may deny the application unless the applicant shows good cause for the Commission to perform additional inspections.

Stat. Auth.: ORS 475B.025

Stats. Implemented: ORS 475B.045, 475B.285, 475B.063 & 2016 OL Ch. 23, Sec. 2

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 9-2016(Temp), f. 6-28-16, cert. ef. 6-30-16 thru 12-26-16; OLCC 22-2016, f. 12-22-16, cert. ef. 12-27-16

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845-025-1100

Approval of Application and Issuance of License

(1) If, after the application review and inspection, the Commission determines that an applicant is in compliance with ORS 475B.025 to 475B.235 and these rules the Commission must notify the applicant in writing that the application has been approved and after payment by the applicant of the license fee, provide the applicant with proof of licensure that includes a unique license number, the effective date of the license, date of expiration, and a description of premises for which the license was issued. If the applicant paid the license fee with a check the Commission will not issue a license until it has confirmation that the check has cleared.

(2) A licensee:

(a) May not operate until on or after the effective date of the license.

(b) Must display proof of licensure in a prominent place on the premises.

(c) May not use the Commission name or logo on any signs at the premises, on the business' website, or in any advertising or social media, except to the extent that information is contained on the proof of licensure or is contained in part of warnings, signage or other documents required by these rules.

(3) Licensure is only valid for the premises indicated on the license and is only issued to the individuals or entities listed on the application or subsequently approved by the Commission.

(4) A license may not be transferred except as provided in OAR 845-025-1160.

Stat. Auth.: ORS 475B.025

Stats. Implemented: ORS 475B.055

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 22-2016, f. 12-22-16, cert. ef. 12-27-16

845-025-1115

Denial of Application

(1) The Commission must deny an initial or renewal application if:

(a) An applicant is under the age of 21.

(b) The applicant's land use compatibility statement shows that the proposed land use is prohibited in the applicable zone, if a land use compatibility statement is required.

(c) The proposed licensed premises is located:

(A) On federal property.

(B) On reservation or tribal trust land of a federally recognized Indian tribe unless that tribe has entered into an agreement with the State of Oregon which allows licensing of recreational marijuana businesses.

(C) At the same location or address, as a retail, processor or wholesale license, unless all of the licenses at the address or location are held or sought by identical applicants.

(d) The location proposed to be licensed is prohibited under OAR 845-025-1230.

(e) The proposed licensed premises of a producer is located on the same tax lot, as a site registered with Oregon Department of Agriculture for the production of industrial hemp, unless the applicant submits and the Commission approves a control plan describing how the registered site will be separated from the premises proposed to be licensed and how the applicant will prevent transfer of industrial hemp to the licensed premises.

(f) The proposed licensed premises of a processor who has applied for an endorsement to process extracts is located in an area that is zoned exclusively for residential use.

(g) The proposed licensed premises of a retail applicant is located:

(A) Except as provided in Oregon Laws 2016, chapter 83, section 29b, within 1,000 feet of:

(i) A public elementary or secondary school for which attendance is compulsory under ORS 339.020; or

(ii) A private or parochial elementary or secondary school, teaching children as described in ORS 339.030.

(B) In an area that is zoned exclusively for residential use.

(h) The proposed licensed premises of a wholesaler applicant is in an area zoned exclusively for residential use.

(i) A city or county has prohibited the license type for which the applicant is applying, in accordance with ORS 475B.800.

(2) The Commission may deny an initial or renewal application, unless the applicant shows good cause to overcome the denial criteria, if it has reasonable cause to believe that:

(a) The applicant:

(A) Is in the habit of using alcoholic beverages, habit-forming drugs, marijuana, or controlled substances to excess.

(B) Has made false statements to the Commission.

(C) Is incompetent or physically unable to carry on the management of the establishment proposed to be licensed.

(D) Is not of good repute and moral character.

(E) Does not have a good record of compliance with ORS 475B.010 to 475B.395, or these rules, prior to or after licensure including but not limited to:

(i) The giving away of marijuana items as a prize, premium or consideration for a lottery, contest, game of chance or skill, or competition of any kind, in violation of ORS 475B.275;

(ii) Providing marijuana items to an individual without checking that the individual is 21 or older;

(iii) Unlicensed transfer of marijuana items for financial consideration; or

(iv) Violations of local ordinances adopted under ORS 475B.340, pending or adjudicated by the local government that adopted the ordinance.

(F) Does not have a good record of compliance with ORS Chapter 471 or any rules adopted thereunder.

(G) Is not possessed of or has not demonstrated financial responsibility sufficient to adequately meet the requirements of the business proposed to be licensed.

(H) Is unable to understand the laws of this state relating to marijuana or these rules, including but not limited to ORS 475.300 to 475.346 and ORS 475B.550 to 475B.590. Inability to understand laws and rules of this state related to marijuana may be demonstrated by violations documented by the Oregon Health Authority.

(b) Any individual listed on the application has been convicted of violating a general or local law of this state or another state, or of violating a federal law, if the conviction is substantially related to the fitness and ability of the applicant to lawfully carry out activities under the license, except as specified in ORS 475B.045(3).

(c) Any applicant is not the legitimate owner of the business proposed to be licensed, or other persons have an ownership interest in the business have not been disclosed to the Commission.

(d) The business proposed to be licensed is located at the same physical location or address as a premises licensed under ORS Chapter 471 or as a retail liquor agent appointed by the Commission.

(e) The proposed licensed premises of a producer applicant is on the same tax lot, as another producer licensee under common ownership.

(f) The proposed licensed premises of a producer applicant is on the same tax lot, as another producer licensee under diverse ownership if the Commission reasonably believes that the presence of multiple producers on the same tax lot creates a compliance risk or other risk to public health and safety.

(3) The Commission may refuse to issue a license to any license applicant or refuse to renew the license of any licensee when conditions exist in relation to any person having a financial interest in the business or in the place of business which would constitute grounds for refusing to issue a license or for revocation or suspension of a license if such person were the license applicant or licensee.

(4)(a) The Commission may deny any initial or renewal application and may revoke any license if medical marijuana items are produced, processed, stored, sold or transported, to or from the same address or location of licensed business or business proposed to be licensed.

(b) The Commission will not deny an initial application under this subsection if:

(A) The applicant surrenders any registration issued by the Authority for the address or location of the business proposed to be licensed;

(B) If applicable, the applicant notifies all other growers registered by the Authority at the location or address proposed to be licensed, in a form and manner prescribed by the Commission, that the grower is no longer permitted to produce medical marijuana at the address or location proposed to be licensed and must surrender his or her registration at that address or location; and

(C) All medical marijuana activity at the location or address proposed to be licensed ceases prior to being issued an OLCC license.

(5) If the Commission denies an application because an applicant submitted false or misleading information to the Commission, the Commission may prohibit the applicant from re-applying for five years.

(6) A notice of denial must be issued in accordance with ORS 183.

Stat. Auth.: ORS 475B.025

Stats. Implemented: ORS 475B.040, 475B.045, 475B.063, 475B.070, 475B.090, 475B.100, 475B.110, 475B.560, 475B.800, 2016 OL Ch. 24, Sec. 1 & 2016 OL Ch. 83, Sec. 29b

Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16; OLCC 6-2015(Temp), f. 12-22-15, cert. ef. 1-1-16 thru 6-28-16; OLCC 6-2016, f. 6-28-16, cert. ef. 6-29-16; OLCC 9-2016(Temp), f. 6-28-16, cert. ef. 6-30-16 thru 12-26-16; OLCC 22-2016, f. 12-22-16, cert. ef. 12-27-16

ADMINISTRATIVE RULES

845-025-1160

Notification of Changes

(1) An applicant or licensee must notify the Commission in writing within 10 calendar days of any of the following:

(a) A change in any contact information for anyone listed in an application or subsequently identified as an applicant or an individual with a financial interest;

(b) A disciplinary proceeding or licensing enforcement action by another governmental entity that may affect the licensee's business;

(c) The temporary closure of the business for longer than 30 days; or

(d) The permanent closure of the business.

(2) An applicant or licensee must notify the Commission in a manner prescribed by the Commission within 24 hours of the arrest or conviction for any misdemeanor or felony of an individual listed in an application or subsequently identified as an applicant, licensee or individual with a financial interest. Violation of this section is a Category I violation.

(3) A licensee must notify the Commission as soon as reasonably practical and in no case more than 24 hours from the theft of marijuana items or money from the licensed premises.

(4) Changes in Financial Interest or Business Structure. A licensee that proposes to change its corporate structure, ownership structure or change who has a financial interest in the business must submit a form prescribed by the Commission, and any information identified in the form to be submitted, to the Commission, prior to making such a change.

(a) The Commission must review the form and other information submitted under subsection (1) of this rule, and will approve the change if the change would not result in an initial or renewal application denial under OAR 845-025-1115, or serve as the basis of a license suspension or revocation.

(b) If the Commission denies the change but the licensee proceeds with the change the licensee must surrender the license or the Commission will propose to suspend or revoke the license.

(c) The Commission will not accept a form for a change in corporate structure or financial interest if the license is expiring in less than 90 days, the licensee is under investigation by the Commission, or has been issued a Notice by the Commission following an alleged violation and the alleged violation has not been resolved.

(d) If a licensee has a change in ownership that is 51% or greater, a new application must be submitted in accordance with OAR 845-025-1030.

(5) Change of Location.

(a) A licensee who wishes to change the location of the licensed premises must submit a completed application for the new premises including all required forms and documents and the fee specified in OAR 845-025-1060, but does not need to submit information and fingerprints required for a criminal background check if there are no changes to the individuals listed on the initial application.

(b) The Commission must approve any change of location prior to licensee beginning business operations in the new location.

Stat. Auth.: ORS 475B.025

Stats. Implemented: ORS 475B.055 & 475B.045

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 22-2016, f. 12-22-16, cert. ef. 12-27-16

845-025-1175

Changing, Altering, or Modifying Licensed Premises

(1) A licensee may not make any physical changes to the licensed premises that materially or substantially alter the licensed premises or the usage of the licensed premises from the plans originally approved by the Commission without the Commission's prior written approval.

(2) A licensee who intends to make any material or substantial changes to the licensed premises must submit a form prescribed by the Commission, and submit any information identified in the form to be submitted, to the Commission, prior to making any such changes.

(3) The Commission must review the form and other information submitted under subsection (2) of this rule, and will approve the changes if the changes would not result in an initial or renewal application denial under OAR 845-025-1115.

(4) If the Commission denies the change the licensee must not make the proposed changes. If the licensee makes the proposed changes, the licensee must surrender the license or the Commission will propose to suspend or revoke the license.

(5) If the Commission approves the change, the Commission may require a site inspection of the changed area and a modification of the licensee's security plan prior to the licensee exercising any license privileges.

(6) For purposes of this rule a material or substantial change requiring approval includes, but is not limited to:

(a) Any increase or decrease in the total physical size or capacity of the licensed premises;

(b) The sealing off, creation of or relocation of a common entryway, doorway, passage or other such means of public ingress or egress, when such common entryway, doorway or passage alters or changes limited access areas, such as the areas in which cultivation, harvesting, processing, or sale of marijuana items occurs within the licensed premises;

(c) Any physical change that would require the installation of additional video surveillance cameras or a change in the security system; or

(d) Any addition or change of location of a primary residence located on the same tax lot as a licensed premises.

Stat. Auth.: ORS 475B.025

Stats. Implemented: ORS 475B.070, 475B.090, 475B.100, 475B.110 & 475B.560

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 22-2016, f. 12-22-16, cert. ef. 12-27-16

845-025-1230

Licensed Premises Restrictions and Requirements

(1) A licensed premises may not be located:

(a) On federal property; or

(b) At the same physical location or address as a:

(A) Medical marijuana grow site registered under ORS 475.304, unless the grow site is also licensed under ORS 475B.080;

(B) Medical marijuana processing site registered under ORS 475B.435;

(C) Medical marijuana dispensary registered under ORS 475B.450; or

(D) Liquor licensee licensed under ORS Chapter 471 or as a retail liquor agent appointed by the Commission.

(2) The licensed premises of a producer applicant may not be on:

(a) Public land; or

(b) The same tax lot as another producer licensee under common ownership.

(3) The licensed premises of a retailer may not be located:

(a) Within 1,000 feet of:

(A) A public elementary or secondary school for which attendance is compulsory under ORS 339.020; or

(B) A private or parochial elementary or secondary school, teaching children as described in ORS 339.030.

(b) In an area that is zoned exclusively for residential use.

(4) The licensed premises of a processor who has an endorsement to process extracts may not be located in an area that is zoned exclusively for residential use.

(5) The licensed premises of a processor, wholesaler, laboratory and retailer must be enclosed on all sides by permanent walls and doors.

(6) A licensee may not permit:

(a) Any minor on a licensed premises except as described in section (7) and (8) of this rule; or

(b) On-site consumption of a marijuana item, alcohol, or other intoxicant by any individual, except that a license representative who has a current registry identification card issued under ORS 475B.415 may consume marijuana during his or her work shift on the licensed premises as necessary for his or her medical condition, if the employee is alone, in a closed room and not visible to others outside the room. A license representative who consumes a marijuana item as permitted under this section may not be intoxicated while on duty. For purposes of this section allowable on-site consumption in an enclosed area, as that as defined in OAR 333-015-0030 does not include smoking, combusting, inhaling, vaporizing, or aerosolizing a marijuana item.

(7) Notwithstanding section (6)(a) of this rule, a minor, other than a licensee's employee, who has a legitimate business purpose for being on the licensed premises, may be on the premises for a limited period of time in order to accomplish the legitimate business purpose. For example, a minor plumber may be on the premises in order to make a repair.

(8) Notwithstanding section (6)(a) of this rule, a minor who resides on the tax lot where a marijuana producer is licensed may be present on those portions of a producer's licensed premises that do not contain usable marijuana or cut and drying marijuana plants.

(9) A licensee must clearly identify all limited access areas in accordance with OAR 845-025-1245.

(10) A licensee must keep a daily log of all employees, contractors and license representatives who perform work on the licensed premises. All employees, contractors and licensee representatives present on the licensed premises must wear clothing or a badge issued by the licensee that easily

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identifies the individual as an employee, contractor or licensee representative.

(a) A licensee must record the name and permit number of every current employee and licensee representative in CTS.

(b) If a current employee or licensee representative is not required to have a marijuana worker permit, the licensee must record the name and date of birth for that individual in CTS.

(c) A licensee must record the name and date of birth for every contractor who performs work on the licensed premises. If the contractor is licensed by the State of Oregon, the licensee must also record the contractor's license number.

(11) The general public is not permitted in limited access areas on a licensed premises, except for the consumer sales area of a retailer and as provided by section (14) of this rule. In addition to licensee representatives, the following visitors are permitted to be present in limited access areas on a licensed premises, subject to the requirements in section (12) and (13) of this rule:

(a) Laboratory personnel, if the laboratory is licensed by the Commission;

(b) A contractor, vendor or service provider authorized by a licensee representative to be on the licensed premises;

(c) Another licensee or that licensee's representative;

(d) Invited guests as defined in OAR 845-025-1015 subject to requirements of section (12) of this rule; or

(e) Tour groups as permitted under section (14) of this rule.

(12) Prior to entering a licensed premises all visitors permitted by section (11) of this rule must be documented and issued a visitor identification badge from a licensee representative that must remain visible while on the licensed premises. A visitor badge is not required for government officials. All visitors described in subsection (11) of this rule must be accompanied by a licensee representative at all times.

(13) A licensee must maintain a log of all visitor activity allowed under section (11) of this rule. The log must contain the first and last name and date of birth of every visitor and the date they visited. A licensee is not required to record the date of birth for government officials.

(14) A marijuana producer or research certificate holder may offer tours of the licensed premises, including limited access areas, to the general public if the licensee submits a control plan in writing and the plan is approved by the Commission.

(a) The plan must describe how conduct of the individuals on the tour will be monitored, how access to usable marijuana will be limited, and what steps the licensee will take to ensure that no minors are permitted on the licensed premises.

(b) The Commission may withdraw approval of the control plan if the Commission finds there is poor compliance with the plan. Poor compliance may be indicated by, for example, individuals on the tour not being adequately supervised, an individual on the tour obtaining a marijuana item while on the tour, a minor being part of a tour, or the tours creating a public nuisance.

(15) Nothing in this rule is intended to prevent or prohibit Commission employees or contractors, or other state or local government officials that have jurisdiction over some aspect of the licensed premises or licensee from being on the licensed premises.

(16) A licensee may not sublet any portion of a licensed premises.

(17) A licensed premises may receive marijuana items only from a marijuana producer, marijuana processor, or marijuana wholesaler for whom a premises has been licensed by the Commission or as otherwise provided by these rules.

(18) A licensed wholesaler or retailer who sells or handles food, as that term is defined in ORS 616.695, or cannabinoid edibles must also be licensed by the Oregon Department of Agriculture under ORS 616.706.

(19) Notwithstanding section (6)(a) of this rule, a minor may pass through the licensed area of an outdoor producer in order to reach an unlicensed area, so long as the minor is not present in areas that contain marijuana items.

Stat. Auth.: ORS 475B.025, 475B.070, 475B.090, 475B.100, 475B.110
Stats. Implemented: ORS 475B.090, 475B.100, 475B.110, 475B.260, 475B.005, 475B.180 & 475B.280
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 22-2016, f. 12-22-16, cert. ef. 12-27-16

845-025-1360

Quality Control Samples

(1) Producer and processor licensees may provide sample marijuana items directly to their own licensee representatives for the purpose of quality control and product development.

(2) The sample marijuana items may not be consumed or used on a licensed premises.

(3) The sample marijuana items may not be provided to or resold to another licensee or consumer.

(4) Any sample provided under this rule must be recorded in CTS.

(5) A producer licensee is limited to providing a total of 28 grams of usable marijuana per harvest lot.

(6) A processor licensee is limited to providing a total of the following amounts of sample marijuana items:

(a) 5 grams of cannabinoid concentrates or extracts per process lot; and

(b) 12 individual units of sale per process lot for other cannabinoid products.

Stat. Auth.: ORS 475B.025, 475B.070 & 475B.090
Stats Implemented: ORS 475B.025, 475B.070 & 475B.090
Hist.: OLCC 6-2016, f. 6-28-16, cert. ef. 6-29-16; OLCC 22-2016, f. 12-22-16, cert. ef. 12-27-16

845-025-1410

Security Requirements

(1) A licensee is responsible for the security of all marijuana items on the licensed premises or in transit, including providing adequate safeguards against theft or diversion of marijuana items and records that are required to be kept.

(2) The licensee must ensure that commercial grade, non-residential door locks are installed on every external door, and gate if applicable, of a licensed premises where marijuana items are present.

(3) During all hours when the licensee is not operating a licensee must ensure that:

(a) All points of ingress and egress from a licensed premises are securely locked and any keys or key codes to the enclosed area remain in the possession of the licensee, licensee representative, or authorized personnel;

(b) All marijuana items on a licensed retailer's premises are kept in a safe or vault as those terms are defined in OAR 845-025-1015; and

(c) All usable marijuana, cut and drying mature marijuana plants, cannabinoid concentrates, extracts or products on the licensed premises of a licensee other than a retailer are kept in a locked, enclosed area within the licensed premises that is secured with at a minimum, a properly installed steel door with a steel frame, and a commercial grade, non-residential door lock.

(4) A licensee must:

(a) Have an electronic back-up system for all electronic records; and

(b) Keep all video recordings and archived required records not stored electronically in a locked storage area. Current records may be kept in a locked cupboard or desk outside the locked storage area during hours when the licensed business is open.

Stat. Auth.: ORS 475B.025, 475B.070, 475B.090, 475B.100, 475B.110
Stats. Implemented: ORS 475B.025, 475B.070, 475B.090, 475B.100 & 475B.110
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 22-2016, f. 12-22-16, cert. ef. 12-27-16

845-025-1420

Alarm System

(1) A licensed premises must have a fully operational security alarm system, activated at all times when the licensed premises is closed for business.

(2) The security alarm system for the licensed premises must:

(a) Be able to detect unauthorized entry onto the licensed premises and unauthorized activity within any limited access area where mature marijuana plants, usable marijuana, cannabinoid concentrates, extracts or products are present;

(b) Be programmed to notify a the licensee, licensee representative or authorized personnel in the event of an unauthorized entry; and

(c) Have a mechanism to ensure that the licensee, licensee's employees and authorized representatives can immediately notify law enforcement or a security company of any unauthorized entry. This subsection may be satisfied in one of the following ways:

(A) Having at least two operational "panic buttons" located inside the licensed premises that are linked with the alarm system that immediately notifies a security company or law enforcement; or

(B) Having operational "panic buttons" physically carried by all licensee representatives present on the licensed premises that are linked with the alarm system that immediately notifies a security company or law enforcement; or

(C) Having a landline telephone present in all limited access areas that is capable of immediately calling a security company or law enforcement.

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(3) A licensee that has at least one authorized representative physically present on the licensed premises at all times when it is closed for business is not required to comply with section (1) and sections (2)(a) and (b) of this rule.

(4) Upon request, licensees shall make all information related to security alarm systems, monitoring and alarm activity available to the Commission.

Stat. Auth.: ORS 475B.025, 475B.070, 475B.090, 475B.100 & 475B.110
Stats. Implemented: ORS 475B.025, 475B.070, 475B.090, 475B.100, 475B.110
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 22-2016, f. 12-22-16, cert. ef. 12-27-16

845-025-1440

Required Camera Coverage and Camera Placement

(1) A licensed premises must have camera coverage, as applicable, for:

- (a) All points of ingress and egress to and from the licensed premises;
- (b) All limited access areas as that term is defined in OAR 845-025-1015;
- (c) All consumer sales areas;
- (d) All points of entry to or exit from limited access areas;
- (e) The surveillance room or surveillance area as defined in OAR 845-025-1460(1)(a) and (b); and
- (f) Any other area that the Commission believes presents a public safety risk based on the overall operation and characteristics of the licensed premises.

(2) A licensee must ensure that cameras are placed so that they capture clear and certain images of any individual and activity occurring:

- (a) Within 15 feet both inside and outside of all points of ingress and egress to and from the licensed premises; and
- (b) In all locations within limited access, and consumer sales areas on the licensed premises.

Stat. Auth.: ORS 475B.025, 475B.070, 475B.090, 475B.100 & 475B.110
Stats. Implemented: ORS 475B.025, 475B.070, 475B.090, 475B.100 & 475B.110
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 22-2016, f. 12-22-16, cert. ef. 12-27-16

845-025-1450

Video Recording Requirements for Licensed Facilities

(1) A licensee must have cameras that continuously record, 24 hours a day:

- (a) In all areas where mature marijuana plants, immature marijuana plants, usable marijuana, cannabinoid concentrates, extracts or products may be present on the licensed premises; and
- (b) All points of ingress and egress to and from areas where mature marijuana plants, immature marijuana plants, usable marijuana, cannabinoid concentrates, extracts or products are present.

(2) A licensee must:

(a) In limited access and consumer sales areas, use cameras that record at a minimum resolution of 1280 x 720 px and record at 10 fps (frames per second);

(b) In exterior perimeter and areas on the licensed premises that are not limited access areas, use cameras that record at a minimum resolution of 1280 x 720 px and record at least 5 fps, except where coverage overlaps any limited access areas such as entrances or exits and in those overlap areas cameras must record at 10 fps;

(c) Use cameras that are capable of recording in all lighting conditions;

(d) Keep surveillance recordings, except for off-site backup recordings described in (2)(l) of this rule, for a minimum of:

(A) 90 calendar days for licenses issued or renewed after August 31, 2016; and

(B) 30 calendar days for licenses issued prior to August 31, 2016.

(e) Keep off-site backup recordings described in (2)(l) of this rule for a minimum of 30 days;

(f) Maintain surveillance recordings in a format approved by the Commission that can be easily accessed for viewing and easily reproduced;

(g) Upon request of the Commission, keep surveillance recordings for periods exceeding the retention period specified in section (2)(d) of this rule;

(h) Have the date and time embedded on all surveillance recordings without significantly obscuring the picture;

(i) Archive video recordings in a format that ensures authentication of the recording as a legitimately-captured video and guarantees that no alterations of the recorded image has taken place;

(j) Make video surveillance records and recordings available immediately upon request to the Commission in a format specified by the Commission for the purpose of ensuring compliance with ORS Chapter 475B and these rules;

(k) Immediately notify the Commission of any equipment failure or system outage lasting 30 minutes or more; and

(l) Back up the video surveillance recordings off-site and in real time for the surveillance room or surveillance area.

(3) Notwithstanding the requirements in section (1) of this rule a licensee may stop recording in areas where marijuana items are not present due to seasonal closures or prolonged periods of inactivity. The licensee must provide notice to OLCC when recording is stopped and must keep a log of all times that recording is stopped due to marijuana items not being present. The log and notice must identify which cameras were not recording, the date and time recording stops, the date and time recording resumes or is scheduled to resume, and a description of the reason why the recording stopped and started.

(4) Failure to comply with subsections (2)(d)(e), (f), (h) or (i) of this rule is a Category I violation and may result in license revocation.

Stat. Auth.: ORS 475B.025, 475B.070, 475B.090, 475B.100 & 475B.110
Stats. Implemented: ORS 475B.025, 475B.070, 475B.090, 475B.100, 475B.110
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 22-2016, f. 12-22-16, cert. ef. 12-27-16

845-025-1470

Producer Security Requirements

(1) A producer must effectively prevent public access to all areas of the licensed premises used in the production of marijuana. In addition to the security requirements in OAR 845-025-1400 to 845-025-1460, a producer's approved security plan as described in OAR 845-025-1400 must include a method to prevent public access to all areas of the licensed premises used in the production of marijuana.

(2) If a producer chooses to dispose of marijuana items by any method of composting, as described in OAR 845-025-7750, the producer must prevent public access to the composting area.

Stat. Auth.: ORS 475B.025 & 475B.070
Stats. Implemented: ORS 475B.025 & 475B.070
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 22-2016, f. 12-22-16, cert. ef. 12-27-16

845-025-2020

Producer Privileges; Prohibitions

(1) A producer may:

(a) Plant, cultivate, grow, harvest and dry marijuana in the manner approved by the Commission and consistent with ORS 475B and these rules;

(b) Engage in indoor or outdoor production of marijuana, or a combination of the two;

(c) Sell or transport:

(A) Usable marijuana to the licensed premises of a marijuana processor, wholesaler, retailer, laboratory, non-profit dispensary, or research certificate holder;

(B) Whole, non-living marijuana plants that have been entirely removed from any growing medium to the licensed premises of a marijuana processor, wholesaler, non-profit dispensary or research certificate holder;

(C) Immature marijuana plants and seeds to the licensed premises of a marijuana producer, wholesaler, retailer or research certificate holder;

(D) Marijuana waste to a producer, processor, wholesaler, or research certificate holder.

(d) Purchase and receive:

(A) Immature marijuana plants and seeds from a producer, wholesaler, or research certificate holder;

(B) Marijuana waste from a producer, processor, wholesaler, retailer, laboratory, or research certificate holder; and

(C) Usable marijuana produced by the licensee that has been stored by a wholesaler on the producer's behalf.

(e) Allow a laboratory licensee to obtain samples for purposes of performing testing as provided in these rules and OAR 333-007-0300 to 333-007-0490.

(2) A producer may not sell, deliver, purchase, or receive any marijuana item other than as provided in section (1) of this rule.

Stat. Auth.: ORS 475B.025, 475B.070 & 475B.075
Stats. Implemented: ORS 475B.025, 475B.070, 475B.075, 2016 OL Ch. 23, Sec. 24 & 2016 OL Ch. 24, Sec. 12 & 65
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 9-2016(Temp), f. 6-28-16, cert. ef. 6-30-16 thru 12-26-16; OLCC 22-2016, f. 12-22-16, cert. ef. 12-27-16

ADMINISTRATIVE RULES

845-025-2030

Licensed Premises of Producer

(1) The licensed premises of a producer includes all public and private areas used in the business operated at the location.

(2) A producer may not engage in any privileges of the license within a residence.

Stat. Auth.: ORS 475B.025 & 475B.070

Stats. Implemented: ORS 475B.070, 475B.080 & 2016 OL, Ch. 24, Sec. 63

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 9-2016(Temp), f. 6-28-16, cert. ef. 6-30-16 thru 12-26-16; OLCC 22-2016, f. 12-22-16, cert. ef. 12-27-16

845-025-2040

Production Size Limitations

(1) Maximum Canopy Size Limits.

(a) Indoor Production.

(A) Micro tier I: Up to 625 square feet.

(B) Micro tier II: 626 to 1250 square feet.

(C) Tier I: 1251 to 5000 square feet.

(D) Tier II: 5,001 to 10,000 square feet.

(b) Outdoor production.

(A) Micro tier I: Up to 2,500 square feet.

(B) Micro tier II: 2501 to 5000 square feet.

(C) Tier I: 5001 to 20,000 square feet.

(D) Tier II: 20,001 to 40,000 square feet.

(c) Mixed production. If a producer intends to have a mixture of indoor and outdoor production the Commission will determine the producer's tiers and canopy sizes by applying the ratio in section (4) of this rule.

(d) For purposes of this section, square footage of canopy space is measured horizontally starting from the outermost point of the furthest mature flowering plant in a designated growing space and continuing around the outside of all mature flowering plants located within the designated growing space.

(e) A producer may designate multiple grow canopy areas at a licensed premises but those spaces must be separated by a physical boundary such as an interior wall or by at least eight feet of open space.

(f) If a local government adopts an ordinance that would permit a producer to have a higher canopy size limit than is permitted under this rule, the local government may petition the Commission for an increase in canopy size limits for that jurisdiction. If the Commission grants such a petition, the Commission may amend this rule in addition to considering changes to the license fee schedule.

(g) On an annual basis, the Commission will evaluate market demand for marijuana items, the number of person applying for producer licenses or licensed as producers and whether the availability of marijuana items in this state is commensurate with the market demand. Following this evaluation the Commission may amend this rule as needed.

(2) Canopy Size Limit — Designation and Increases.

(a) A producer must clearly identify designated canopy areas and proposed canopy size in the initial license application. A producer may change a designated canopy area within a production type at any time with prior written approval from the Commission, but a producer may only change canopy tiers at the time of renewal in accordance with section (2)(b) or section (3)(a) of this rule.

(b) A producer may submit a request to change canopy tiers at the time the producer submits an application for renewal of the license. The Commission will grant approval of the request to increase the canopy tier for the producer's next licensure term if:

(A) The producer's renewal application is otherwise complete;

(B) There are no bases to deny or reject the producer's renewal application;

(C) The producer has not already reached the applicable maximum canopy size set forth in section (2) of this rule; and

(D) During the preceding year of licensure, the producer has not been found to be in violation, and does not have any pending allegations of violations of ORS 475B or these rules.

(c) The Commission shall give a producer an opportunity to be heard if a request is rejected under this section.

(3) Mixed cultivation methods.

(a) A producer may produce marijuana indoors and outdoors at the same time on the same licensed premises. The Commission must be notified of a producer's plan to engage in the indoor and outdoor production of marijuana at the time of initial licensure or at renewal, and not at any other time. A producer who utilizes mixed production may only change designated canopy areas from one production type to another at the time the producer submits a renewal application.

(b) The Commission must approve the canopy size applicable to each method.

(c) The Commission will use a 4:1 ratio, for outdoor and indoor respectively, to allocate canopy size limits under this section, not to exceed the sum canopy size limits set forth in section (1) of this rule. For example, if a Tier II producer in the first year of licensure has 5,000 square feet of indoor canopy space, then the producer may have up to 20,000 square feet of outdoor canopy space at the same time.

(4) Mature marijuana plants may only be located within the designated canopy area.

(5) Violations. An intentional violation of this rule is a Category I violation and may result in license revocation. All other violations are Category III violations.

Stat. Auth.: ORS 475B.025, 475B.070 & 475B.075

Stats. Implemented: ORS 475B.075

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 22-2016, f. 12-22-16, cert. ef. 12-27-16

845-025-2060

Recreational Marijuana Producers — Start-up Inventory

(1) Marijuana producers may not receive immature marijuana plants or seeds from any source other than from another licensee, except:

(a) Between January 1, 2016 and December 31, 2017 a marijuana producer may receive immature marijuana plants and seeds from any source within Oregon for up to 90 days following initial licensure by the Commission;

(b) Pursuant to the transfer of medical marijuana inventory under OAR 845-025-2100.

(2) The marijuana producer shall, through CTS, report receipt of the number of immature marijuana plants or seeds received under this section within 24 hours of the plants or seeds arriving at the licensed premises. A producer does not have to document the source of the immature plants or seeds during the 90 day start-up period.

(3) The requirements in section (2) of this rule do not apply during the first ten calendar days of licensure so long as the licensee has ordered UID tags and the UID tags are in transit to the licensee.

(4) Failure to comply with this rule is a Category I violation and could result in license revocation.

Stat. Auth.: ORS 475B.025 & 475B.070

Stats. Implemented: ORS 475B.023, 475B.070 & 2016 OL Ch. 24, Sec. 25

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 9-2016(Temp), f. 6-28-16, cert. ef. 6-30-16 thru 12-26-16; OLCC 22-2016, f. 12-22-16, cert. ef. 12-27-16

845-025-2100

Transfer of Medical Marijuana Grower Inventory

(1) An individual applicant listed on an application for a producer license under ORS 475B.070 that is also a PRMG may submit a transfer request to the Commission, on a form prescribed by the Commission, to transition a medical marijuana grow site from being registered with the Authority to being licensed by the Commission. The request must include, at a minimum, the following information:

(a) The names, contact information, and Authority issued registry identification number for each PRMG currently registered at the grow site address that is the proposed premises to be licensed;

(b) Copies of all personal agreements entered into under ORS 475B.425 that specify whether a patient has authorized the transfer of marijuana plants or usable marijuana to the Commission license and if so, how much may be transferred; and

(c) An authorization that permits the Authority to disclose to the Commission the PRMG's registration information.

(2) Upon receipt of a request under section (1) of this rule the Commission must verify with the Authority:

(a) The registration status of each PRMG identified in the transfer request;

(b) The number of PRMGs registered at the grow site address that is the proposed premises to be licensed; and

(c) The number of patients each PRMG is producing marijuana for at that grow site address.

(3) The Commission will deny a transfer request if an applicant has not complied with this rule or if a license is denied under OAR 845-025-1115.

(4) If the information in the transfer request is verified by the Authority and the Commission approves a license application under ORS 475B.070, the Commission must notify the applicant of the number of seeds, marijuana plants and usable marijuana permitted to be transferred. Information regarding the seeds, marijuana plants and usable marijuana transferred must be recorded in CTS within ten calendar days of licensure.

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(a) The number of marijuana plants and amount of usable marijuana that is permitted to be transferred will be based on the number of patients whose registration status has been verified by the Authority in accordance with section (2) of this rule and who have authorized the transfer of marijuana items to the Commission license.

(b) There is no limit on seeds or immature plants that may be transferred to the Commission license, subject to subsection (a) of this section.

(c) No more than six mature plants per patient may be transferred to the Commission license, subject to subsection (a) of this section.

(d) For a medical marijuana grow site located outdoors no more than 12 pounds of usable marijuana per patient may be transferred to the Commission license, subject to subsection (a) of this section.

(e) For a medical marijuana grow site located indoors no more than 6 pounds of usable marijuana per patient may be transferred to the Commission license, subject to subsection (a) of this section.

(f) Any seeds, marijuana plants or usable marijuana that exceed the amount permitted by the Commission to be transferred must be removed from the premises by the applicant prior to the initial date of licensure and lawfully transferred or disposed of.

(5) The licensee must notify the Commission once the marijuana plants and usable marijuana are entered into CTS and the Commission may inspect the premises to verify the information the licensee entered into CTS.

(6) Once the transfer of inventory under this section is complete the Commission must notify the Authority that the grow site address is now a licensed premises and that the licensed premises may not be registered as a grow site address under ORS 475B.420.

(7) The Commission may deny a transfer request if it cannot verify the information in the request or if the applicant submits incomplete information to the Commission.

(8) Any usable marijuana transferred from a medical marijuana grow site to the licensed premises under this rule must be tested, labeled and packaged, in accordance with OAR 845-025-7000 to 845-025-7060 and 845-025-5700 as applicable, before transferring the usable marijuana to another licensee.

Stat. Auth.: ORS 475B.025 & 475B.070
Stats. Implemented: 2016 OL Ch. 24, Sec. 25
Hist.: OLCC 9-2016(Temp), f. 6-28-16, cert. ef. 6-30-16 thru 12-26-16; OLCC 22-2016, f. 12-22-16, cert. ef. 12-27-16

845-025-2800

Retailer Privileges; Prohibitions

(1) A retailer is the only licensee that is authorized to sell a marijuana item to a consumer.

(2) A retailer may:

(a) Between the hours of 7:00 AM and 10:00 PM local time, sell marijuana items from the licensed premises to a consumer 21 years of age or older;

(b) Sell and deliver:

(A) Marijuana items to a consumer 21 years of age or older pursuant to a bona fide order as described in OAR 845-025-2880.

(B) Marijuana waste to a producer, processor, wholesaler, or research certificate holder.

(C) Return marijuana items to a producer, processor or wholesaler who transferred the item to the retailer.

(c) Purchase and receive:

(A) Usable marijuana, immature marijuana plants, and seeds from a producer or from a research certificate holder;

(B) Cannabinoid concentrates, extracts, and products from a processor with an endorsement to manufacture the type of product received or from a research certificate holder;

(C) Any marijuana item, except for whole, non-living marijuana plants, from a wholesaler; and

(D) Any marijuana item from a laboratory.

(d) Refuse to sell marijuana items to a consumer;

(e) Allow a laboratory licensee to obtain samples for purposes of performing testing as provided in these rules and OAR 333-007-0300 to 333-007-0490; and

(f) Accept returned marijuana items that the retailer sold to a consumer and provide a refund or exchange with a product of equal or lesser value.

(3) A retailer may not:

(a) Sell more than the following amounts to an individual at any one time or within one day:

(A) One ounce of usable marijuana to recreational consumers;

(B) 24 ounces of usable marijuana to registry identification cardholders and designated primary caregivers pursuant to the requirements of OAR 845-025-2900;

(C) 16 ounces of a cannabinoid product in solid form;

(D) 72 ounces of a cannabinoid product in liquid form;

(E) Five grams of cannabinoid extracts or concentrates, whether sold alone or contained in an inhalant delivery system;

(F) Four immature marijuana plants; and

(G) Ten marijuana seeds.

(b) Provide free marijuana items to a recreational consumer.

(c) Sell or give away pressurized containers of butane or other materials that could be used in the home production of marijuana extracts.

(d) Discount a marijuana item if the retail sale of the marijuana is made in conjunction with the retail sale of any other items, including other marijuana items.

(e) Sell a marijuana item at a nominal price for promotional purposes.

(f) Permit consumers to be present on the licensed premises or sell to a consumer between the hours of 10:00 p.m. and 7:00 a.m. local time the following day.

(g) Sell an industrial hemp commodity or product that contains cannabinoids and is intended for human consumption, unless that commodity or product has been tested, labeled and packaged in accordance with the applicable sections of these rules. For purposes of this subsection, "consumption" has the meaning given that term in Section 9, Oregon Laws 2016, Chapter 71.

(h) Permit a licensed representative to handle an unpackaged marijuana item without the use of protective gloves, tools or instruments that prevent the marijuana item from coming into contact with the licensed representative's skin.

(i) Sell or transfer a returned marijuana item to another consumer.

(j) Sell, transfer, deliver, purchase, or receive any marijuana item other than as provided in section (2) of this rule.

(k) Permit a consumer to open or alter a package containing a marijuana item or otherwise remove a marijuana item from packaging required by these rules within the licensed premises or in an area that the licensee controls;

(l) Permit a consumer to bring marijuana items onto the licensed premises except for marijuana items being returned for refund or exchange as allowed by this rule.

Stat. Auth.: ORS 475B.025 & 475B.110

Stats. Implemented: ORS 475B.025, 475B.110 & 2016 OL Ch. 24, Sec. 12 & 65

Stat. Auth.: ORS 475B.025 & 475B.110

Stats. Implemented: ORS 475B.025 & 475B.110

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 9-2016(Temp), f. 6-28-16, cert. ef. 6-30-16 thru 12-26-16; OLCC 22-2016, f. 12-22-16, cert. ef. 12-27-16

845-025-2840

Retailer Premises

(1) The licensed premises of a retailer:

(a) May not be located in an area that is zoned exclusively for residential use.

(b) Except as provided in Oregon Laws 2016, chapter 83, section 29b, may not be located within 1,000 feet of:

(A) A public elementary or secondary school for which attendance is compulsory under ORS 339.020; or

(B) A private or parochial elementary or secondary school, teaching children as described in ORS 339.030.

(c) Must be enclosed on all sides by permanent walls and doors.

(2) A retailer must post in a prominent place signs that read:

(a) "No Minors Permitted Anywhere on the Premises";

(b) "No On-Site Consumption"; and

(c) "Security Cameras in Use."

(d) Exit from the licensed premises that reads: "Marijuana or Marijuana Infused Products May Not Be Consumed In Public".

(3) A retailer must designate a consumer sales area on the licensed premises where consumers are permitted. The area shall include the portion of the premises where marijuana items are displayed for sale to the consumer and sold and may include other contiguous areas such as a lobby or a restroom. The consumer sales area is the sole area of the licensed premises where consumers are permitted.

(4) All inventory must be stored on the licensed premises.

(5) For purposes of determining the distance between a retailer and a school referenced in subsection (1)(b) of this rule, "within 1,000 feet" means a straight line measurement in a radius extending for 1,000 feet or less in any direction from the closest point anywhere on the boundary line

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of the real property comprising a school to the closest point of the licensed premises of a retailer. If any portion of the licensed premises is within 1,000 feet of a school as described subsection (1)(b) of this rule an applicant will not be licensed.

Stat. Auth.: ORS 475B.025 & 475B.110
Stats. Implemented: ORS 475B.110, 475B.160 & 2016 OL Ch. 83, Sec. 29b
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 9-2016(Temp), f. 6-28-16, cert. ef. 6-30-16 thru 12-26-16; OLCC 22-2016, f. 12-22-16, cert. ef. 12-27-16

845-025-2900

Retail Sale of Marijuana for Medical Purposes

(1) In order to sell marijuana items for medical purposes a marijuana retailer licensed under ORS 475B.110 must register in a form and manner specified by the commission.

(2) A marijuana retailer licensed under ORS 475B.110 who has registered with the commission to sell marijuana items for medical purposes, may:

(a) Sell marijuana items tax free to registry identification cardholders and designated primary caregivers.

(b) Sell medical grade cannabinoid product, cannabinoid concentrate or extract to registry identification cardholders and designated primary caregivers.

(c) Sell or provide usable marijuana and medical grade cannabinoid products, concentrates and extracts to registry identification cardholders and designated primary caregivers free of charge or at a discounted price.

(d) Notwithstanding the requirements of OAR 845-025-1230, 845-025-2800, 845-025-2820 and 845-025-8520, permit registry identification cardholders 18 years of age and older to be present on the licensed premises and purchase marijuana items.

(3) A marijuana retailer who is registered with the commission to sell marijuana items for medical purposes must:

(a) Store and display medical grade cannabinoid products, concentrates and extracts in a manner that separates medical grade items from other marijuana items.

(b) Comply with the requirements of OAR 333-007-0100 to 333-007-0100 for labeling medical grade products.

(c) Prior to the sale or transfer of a marijuana item as described in section (2) of this rule, verify that the individual who is purchasing a marijuana item for medical purposes is currently registered with the Authority by viewing the individual's government issued photo identification and Authority issued registry identification card or designated primary caregiver card, or a receipt issued by the Authority under OAR 333-008-0023 or 333-008-0040 and making sure the identities match and that the card is current or the receipt has not expired.

(d) Use CTS to record the receipt or card number of every registry identification cardholder and designated primary care giver who receives marijuana items as described in section (2) of this rule together with the date of the sale or transfer and amount sold or transferred.

(4) A marijuana retailer who is registered with the commission to sell marijuana items for medical purposes may not sell or transfer a medical grade product to a registry identification cardholder or designated primary caregiver that exceeds the concentration limits in OAR 333-007-0220.

(5) Violation of this rule is a Category III violation.

Stat. Auth.: ORS 475B.025
Stats. Implemented: 2016 OL Ch. 83, Sec. 5
Hist.: OLCC 9-2016(Temp), f. 6-28-16, cert. ef. 6-30-16 thru 12-26-16; OLCC 22-2016, f. 12-22-16, cert. ef. 12-27-16

845-025-2910

Transfer of Medical Marijuana Dispensary Inventory

(1) For purposes of this rule:

(a) "Medical marijuana dispensary" means a medical marijuana dispensary registered under ORS 475B.450.

(b) "Person responsible for the medical marijuana dispensary" or "PRD" has the meaning given that term in OAR 333-008-1010.

(c) "Primary PRD" has the meaning given that term in OAR 333-008-1010.

(2) An applicant for a retail license under ORS 475B.110 that is also an owner of a medical marijuana dispensary may submit a transfer request to the Commission, on a form prescribed by the Commission, to transition from being registered with the Authority to being licensed by the Commission. The request must include, at a minimum, the following information:

(a) The name of the marijuana dispensary, dispensary address, and Authority issued registration number for the medical marijuana dispensary;

(b) The name and contact information of the owner of the medical marijuana dispensary;

(c) The names and contact information for each PRD;

(d) Identification of the primary PRD;

(e) An authorization that permits the Authority to disclose to the Commission any information necessary to verify the information submitted in the request; and

(f) The amount and type of marijuana items proposed to be transferred.

(3) Upon receiving a request under section (2) of this rule the Commission must verify with the Authority:

(a) The registration status of the medical marijuana dispensary; and

(b) The ownership of the dispensary and the identification of each PRD and the primary PRD.

(4) A transfer request will be denied if an applicant has not complied with this rule or if a license is denied under OAR 845-025-1115.

(5) The Commission may inspect the marijuana items proposed for transfer to determine if they:

(a) Have been packaged, labeled and tested in accordance with OAR 845-025-7000 to 845-025-7060 and 845-025-5700; and

(b) Meet the applicable concentration limits in OAR 333-007-0210 or 333-007-0220.

(6) If the information in the transfer request is verified by the Authority and the Commission approves a license application under ORS 475B.090, the Commission must notify the applicant of the amount and type of marijuana items permitted to be transferred.

(7) The Commission will deny the request to transfer any marijuana item that:

(a) Was not identified in the request to transfer; or

(b) Was not in the dispensary's inventory at the time of the request to transfer.

(8) The Commission will deny the request to transfer any marijuana that does not comply with the applicable packaging and testing rules in OAR 845-025-7000 to 845-025-7060 and 845-025-5700, except as provided in Section (9) of this rule.

(9) The Commission will allow the transfer of marijuana items received by the dispensary prior to October 1, 2016 if:

(a) The marijuana item was tested in accordance with OAR 333-008-1190 in effect at the time, if the item contains a label placed on the package where it can easily be seen by a consumer, patient or designated primary caregiver that reads "DOES NOT MEET NEW TESTING REQUIREMENTS" in 12 point font, and in bold, capital letters; and

(b) The Marijuana item is packaged in a child resistant container as required by 845-025-7020(3).

(10) The Commission may deny a transfer request if it cannot verify the information in the request or the applicant submitted incomplete information to the Commission.

(11) Marijuana items transferred under section (9) of this rule may be retained in the retail licensee's inventory until March 1, 2017. Violation of this section is a Category III violation.

(12) Transferred inventory must be recorded in CTS as required by these rules.

Stat. Auth.: ORS 475B.025
Stats. Implemented: 2016 OL Ch. 24, Sec. 25
Hist.: OLCC 9-2016(Temp), f. 6-28-16, cert. ef. 6-30-16 thru 12-26-16; OLCC 14-2016(Temp), f. & cert. ef. 9-20-16 thru 12-26-16; OLCC 22-2016, f. 12-22-16, cert. ef. 12-27-16

845-025-3215

Processor Privileges; Prohibitions

(1) A processor may:

(a) Transfer, sell or transport:

(A) Cannabinoid concentrates, extracts, and products for which the processor has an endorsement to a processor, wholesaler, retailer, non-profit dispensary, or research certificate holder; and

(B) Marijuana waste to a producer, processor, wholesaler, or research certificate holder.

(b) Purchase and receive:

(A) Whole, non-living marijuana plants that have been entirely removed from any growing medium from a producer, wholesaler, or from a research certificate holder;

(B) Usable marijuana from a producer, wholesaler, or from a research certificate holder;

(C) Cannabinoid concentrates, extracts and products from a processor with an endorsement to manufacture the type of product received, or from a research certificate holder;

(D) Marijuana waste from a producer, processor, wholesaler, retailer, laboratory, or research certificate holder; and

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(E) Cannabinoid concentrates, extracts, and products produced by the licensee that have been held in bailment by a wholesaler.

(c) Allow a laboratory licensee to obtain samples for purposes of performing testing as provided in these rules and OAR 333-007-0300 to 333-007-0490.

(2) A processor may not transfer, sell transport, purchase, or receive any marijuana item other than as provided in section (1) of this rule.

Stat. Auth.: ORS 475B.025 & 475B.090

Stats. Implemented: ORS 475B.025, 475B.090 & Sec. 24, Ch. 23, OL 2016 & Sec. 12 & 65 Ch. 24, OL 2016

Hist.: OLCC 6-2016, f. 6-28-16, cert. ef. 6-29-16; OLCC 9-2016(Temp), f. 6-28-16, cert. ef. 6-30-16 thru 12-26-16; OLCC 22-2016, f. 12-22-16, cert. ef. 12-27-16

845-025-3260

Cannabinoid Concentrate and Extract Processor Requirements

(1) Cannabinoid Concentrates or Extracts. A processor with a cannabinoid concentrate or extract endorsement:

(a) May not use Class I solvents as those are classified in the Federal Drug Administration Guidance, Table I, published in the Federal Register on December 24, 1997 (62 FR 67377).

(b) Must:

(A) Only use a hydrocarbon-based solvent that is at least 99 percent purity.

(B) Only use a non-hydrocarbon-based solvent that is food-grade.

(C) Work in an environment with proper ventilation, controlling all sources of ignition where a flammable atmosphere is or may be present.

(D) Use only potable water and ice made from potable water in processing.

(E) If making a concentrate or extract that will be used in a cannabinoid edible, be endorsed as a cannabinoid edible processor and comply with OAR 845-025-3250.

(2) Cannabinoid Extracts. A processor with an endorsement to make cannabinoid extracts:

(a) May not use pressurized canned flammable fuel, including but not limited to butane and other fuels intended for use in camp stoves, handheld torch devices, refillable cigarette lighters and similar consumer products.

(b) Must:

(A) Process in a:

(i) Fully enclosed room clearly designated on the current diagram of the licensed premises.

(ii) Room and with equipment, including all electrical installations that meet the requirements of the Oregon Structural Specialty Code, related Oregon Specialty Codes and the Oregon Fire Code.

(B) Use a professional grade closed loop extraction system designed to recover the solvents and built to codes of recognized and generally accepted good engineering standards, such as those of:

(i) American National Standards Institute (ANSI);

(ii) Underwriters Laboratories (UL); or

(iii) The American Society for Testing and Materials (ASTM).

(C) If using carbon dioxide in processing, use a professional grade closed loop carbon dioxide gas extraction system where every vessel is rated to a minimum of six hundred pounds per square inch.

(D) Have equipment and facilities used in processing approved for use by the local fire code official.

(E) For extraction system engineering services, including but not limited to consultation on and design of extraction systems or components of extraction systems, use the services of a professional engineer registered with the Oregon State Board of Examiners for Engineering and Land Surveying, unless an exemption under ORS 672.060 applies.

(F) Have an emergency eye-wash station in any room in which cannabinoid extract is being processed.

(G) Have all applicable material safety data sheets readily available to personnel working for the processor.

(3) Cannabinoid Concentrates. A processor with an endorsement to make cannabinoid concentrates:

(a) May not:

(A) Use denatured alcohol.

(B) If using carbon dioxide, apply high heat or pressure.

(b) Must only use or store dry ice in a well-ventilated room to prevent against the accumulation of dangerous levels of carbon dioxide.

(c) May use:

(A) A mechanical extraction process;

(B) A chemical extraction process using a nonhydrocarbon-based or other solvent, such as water, vegetable glycerin, vegetable oils, animal fats, isopropyl alcohol or ethanol; or

(C) A chemical extraction process using the solvent carbon dioxide, provided that the process does not involve the use heat over 180 degrees (Fahrenheit) or pressure.

Stat. Auth.: ORS 475B.025 & 475B.090

Stats. Implemented: ORS 475B.090

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 22-2016, f. 12-22-16, cert. ef. 12-27-16

845-025-3300

Processing Marijuana for Medical Purposes

(1) In order to process marijuana items for medical purposes a marijuana processor licensed under ORS 475B.090 must register with the commission in a form and manner specified by the commission.

(2) A marijuana processor licensed under ORS 475B.090 who has registered with the commission to process marijuana items for medical purposes:

(a) May:

(A) Process medical grade cannabinoid products, concentrates or extracts; and

(B) Sell or transfer medical grade cannabinoid products, concentrates or extracts to wholesalers, processors and retailers who have registered to sell or process marijuana for medical purposes.

(C) Sell or transfer medical grade cannabinoid products, concentrates or extracts to research certificate holders and non-profit dispensaries.

(b) Must comply with the requirements of OAR 333-007-0010 to 333-007-0100 for labeling medical grade products.

Stat. Auth.: ORS 475.025

Stats. Implemented: 2016 OL Ch. 83, Sec. 3

Hist.: OLCC 9-2016(Temp), f. 6-28-16, cert. ef. 6-30-16 thru 12-26-16; OLCC 22-2016, f. 12-22-16, cert. ef. 12-27-16

845-025-3310

Transfer of Medical Marijuana Processing Site Inventory

(1) For purposes of this rule:

(a) "Marijuana processing site" means a marijuana processing site registered under ORS 475B.435.

(b) "Person responsible for the marijuana processing site" or "PRP" has the meaning given that term in OAR 333-008-0160.

(c) "Primary PRP" has the meaning given that term in OAR 333-008-0160.

(2) An applicant for a processor license under ORS 475B.090 that is also an owner of a registered marijuana processing site or a business that applied to register as a marijuana processing site prior to December 31, 2016 under ORS 475B.435, may submit a transfer request to the Commission, on a form prescribed by the Commission, to transfer inventory produced or obtained under Authority approval or registration.

(3) Requests made under this rule must include, at a minimum, the following information:

(a) The name of the marijuana processing site, address, and Authority issued registration number for the marijuana processing site.

(b) The name and contact information of the owner of the marijuana processing site.

(c) The names and contact information for each PRP.

(d) Identification of the primary PRP.

(e) The endorsements of the marijuana processing site.

(f) An authorization that permits the Authority to disclose to the Commission any information necessary to verify the information submitted in the request; and

(g) The amount and types of marijuana items proposed to be transferred.

(4) Upon receiving a request under section (2) of this rule the Commission must verify with the Authority:

(a) The registration status of the marijuana processing site; and

(b) The ownership of the processing site and the identification of each PRP and the primary PRP.

(5) A transfer request will be denied if an applicant has not complied with this rule or if a license is denied under OAR 845-025-1115.

(6) If the information in the transfer request is verified by the Authority and the Commission approves a license application under ORS 475B.090, the Commission must notify the applicant of the amount and type of marijuana items permitted to be transferred.

(a) The Commission may not permit the transfer of a marijuana cannabinoid product, concentrate or extract packaged for ultimate sale to the consumer that exceeds the concentration limits established for retail adult use under OAR 333-007-0210 unless the licensee has been registered to process medical grade cannabinoid concentrates, extracts or products.

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(b) For transfer requests that are received after January 31, 2017, the Commission may not permit the transfer of a marijuana item that was produced or acquired before December 31, 2016, unless the applicant is registered with the Authority as a processing site under ORS 475B.435 and the item was processed or acquired on or after the date the processing site was registered.

(c) Prior to licensure the marijuana processing site must return any marijuana item that is the lawful property of a patient.

(d) Any marijuana items that have not been approved by the Commission for transfer or returned to a patient as described in section (5)(b) of this rule must be removed from the premises by the applicant prior to the initial date of licensure and lawfully transferred or disposed of.

(7) Information regarding the usable marijuana, cannabinoid concentrates, extracts or products transferred must be recorded in CTS within ten calendar days of licensure.

(8) The licensee must notify the Commission once the usable marijuana, cannabinoid concentrates, extracts or products are entered into CTS and the Commission may inspect the premises to verify the information the licensee entered into CTS.

(9) Once the transfer of inventory under this section is complete the Commission must notify the Authority that the marijuana processing site is now a licensed premises and that the licensed premises may not be registered as a marijuana processing site address under ORS 475B.435.

(10) The Commission may deny a transfer request if:

(a) It cannot verify the information in the request or the applicant submitted incomplete information to the Commission; or

(b) The processor has not been granted an endorsement for the type of marijuana item requested for transfer.

(11) Any usable marijuana, cannabinoid concentrates, extracts or products transferred from a medical marijuana processing site to the licensed premises under this rule must be:

(a) Tested in accordance with OAR 845-025-5700 before being used or transferred; and

(b) Labeled and packaged in accordance with OAR 845-025-7000 to 845-025-7060 before being transferred to another licensee.

Stat. Auth.: ORS 475.025

Stats. Implemented: 2016 OL Ch. 24, Sec. 25

Hist.: OLCC 9-2016(Temp), f. 6-28-16, cert. ef. 6-30-16 thru 12-26-16; OLCC 14-2016(Temp), f. & cert. ef. 9-20-16 thru 12-26-16; OLCC 22-2016, f. 12-22-16, cert. ef. 12-27-16

845-025-3500

Wholesale License Privileges; Prohibitions

(1) A wholesale licensee may:

(a) Sell, including sale by auction, transfer and transport:

(A) Any type of marijuana item to a retailer, wholesaler, non-profit dispensary or research certificate holder, except that whole, non-living marijuana plants may not be transferred to a retailer or to a non-profit dispensary;

(B) Immature marijuana plants and seeds to a producer;

(C) Usable marijuana to a producer license that the wholesale license has stored on the producer's behalf;

(D) Usable marijuana, cannabinoid extracts and concentrates to a processor licensee; and

(E) Marijuana waste to a producer, processor, wholesaler or research certificate holder.

(b) Purchase or receive:

(A) Any type of marijuana item from a wholesaler;

(B) Cannabinoid concentrates, extracts, and products from a processor with an endorsement to manufacture the type of product received;

(C) Seeds, immature plants or usable marijuana from a producer;

(D) Whole, non-living marijuana plants that have been entirely removed from any growing medium from a producer; and

(E) Marijuana waste from a producer, processor, wholesaler, retailer, laboratory, or research certificate holder.

(c) Transport and store marijuana items received from other licensees, pursuant to the requirements of OAR 845-025-7500 to 845-025-7590 and 845-025-7700.

(d) Allow a laboratory licensee to obtain samples for purposes of performing testing as provided in these rules and OAR 333-007-0300 to 333-007-0490.

(2) A wholesale licensee may not sell, deliver, purchase, or receive any marijuana item other than as provided in section (1) of this rule.

(3) For purposes of this rule, "marijuana item" does not include a mature marijuana plant.

Stat. Auth.: ORS 475B.025 & 475B.090

Stats. Implemented: ORS 475B.100 & 475B.400 & 2016, OL Ch. 23, Sec. 24

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 9-2016(Temp), f. 6-28-16, cert. ef. 6-30-16 thru 12-26-16; OLCC 22-2016, f. 12-22-16, cert. ef. 12-27-16

845-025-3510

Micro-Wholesaler License Privileges

A micro-wholesale licensee may:

(1) Purchase or receive usable marijuana, immature marijuana plants, seeds, whole non-living marijuana plants and marijuana waste from a producer with a micro tier I or micro tier II canopy;

(2) Sell including sale by auction, transfer and transport:

(a) Usable marijuana to a retailer, wholesaler, processor, non-profit dispensary or research certificate holder;

(b) Seeds and immature plants to a retailer, wholesaler, producer, non-profit dispensary or research certificate holder;

(c) Whole non-living marijuana plants to a wholesaler, processor or non-profit dispensary; and

(d) Marijuana waste to a producer, processor, wholesaler or research certificate holder.

(3) Transport and store marijuana items received from producers with a micro tier I or micro tier II canopy, pursuant to the requirements of OAR 845-025-7500 to 845-025-7590 and 845-025-7700.

(4) Allow a laboratory licensee to obtain samples for purposes of performing testing as provided in these rules and OAR 333-007-

Stat. Auth.: ORS 475B.025 & 475B.075

Stats. Implemented: ORS 475B.075 & 2016 OL Ch. 24, Sec. 1

Hist.: OLCC 9-2016(Temp), f. 6-28-16, cert. ef. 6-30-16 thru 12-26-16; OLCC 22-2016, f. 12-22-16, cert. ef. 12-27-16

845-025-3600

Wholesaling Marijuana for Medical Purposes

(1) In order to sell marijuana at wholesale for medical purposes a marijuana wholesaler licensed under ORS 475B.100 must register with the commission in a form and manner specified by the commission.

(2) A marijuana wholesaler licensed under ORS 475B.100 who has registered with the commission to wholesale marijuana items for medical purposes:

(a) May:

(A) Receive or purchase medical grade cannabinoid products, concentrates or extracts from processors that have registered to process marijuana items for medical purposes;

(B) Sell or transfer medical grade cannabinoid products, concentrates or extracts to wholesalers, processors and retailers who have registered to sell or process marijuana for medical purposes; and

(C) Sell or transfer medical grade cannabinoid products, concentrates or extracts to research certificate holders and non-profit dispensaries.

(b) Must comply with the requirements of OAR 333-007-0100 to 333-007-0100 for labeling medical grade products.

Stat. Auth.: ORS 475B.025

Stats. Implemented: ORS 475B.075 & 2016 OL Ch. 83, Sec. 4

Hist.: OLCC 9-2016(Temp), f. 6-28-16, cert. ef. 6-30-16 thru 12-26-16; OLCC 22-2016, f. 12-22-16, cert. ef. 12-27-16

845-025-5000

Laboratory License Privileges; Requirements

(1) A licensed marijuana testing laboratory may:

(a) Obtain samples of marijuana items from licensees or registrants for the purpose of testing as provided in these rules and OAR 333-007-0300 to 333-007-0490 if the laboratory has an accredited scope item for sampling;

(b) Transport and dispose of samples as provided in these rules;

(c) Perform testing on marijuana items in a manner consistent with the laboratory's accreditation by the Authority, these rules, OAR 333-007-0300 to 333-007-0490, and OAR 333, Division 64; and

(d) Transfer the laboratory's marijuana waste to a producer, processor, wholesaler, or research certificate holder.

(2) A licensed marijuana testing laboratory must, upon request of the Oregon Department of Agriculture, provide a test result and any other information or sample material to the Department.

(3) Notwithstanding the requirements of OAR 845-025-1230, a laboratory licensee may permit a registrant 18 years of age or older to be present on the licensed premises for the purpose of delivering a marijuana item for sampling and testing.

(4) Nothing in these rules prohibits a laboratory licensee from testing industrial hemp or industrial hemp commodities and products in accordance with Oregon Laws 2016, Chapter 71, Section 9.

(5) A licensed laboratory may return a marijuana item obtained for purposes of testing to the licensee, registrant or research certificate holder,

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in accordance with any applicable accreditation standards for retaining samples. The return of such marijuana items must be entered into CTS or, if the return is to a registrant, documented in the laboratory's records.

Stat. Auth.: ORS 475B.560
Stats. Implemented: ORS 475B.560
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 9-2016(Temp), f. 6-28-16, cert. ef. 6-30-16 thru 12-26-16; OLCC 22-2016, f. 12-22-16, cert. ef. 12-27-16

845-025-5300

Application for Marijuana Research Certificate

(1) The Commission shall issue Marijuana Research Certificates to qualifying public and private researchers who present research proposals that demonstrate:

(a) The proposed research would benefit the state's cannabis industry, medical research or public health and safety; and

(b) The proposed operation and methodology complies with all applicable laws and administrative rules governing marijuana licensees and licensee representatives.

(2) The process for applying for, receiving and renewing a certificate shall be the same as the process for applying for, receiving and renewing a marijuana license under OAR 845-025-1030 to 845-025-1115.

(3) In addition to the application requirements in OAR-025-1030, the applicant must also provide:

(a) A clear description of the research proposal;

(b) A description of the researchers' expertise in the scientific substance and methods of the proposed research;

(c) An explanation of the scientific merit of the research plan, including a clear statement of the overall benefit of the applicant's proposed research to Oregon's cannabis industry, medical research, or to public health and safety;

(d) Descriptions of key personnel, including clinicians, scientists, or epidemiologists and support personnel who would be involved in the research, demonstrating they are adequately trained to conduct this research;

(e) A clear statement of the applicant's access to funding and the estimated cost of the proposed research;

(f) A disclosure of any specific conflicts of interest that the researcher or other key personnel have regarding the research proposal;

(g) A description of the research methods demonstrating an unbiased approach to the proposed research;

(h) A description of the quantities of marijuana items, if any, that are proposed to be transferred to licensees; and

(i) If the applicant intends to research the use of pesticides, an experimental use permit issued by Oregon Department of Agriculture pursuant to OAR 603-057-0160.

(4) Research certificates will be granted for up to a three-year term.

(5) The Commission may request that the research certificate holder submit information and fingerprints required for a criminal background check at any time within the research certificate term.

(6) A certificate holder may, in writing, request that the Commission waive one or more of these rules. The request must include the following information:

(a) The specific rule and subsection of a rule that is requested to be waived;

(b) The reason for the waiver;

(c) A description of an alternative safeguard the licensee can put in place in lieu of the requirement that is the subject of the waiver, or why such a safeguard is not necessary; and

(d) An explanation of how and why the alternative safeguard or waiver of the rule protects public health and safety, prevents diversion of marijuana, and provides for accountability.

(7) The Commission may, in its discretion, and on a case-by-case basis, grant the waiver in whole or in part if it finds:

(a) The reason the certificate holder is requesting the waiver is because another state or local law prohibits compliance;

(b) The certificate holder cannot comply with the particular rule, for reasons beyond the certificate holder's control or compliance with the rule is cost prohibitive; or

(c) Because of the nature of the research, the Commission finds that compliance with a particular rule is not necessary and that even with the waiver public health and safety can be protected, there is no increased opportunity for diversion of marijuana, and the certificate holder remains accountable.

(8) The Commission must notify the certificate holder in writing whether the request has been approved. If the request is approved the notice

must specifically describe any alternate safeguards that are required and, if the waiver is time limited, must state the time period the waiver is in effect.

(9) The Commission may withdraw approval of the waiver at any time upon a finding that the previously approved waiver is not protecting public health and safety or the research certificate holder has other issues with compliance. If the Commission withdraws its approval of the waiver the certificate holder will be given a reasonable period of time to come into compliance with the requirement that was waived.

Stat. Auth.: ORS 475B.235
Stats. Implemented: ORS 475B.235 & 2016 OL Ch. 24, Sec. 12 & 65
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 9-2016(Temp), f. 6-28-16, cert. ef. 6-30-16 thru 12-26-16; OLCC 22-2016, f. 12-22-16, cert. ef. 12-27-16

845-025-5350

Marijuana Research Certificate Privileges; Prohibitions

(1) A certificate holder may receive marijuana items from a licensee or a registrant under ORS 475B.400 to 475B.525.

(2) A certificate holder:

(a) May not:

(A) Sell or otherwise transfer marijuana items to any other person except when disposing of waste pursuant to OAR 845-025-7750, transferring to another certificate holder or transferring to another licensee pursuant to these rules.

(B) Transfer more to another licensee than is permitted in the Commission's order granting the research certificate.

(b) Must comply with the testing rules in OAR 333-007-0300 to 333-007-0490 applicable to a producer or processor prior to transferring marijuana items to a licensee.

(3) A certificate holder may not conduct any human subject research related to marijuana unless the certificate holder has received approval from an institutional review board that has adopted the Common Rule, 45 CFR Part 46.

(4) All administrative rules adopted by Commission for the purpose of administering and enforcing ORS Chapter; and any rules adopted thereunder with respect to licensees and licensee representatives apply to certificate holders except for those which are inconsistent with this rule.

Stat. Auth.: ORS 475B.235
Stats. Implemented ORS 475B.235 & 2016 OL Ch. 24, Sec. 12 & 65
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 9-2016(Temp), f. 6-28-16, cert. ef. 6-30-16 thru 12-26-16; OLCC 22-2016, f. 12-22-16, cert. ef. 12-27-16

845-025-5500

Marijuana Worker Permit and Retailer Requirements

(1) A marijuana worker permit is required for any individual who performs work for or on behalf of a marijuana retailer, producer, processor or wholesaler if the individual participates in:

(a) The possession, securing or selling of marijuana items at the premises for which the license has been issued;

(b) The recording of the possession, securing or selling of marijuana items at the premises for which the license has been issued;

(c) The verification of any document described in ORS 475B.170; or

(d) The direct supervision of a person described in subsections (a) to (c) of this section.

(2) An individual who is required by section (1) of this rule to hold a marijuana worker permit must carry that permit on his or her person at all times when performing work on behalf of a marijuana retailer.

(3) A person who holds a marijuana worker permit must notify the Commission in writing within 10 days of any conviction for a misdemeanor or felony.

(4) A marijuana retailer, producer, processor or wholesaler must verify that an individual has a valid marijuana worker permit issued in accordance with OAR 845-025-5500 to 845-025-5590 before allowing the individual to perform any work at the licensed premises.

Stat. Auth.: ORS 475B.215 & 475B.218
Stats. Implemented: ORS 475B.215, 475B.218 & 2016 OL Ch. 23, Sec. 16 & 17
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 9-2016(Temp), f. 6-28-16, cert. ef. 6-30-16 thru 12-26-16; OLCC 22-2016, f. 12-22-16, cert. ef. 12-27-16

845-025-5540

Marijuana Worker Permit Denial Criteria

(1) The Commission must deny an initial or renewal application if the applicant:

(a) Is not 21 years of age or older;

(b) Has had a marijuana license or worker permit revoked for violation of ORS 475B.010 to 475B.395 or any rule adopted under ORS 475B.010 to 475B.395 within two years of the date of the application;

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(2) The Commission may deny an initial or renewal application, if the applicant:

(a) Has been convicted of a felony for possession, manufacture or delivery of a controlled substance or an offense under ORS 475.856, 475.858, 475.860 or 475.862 within three years of the date the Commission received the application, except that the Commission will not consider convictions for:

(A) Possession of marijuana; or

(B) Manufacture or delivery of marijuana if the date of the conviction is two or more years prior to the date of the application or renewal.

(b) Has been convicted of a felony for a crime involving violence within three years of the date the Commission received the application;

(c) Has been convicted of a felony for a crime of dishonesty or deception, including but not limited to theft, fraud, or forgery, within three years of the date the Commission received the application;

(d) Has more than one conviction for any of the crimes listed in subsections (a) to (c) of this section within five years of the date the Commission received the application;

(e) Has violated any provision of ORS 475B.010 to 475B.395 or any rule adopted under ORS 475B.010 to 475B.395; or

(f) Makes a false statement to the Commission.

(3) If the Commission denies an application under subsection (2)(f) to (g) of this rule the individual will not be eligible for a permit for two years from the date the Commission received the application.

(4) A Notice of Denial must be issued by the Commission in accordance with ORS Chapter 183.

Stat. Auth.: ORS 475B.215 & 475B.218

Stats. Implemented: ORS 475B.215, 475B.218 & 2016 OL Ch. 24, Sec. 13

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 9-2016(Temp), f. 6-28-16, cert. ef. 6-30-16 thru 12-26-16; OLCC 22-2016, f. 12-22-16, cert. ef. 12-27-16

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) Until March 1, 2017, 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 prior to March 1, 2017, 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

845-025-7000

Packaging and Labeling — Definitions

For the purposes of OAR 845-025-7000 to 845-025-7060:

(1) "Attractive to minors" means packaging, labeling and marketing that features:

(a) Cartoons;

(b) A design, brand or name that resembles a non-cannabis consumer product of the type that is typically marketed to minors;

(c) Symbols or celebrities that are commonly used to market products to minors;

(d) Images of minors; and

(e) Words that refer to products that are commonly associated with minors or marketed by minors.

(2) "Cannabinoid" means any of the chemical compounds that are the active constituents of marijuana.

(3) "Cannabinoid concentrate or extract" means a substance obtained by separating cannabinoids from marijuana by a mechanical, chemical or other process.

(4) "Cannabinoid edible" means food or potable liquid into which a cannabinoid concentrate or extract or the dried leaves or flowers of marijuana have been incorporated.

(5)(a) "Cannabinoid product" means a cannabinoid edible or any other product intended for human consumption or use, including a product intended to be applied to a person's skin or hair, that contains cannabinoids or the dried leaves or flowers of marijuana.

(b) "Cannabinoid product" does not include:

(A) Usable marijuana by itself;

(B) A cannabinoid concentrate or extract by itself; or

(C) Industrial hemp, as defined in ORS 571.300.

(6) "Cartoon" means any drawing or other depiction of an object, person, animal, creature or any similar caricature that satisfies any of the following criteria:

(a) The use of comically exaggerated features;

(b) The attribution of human characteristics to animals, plants or other objects, or the similar use of anthropomorphic technique; or

(c) The attribution of unnatural or extra-human abilities, such as imperviousness to pain or injury, X-ray vision, tunneling at very high speeds or transformation.

(7) "Child resistant" means designed or constructed to be significantly difficult for children under five years of age to open and not difficult for adults to use properly.

(8) "Consumer":

(a) Has the meaning given that term in ORS 475B.015; or

(b) Means a patient or designated primary caregiver receiving a transfer from a medical marijuana dispensary.

(9) "Container" means a sealed, hard or soft-bodied receptacle in which a marijuana item is placed prior to being sold to a consumer.

(10) "Exit Package" means a sealed container provided at the retail point of sale in which any marijuana items already within a container are placed.

(11) "Licensee" has the meaning given that term in OAR 845-025-1015.

(12) Marijuana.

(a) "Marijuana" means the plant Cannabis family Cannabaceae, any part of the plant Cannabis family Cannabaceae and the seeds of the plant Cannabis family Cannabaceae.

(b) "Marijuana" does not include industrial hemp, as defined in ORS 571.300.

(13) "Marijuana item" means marijuana, usable marijuana, a cannabinoid product or a cannabinoid concentrate or extract.

(14) "Processing" means the compounding or conversion of marijuana into cannabinoid products or cannabinoid concentrates or extracts.

(15) "Producing" means:

(a) Planting, cultivating, growing, trimming or harvesting marijuana; or

(b) Drying marijuana leaves and flowers.

(16) "Registrant" means a person registered with the Authority under ORS 475B.420, 475B.435, or ORS 475B.450.

(17) Usable Marijuana.

(a) "Usable marijuana" means the dried leaves and flowers of marijuana.

(b) "Usable marijuana" does not include:

(A) The seeds, stalks and roots of marijuana; or

(B) Waste material that is a by-product of producing or processing marijuana.

Stat. Auth.: ORS 475B.615

Stats. Implemented: ORS 475B.600 & 475B.615

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 17-2016(Temp), f. & cert. ef. 9-30-16 thru 12-26-16; OLCC 22-2016, f. 12-22-16, cert. ef. 12-27-16

845-025-7020

Packaging for Sale to Consumer

(1) The purpose of this rule is to set the minimum standards for the packaging of marijuana items that are sold to the consumer, applicable to:

(a) A licensee; or

(b) On and after October 1, 2016, a registrant who is not exempt from the labeling requirements.

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(2) Containers or packaging for marijuana items must protect a marijuana item from contamination and must not impart any toxic or deleterious substance to the marijuana item.

(3) Marijuana items for ultimate sale to a consumer, except for immature plants and seeds, must:

(a) Be packaged in a container that is child-resistant as certified by a qualified third party child-resistant package testing firm or placed within an exit package that is certified by a qualified third party child-resistant package testing firm prior to final sale to consumer;

(b) Be packaged in a container or placed in an exit package that is capable of being resealed and made child resistant again after it has been opened, as certified by a qualified third party child-resistant package testing firm if the marijuana item is a cannabinoid product that contains more than 15 mg of THC, or if the item is an extract or concentrate.

(c) Not be packaged or labeled in a manner that is attractive to minors; and

(d) Be labeled in accordance with OAR 333-007-0010 to 333-007-0100.

(4) Packaging may not contain any text that makes an untruthful or misleading statement.

(5) Nothing in this rule:

(a) Prevents the re-use of packaging that is capable of continuing to be child-resistant, as permitted by rules established by the Commission or the Authority; or

(b) Prohibits the Commission or the Authority from imposing additional packaging requirements in their respective rules governing licensees and registrants.

(6) A licensee or registrant must provide to the Commission or the Authority upon that agency's request, additional information about the testing that was performed by the qualified third party child-resistant package testing firm in accordance with 16 CFR 1700.

Stat. Auth.: ORS 475B.615

Stats. Implemented: ORS 475B.070, 475B.090, 475B.100, 475B.110, 475B.615

Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16; OLCC 2-2016(Temp), f. & cert. ef. 2-23-16 thru 8-18-16; OLCC 6-2016, f. 6-28-16, cert. ef. 6-29-16; OLCC 12-2016(Temp), f. & cert. ef. 8-23-16 thru 12-26-16; OLCC 22-2016, f. 12-22-16, cert. ef. 12-27-16

845-025-7030

Labeling for Sale to Consumer

In addition to requirements of OAR 333-007-0010 to 333-007-0100:

(1) No label may be attractive to minors as defined in OAR 845-025-7000(1); and

(2) The Commission may require that marijuana items sold at retail be labeled with a Universal Product Code.

Stat. Auth.: ORS 475B.025 & 475B.605

Stats. Implemented: ORS 475B.025

Hist.: OLCC 6-2016, f. 6-28-16, cert. ef. 6-29-16; OLCC 17-2016(Temp), f. & cert. ef. 9-30-16 thru 12-26-16; OLCC 22-2016, f. 12-22-16, cert. ef. 12-27-16

845-025-7060

Packaging and Labeling Pre-approval Process

(1) Prior to a marijuana item being sold to a consumer, a licensee, license applicant or a registrant, if pre-approval is required by the Authority, must submit an application for both package and label pre-approval by the Commission.

(a) The initial submission shall be made electronically if required by the Commission. The licensee, license applicant or registrant must submit a physical prototype upon request by the Commission.

(b) If a license applicant submits packages and labels for pre-approval, final determination for packages and labels will not be made until the applicant has been issued a license.

(2) Except as provided in sections (7) to (9) of this rule, the packaging and labels must be accompanied by the following:

(a) A fee as specified in OAR 845-025-1060; and

(b) Information including but not limited to:

(A) Documentation that the package has been certified for child resistance as defined by 16 CFR 1700 by a qualified third party child-resistant package testing firm.

(B) A picture of and description of the item to be placed in the package.

(3) The Commission will evaluate the packaging and label in order to determine whether:

(a) The packaging:

(A) Has been certified as child resistant by a qualified third party child-resistant package testing firm;

(B) Is attractive to minors or is marketed in a manner attractive to minors;

(C) Contains untruthful or misleading content; and

(D) Will contain a marijuana item that is not compliant with ORS 475B, OAR 333, Divisions 7 and 8, or these rules.

(b) The label complies with the Authority's labeling rules, OAR 333-007-0010 to 333-007-0100, or any additional labeling requirements in these rules.

(4) The Commission must review the packaging and labeling and notify the licensee, licensee applicant or registrant whether the packaging and labeling is approved, and if not approved, a description of the packaging or labeling deficiencies.

(5) If a licensee or registrant's label is deficient, it must correct the deficiencies and resubmit the label for pre-approval, but the licensee or registrant is not required to submit an additional fee unless the label is found deficient for a second time in which case the licensee must resubmit the packaging or labeling in accordance with section (1) of this rule.

(6) If a licensee, licensee applicant or registrant's original packaging is deficient because it is not child resistant, the licensee, applicant or registrant may:

(a) Correct the deficiencies and resubmit the packaging for pre-approval. The licensee or registrant is not required to submit an additional fee unless the packaging is found deficient for a second time in which case the licensee may resubmit the packaging or labeling in accordance with subsection (1) of this rule; or

(b) The licensee, licensee applicant or registrant may indicate that they wish to satisfy the requirement that a marijuana item be in a container that is child-resistant by using an approved child-resistant exit package.

(7) If a licensee or registrant's packaging is deficient for reasons other than child resistance it must correct the deficiencies and resubmit the packaging for pre-approval, but the licensee, applicant or registrant is not required to submit an additional fee unless the packaging is found deficient for a second time in which case the licensee must resubmit the packaging or labeling in accordance with subsection (1) of this rule.

(8) A licensee, applicant or registrant may submit packaging and labeling for approval on the same application for a product that may have different flavors, colors or sizes if the product and packaging is otherwise identical. Applications for approval of packaging and labeling under this section are subject to a single application fee.

(9) Packages and labels that have been previously approved do not need to be resubmitted if the only changes to the packaging or label are:

(a) Changes in the:

(A) Harvest or processing date;

(B) Strain;

(C) Test results;

(D) Net weight or volume; or

(E) Harvest or process lot numbers.

(b) The deletion of any non-mandatory label information.

(c) The addition, deletion or change in the:

(A) UPC barcodes or 2D mobile barcodes (QR codes); or

(B) Website address, phone number, fax number, or zip code of the licensee or registrant.

(d) The repositioning of any label information on the package, as long as the repositioning of label information is consistent with OAR 333-007-0010 to 333-007-0100.

(10) The Commission may publish a list of previously-approved commercially available packaging. Packaging identified on this list as approved for certain product types does not need to be submitted for approval if used for the type of product for which it is approved and the packaging does not contain any graphics, pictures or logos.

(11) The Commission may publish a list of products whose package and label have been approved, but require an approved exit package in order to meet the child resistance requirement.

(12) Labels for marijuana items do not require pre-approval if they contain only the information required by OAR 333-007-0010 to 333-007-0100 and have no graphics, pictures or logos.

(13) Notwithstanding any provisions of this rule, the Commission may permit or require electronic submission of labels and packaging for approval.

Stat. Auth.: ORS 475B.610 & 475B.620

Stats. Implemented: ORS 475B.610 & 475B.620

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 22-2016, f. 12-22-16, cert. ef. 12-27-16

845-025-7520

Unique Identification (UID) Tags

(1) A licensee must:

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(a) Use UID tags issued by a Commission-approved vendor that is authorized to provide UID tags for CTS. Each licensee is responsible for the cost of all UID tags and any associated vendor fees.

(b) Have an adequate supply of UID tags at all times, except that the licensee is not required to have UID tags during the first ten calendar days of licensure so long as UID tags have been ordered and are in transit to the licensee.

(c) Tag individual marijuana plants with a UID tag no later than when each plant reaches a height of twenty four inches or when the individual plant has been identified as female, whichever is sooner.

(d) Properly tag all other inventory with a UID tag pursuant to the system requirements of CTS.

(e) Place tags in a position that can be clearly read by an individual standing next to the item and the tag must be kept free from dirt and debris.

(2) A licensee may only tag and package together identical items for transport to another licensee, except for mixed lots of usable marijuana, cannabinoid concentrates or extracts that are transferred to a processor license to be processed.

Stat. Auth.: ORS 475B.025, 475B.070, 475B.090, 475B.100, 475B.110 & 475B.560

Stats. Implemented: ORS 475B.150

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 22-2016, f. 12-22-16, cert. ef. 12-27-16

845-025-7580

Reconciliation with Inventory

(1) All licensees must:

(a) Use CTS for all inventory tracking activities at a licensed premises;

(b) Reconcile all on-premises and in-transit marijuana item inventories each day in CTS at the close of business pursuant to system requirements; and

(c) Record all required information for seeds, usable marijuana, cannabinoid concentrates and extracts by weight;

(d) Record the wet weight of all harvested marijuana plants immediately after harvest; and

(e) Record all required information for cannabinoid products by unit count but must also record the weight per unit of a product.

(2) The requirements in section (1)(b) and (4) of this rule do not apply during the first ten calendar days of licensure so long as the license has ordered UID tags and the UID tags are in transit to the licensee.

(3) The requirements in section (1)(b) of this rule do not apply to marijuana items held by a laboratory licensee that are undergoing analytical testing required by these rules or OAR 333-007-0300 to 333-007-0490 so long as the marijuana items do not leave the laboratory's licensed premises and are reconciled on the same day that the analytical testing concludes.

(4) In addition to the requirements in section (1) of this rule retailers must record the price before tax and amount of each item sold to consumers and the date of each transaction in CTS for each individual transaction at the close of every day the business operates.

(5) Information that was not required to be recorded and reconciled daily pursuant to section (2) of this rule must be recorded and reconciled within three calendar days of the licensee's receipt of UID tags.

Stat. Auth.: ORS 475B.025, 475B.070, 475B.090, 475B.100 & 475B.110

Stats. Implemented: ORS 475B.150

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 15-2016(Temp), f. & cert. ef. 9-20-16 thru 12-26-16; OLCC 22-2016, f. 12-22-16, cert. ef. 12-27-16

845-025-7700

Transportation and Delivery of Marijuana Items

(1) Marijuana items may only be transferred between licensed premises by a licensee or licensee representative.

(2) An individual authorized to transport marijuana items must have a valid Oregon Driver's License.

(3) A licensee must:

(a) Keep marijuana items in transit shielded from public view;

(b) Use a vehicle for transport that is:

(A) Insured at or above the legal requirements in Oregon;

(B) Capable of securing (locking) the marijuana items during transportation;

(C) Equipped with an alarm system; and

(D) Capable of being temperature controlled if perishable marijuana items are being transported.

(c) Using CTS, generate a printed transport manifest that accompanies every transport of marijuana items that contains the following information:

(A) The name, contact information of a licensee representative, licensed premises address and license number of the licensee transporting the marijuana items;

(B) The name, contact information of the licensee representative, licensed premises address, and license number of the licensee receiving the delivery;

(C) Product name and quantities (by weight or unit) of each marijuana item contained in each transport, along with the UIDs for every item;

(D) The date of transport and approximate time of departure;

(E) Arrival date and estimated time of arrival;

(F) Delivery vehicle make and model and license plate number; and

(G) Name and signature of the licensee's representative accompanying the transport.

(4) A licensee must generate the manifest required by section (3)(c) of this rule at least 24 hours in advance of initiating transportation if the marijuana items transported pursuant to the manifest exceed:

(a) 25 pounds of usable marijuana;

(b) One pound of cannabinoid concentrate or extract; or

(c) 1,000 units of sale of any individual cannabinoid product.

(5) A licensee may not void or change a transportation manifest after departing from the originating premises.

(6) All marijuana items must be packaged in shipping containers and labeled with a UID tag prior to transport.

(7) A licensee must provide a copy of the transport manifest to each licensed premises receiving the inventory described in the transport manifest, but in order to maintain transaction confidentiality, may prepare a separate manifest for each receiving licensed premises.

(8) A licensee must provide a copy of the printed transport manifest and any printed receipts for marijuana items delivered to law enforcement officers or other representatives of a government agency if requested to do so while in transit.

(9) A licensee must contact the Commission immediately, or as soon as possible under the circumstances, if a vehicle transporting marijuana items is involved in any accident that involves product loss.

(10) Upon receipt of inventory a receiving licensee must ensure that the marijuana items received are as described in the transport manifest and must record receipt of the inventory in CTS.

(11) A receiving licensee must separately document any differences between the quantity specified in the transport manifest and the quantities received. Such documentation shall be made in CTS and in any relevant business records.

(12) A licensee must provide temperature control for perishable marijuana items during transport.

(13) Any vehicle transporting marijuana items must travel directly from the shipping licensee to the receiving licensee and must not make any unnecessary stops in between except to other licensed premises receiving inventory.

(14) A licensee must notify the Commission in advance of the location of every stop at an unlicensed location that exceeds two hours in duration.

(15) If the licensee's delivery vehicle is stopped at an unlicensed location the licensee must immediately make the vehicle and its contents available for inspection upon the Commission's request.

(16) A licensee may transport marijuana on behalf of other licensees if the transporting licensee holds a wholesale license.

Stat. Auth.: ORS 475B.025, 475B.070, 475B.090, 475B.100 & 475B.110

Stats. Implemented: ORS 475B.025, 475B.070, 475B.090, 475B.100 & 475B.110

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 22-2016, f. 12-22-16, cert. ef. 12-27-16

845-025-7750

Waste Management

(1) A licensee must:

(a) Store, manage and dispose of solid and liquid wastes generated during marijuana production and processing in accordance with applicable state and local laws and regulations which may include but are not limited to:

(A) Solid waste requirements in ORS 459 and OAR 340 Divisions 93 to 96;

(B) Hazardous waste requirements in ORS 466 and OAR 340, Divisions 100 to 106; and

(C) Wastewater requirements in ORS 468B and OAR 340, Divisions 41 to 42, 44 to 45, 53, 55 and 73.

(b) Store marijuana waste in a secured waste receptacle in the possession of and under the control of the licensee.

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(c) If the waste is generated post-harvest or if an entire marijuana plant greater than 24 inches tall is designated as waste, the waste must be held on the licensed premises for at least three business days prior to disposal.

(2) A licensee may give or sell marijuana waste to a producer, processor or wholesale licensee or research certificate holder. Any such transaction must be entered into CTS pursuant to OAR 845-025-7500.

(3) In addition to information required to be entered into CTS pursuant to OAR 845-025-7500, a licensee must maintain accurate and comprehensive records regarding waste material that accounts for, reconciles, and evidences all waste activity related to the disposal of marijuana.

(4) Waste items consisting of usable marijuana, concentrates, extracts or cannabinoid products must be disposed of on the licensed premises or transferred to another licensee for disposal.

Stat. Auth.: ORS 475B.025, 475B.070 & 475B.090
Stats. Implemented: ORS 475B.070, 475B.090, 475B.100 & 475B.150
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 22-2016, f. 12-22-16, cert. ef. 12-27-16

845-025-8040

Advertising Restrictions

(1) Marijuana advertising may not:

(a) Contain statements that are deceptive, false, or misleading;

(b) Contain any content that can reasonably be considered to target individuals under the age of 21, including but not limited to images of minors, cartoon characters, toys, or similar images and items typically marketed towards minors, or references to products that are commonly associated with minors or marketed by minors;

(c) Specifically encourages the transportation of marijuana items across state lines;

(d) Assert that marijuana items are safe because they are regulated by the Commission or have been tested by a certified laboratory or otherwise make claims that any government agency endorses or supports marijuana;

(e) Make claims that recreational marijuana has curative or therapeutic effects;

(f) Display consumption of marijuana items;

(g) Contain material that encourages the use of marijuana because of its intoxicating effect; or

(h) Contain material that encourages excessive or rapid consumption.

(2) A licensee may not make any deceptive, false, or misleading assertions or statements on any informational material, any sign, or any document provided to a consumer.

(3) A licensee must include the following statement on all print, billboard, television, radio and internet advertising in font size legible to the viewer:

(a) "Do not operate a vehicle or machinery under the influence of this drug".

(b) "For use only by adults twenty-one years of age and older."

(c) "Keep out of the reach of children."

Stat. Auth.: ORS 475B.025
Stats. Implemented: ORS 475B.025
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 22-2016, f. 12-22-16, cert. ef. 12-27-16

845-025-8060

Advertising Media, Coupons, and Promotions

(1) The Commission prohibits advertising through handbills that are posted or passed out in public areas such as parking lots and publicly owned property.

(2) A licensee may not utilize television, radio, billboards, print media or internet advertising unless the licensee has reliable evidence that no more than 30 percent of the audience for the program, publication or internet web site in or on which the advertising is to air or appear is reasonably expected to be under the age of 21.

(3) A licensee who advertises via web page must utilize appropriate measures to ensure that individuals visiting the web page are over 21 years of age.

(4) A licensee may not engage in advertising via marketing directed towards location-based devices, including but not limited to cellular phones, unless the marketing is a mobile device application installed on the device by the owner of the device who is 21 years of age or older and includes a permanent and easy opt-out feature.

Stat. Auth.: ORS 475B.025
Stats. Implemented: ORS 475B.025
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 22-2016, f. 12-22-16, cert. ef. 12-27-16

845-025-8520

Prohibited Conduct

(1) Sale to a Minor. A licensee or permittee may not sell, deliver, transfer or make available any marijuana item to a person under 21 years of age.

(a) Violation of this section for an intentional sale to a minor by a licensee, permittee or license representative is a Category II violation.

(b) Violation of this section for other than intentional sales is a Category II(b) violation.

(2) Identification. A licensee or license representative must require a person to produce identification as required by ORS 475B.170 before selling or providing a marijuana item to that person. Violation of this section is a Category IV violation.

(3) Access to Premises.

(a) A licensee or permittee may not:

(A) During regular business hours for the licensed premises, refuse to admit or fail to promptly admit a Commission regulatory specialist who identifies him or herself and who enters or wants to enter a licensed premises to conduct an inspection to ensure compliance with ORS 475B affecting the licensed privileges; or these rules;

(B) Outside of regular business hours or when the premises appear closed, refuse to admit or fail to promptly admit a Commission regulatory specialist who identifies him or herself and requests entry on the basis that there is a reason to believe a violation of ORS 475B affecting the licensed privileges; or these rules is occurring; or

(C) Once a regulatory specialist is on the licensed premises, ask the regulatory specialist to leave until the specialist has had an opportunity to conduct an inspection to ensure compliance with ORS 475B affecting the licensed privileges; or these rules.

(b) Violation of this section is a Category II violation.

(4) Use or Consumption of Intoxicants on Duty and Under the Influence on Duty.

(a) No licensee, licensee representative, or permittee may consume any intoxicating substances while on duty, except for employees as permitted under OAR 845-025-1230(6)(b). Violation of this subsection is a Category III violation.

(b) No licensee, licensee representative, or permittee may be under the influence of intoxicating substances while on duty. Violation of this subsection is a Category II violation.

(c) Whether a person is paid or scheduled for a work shift is not determinative of whether the person is considered "on duty."

(d) As used in this section:

(A) "On duty" means:

(i) From the beginning to the end of a work shift for the licensed business, including any and all coffee, rest or meal breaks; or

(ii) Performing any acts on behalf of the licensee or the licensed business outside of a work shift if the individual has the authority to put himself or herself on duty.

(B) "Intoxicants" means any substance that is known to have or does have intoxicating effects, and includes alcohol, marijuana, or any other controlled substances.

(5) Permitting Use of Marijuana at Licensed Premises. A licensee or permittee may not permit the use or consumption of marijuana, or any other intoxicating substance, anywhere in or on the licensed premises, or in surrounding areas under the control of the licensee, except for employees as permitted under OAR 845-025-1230(6)(b). Violation of this section is a Category III violation.

(6) Import and Export. A licensee or permittee may not import marijuana items into this state or export marijuana items out of this state. Violation of this section is a Category I violation and could result in license or permit revocation.

(7) Permitting, Disorderly or Unlawful Conduct. A licensee or permittee may not permit disorderly activity or activity that is unlawful under Oregon state law on the licensed premises or in areas adjacent to or outside the licensed premises under the control of the licensee.

(a) If the prohibited activity under this section results in death or serious physical injury, or involves unlawful use or attempted use of a deadly weapon against another person, or results in a sexual offense which is a Class A felony such as first degree rape, sodomy, or unlawful sexual penetration, the violation is a Category I violation and could result in license or permit revocation.

(b) If the prohibited activity under this section involves use of a dangerous weapon against another person with intent to cause death or serious physical injury, it is a Category II violation.

(c) As used in this section:

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(A) "Disorderly activities" means activities that harass, threaten or physically harm oneself or another person.

(B) "Unlawful activity" means activities that violate the laws of this state, including but not limited to any activity that violates a state criminal statute.

(d) The Commission does not require a conviction to establish a violation of this section except as required in ORS 475B.045.

(8) Marijuana as a Prize, Premium or Consideration. No licensee or permittee may give or permit the giving of any marijuana item as a prize, premium, or consideration for any lottery, contest, game of chance or skill, exhibition, or any competition of any kind on the licensed premises.

(9) Visibly Intoxicated Persons. No licensee or permittee may sell, give, or otherwise make available any marijuana item to any person who is visibly intoxicated. Violation of this section is a Category III violation.

(10) Additional Prohibitions. A licensee or permittee may not:

(a) Sell or deliver any marijuana item through a drive-up window.

(b) Use any device or machine that both verifies the age of the consumer and delivers marijuana to the consumer; or

(c) Deliver marijuana to a consumer off the licensed premises, except that retail licensees may provide delivery as set forth in OAR 845-025-2880.

(d) Violation of this subsection is a Category III violation.

(e) Permit industrial hemp, as defined in ORS 571.300 or product derived from industrial hemp that contains cannabinoids to be present on the licensed premises, except as allowed by OAR 845-025-2800. Violation of this subsection is a Category I violation.

Stat. Auth.: ORS 475B.025, 475B.070, 475B.090, 475B.100 & 475B.110

Stats. Implemented: ORS 475B.070, 475B.090, 475B.100, 475B.110, 475B.185, 475B.270 & 475B.275

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 22-2016, f. 12-22-16, cert. ef. 12-27-16

845-025-8560

Inspections

(1) The Commission may conduct:

(a) A complaint inspection at any time following the receipt of a complaint that alleges a licensee or permittee is in violation of ORS 475B or these rules;

(b) A random inspection at any time in order to determine compliance with ORS 475B or these rules; or

(c) Compliance transactions in order to determine whether a licensee or permittee is complying with ORS 475B or these rules.

(2) A licensee, licensee representative, or permittee must cooperate with the Commission during an inspection.

(3) If licensee, licensee representative or permittee fails to permit the Commission to conduct an inspection the Commission may seek an investigative subpoena to inspect the premises and gather books, payrolls, accounts, papers, documents or records.

Stat. Auth.: ORS 475B.025, 475B.070, 475B.090, 475B.100 & 475B.110

Stats. Implemented: ORS 475B.285 & 475B.635

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 22-2016, f. 12-22-16, cert. ef. 12-27-16

845-025-8750

License Surrender

A licensee may request the Commission to accept the surrender of a license. The license remains in effect until the Commission accepts the surrender. If the Commission accepts the surrender, the Commission will notify the licensee of the date of acceptance. The licensee must cease all license privileges from on this date through the remainder of the licensing period. The licensee must apply for and receive a new license before engaging in any licensed activities.

Stat. Auth.: ORS 475B.025

Stats. Implemented: ORS 475B.025

Hist.: OLCC 22-2016, f. 12-22-16, cert. ef. 12-27-16

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Rule Caption: The amendments align the rule with the Oregon Department of Agriculture's Marijuana Compliance Assistance Program.

Adm. Order No.: OLCC 23-2016(Temp)

Filed with Sec. of State: 12-30-2016

Certified to be Effective: 1-1-17 thru 6-29-17

Notice Publication Date:

Rules Amended: 845-025-2070

Subject: The Oregon Department of Agriculture has announced that they will be initiating a program called the Marijuana Compliance Assistance Program. This program allows marijuana producers who

participate in the program to receive reduced sanctions from the Oregon Department of Agriculture if the producer accepts responsibility for potential illegal pesticide applications. A producer that accepts responsibility under the Marijuana Compliance Assistance Program, will receive a notice of warning from the Oregon Liquor Control Commission for their first violation instead of a Category I violation. Any subsequent violations would result in a Category I violation, as the Assistance program is only available to first time violators.

Rules Coordinator: Bryant Haley—(503) 872-5136

845-025-2070

Pesticides, Fertilizers and Agricultural Chemicals

(1) Pesticides. A producer may only use pesticides in accordance with ORS Chapter 634 and OAR 603, division 57.

(2) Fertilizers, Soil Amendments, Growing Media. A producer may only use fertilizer, agricultural amendments, agricultural minerals and lime products in accordance with ORS Chapter 633.

(3) A producer may not treat or otherwise adulterate usable marijuana with any chemical, biologically active drug, plant, substance, including nicotine, or other compound that has the effect or intent of altering the usable marijuana's color, appearance, weight or smell.

(4) In addition to other records required by these rules, a producer must maintain, at all times and on the licensed premises:

(a) The material safety data sheet (MSDS) for all pesticides, fertilizers or other agricultural chemicals used by the producer in the production of marijuana;

(b) The original label or a copy thereof for all pesticides, fertilizers or other agricultural chemicals used by the producer in the production of marijuana; and

(c) A log of all pesticides, fertilizers or other agricultural chemicals used by the producer in the production of marijuana. The log must include:

(A) The information required to be documented by a pesticide operator in ORS 634.146; and

(B) The unique identification tag number of the cultivation batch or individual mature marijuana plant to which the product was applied, or if applied to all plants on the licensed premises a statement to that effect.

(5) A producer may maintain the records required under this rule in electronic or written form. If electronic, a producer shall maintain a backup system or sufficient data storage so that records are retained for no less than two years after harvest of any marijuana on which documented products were used. If written, a producer shall ensure that the records are legible and complete, shall keep them in a safe and secure location, and shall retain the records for no less than two years after harvest of any marijuana on which documented products were used.

(6) A producer must make the records required under this rule immediately available during a premises inspection by a Commission regulatory specialist. If the Commission requests copies of the records at any time other than during a premises inspection, a producer shall produce the records upon request.

(7) A violation of sections (1) to (4) of this rule is a Category I violation and could result in license revocation.

(8) Notwithstanding (7) of this rule, if a licensee accepts responsibility for an illegal pesticide application through Department of Agriculture's Marijuana Compliance Assistance Program and successfully completes the program, the licensee will receive a notice of warning for their first violation. Any subsequent violations are Category I violations.

(9) A failure to keep complete records as required by this rule is a Category III violation. A failure to keep records on the licensed premises, or failure to timely produce records, is a Category III violation.

Stat. Auth.: ORS 475B.025 & 475B.070

Stats. Implemented: ORS 475B.070 & 475B.160

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 23-2016(Temp), f. 12-30-16, cert. ef. 1-1-17 thru 6-29-17

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Rule Caption: The changes allow processors to produce concentrates for use in their edible or topical products.

Adm. Order No.: OLCC 24-2016(Temp)

Filed with Sec. of State: 12-30-2016

Certified to be Effective: 1-1-17 thru 6-29-17

Notice Publication Date:

Rules Adopted: 845-025-3255

Rules Amended: 845-025-3250

Subject: As Commission staff has begun licensing cannabinoid edible processors, staff has discovered that many processors do not own

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a commercial kitchen to produce their products. Instead, as is common in the catering industry, many edible/concentrate makers rent commercial kitchen space or share space with another processor to save on costs. Existing rules allow for this practice under certain conditions for processors with an edible endorsement. However, existing rules do not contemplate that many edible makers also produce their own infused products, which requires a concentrate endorsement. The Commission is expanding the rule to allow processors who operate under this rule to also produce certain concentrates for use in their edible or topical products.

Rules Coordinator: Bryant Haley—(503) 872-5136

845-025-3250

Cannabinoid Edible Processor Requirements

(1) A cannabinoid edible processor may only process in a food establishment licensed by the Oregon Department of Agriculture (ODA) and must comply with the applicable provisions of OAR 603, Division 21, Division 24, Division 25, with the exception of OAR 603-025-0020(17) and Division 28.

(2) A cannabinoid edible processor may not:

(a) Engage in processing in a location that is operating as a restaurant, seasonal temporary restaurant, intermittent temporary restaurant, limited service restaurant, single-event temporary restaurant, commissary, mobile unit, bed or breakfast, or warehouse licensed under ORS 624;

(b) Share a food establishment with a person not licensed and endorsed by the Commission as a cannabinoid edible processor;

(c) Process food intended for commercial sale that does not contain cannabinoids, at the licensed premises; or

(d) Use a cannabinoid concentrate or extract to process food unless that concentrate or extract was processed by a licensee in a food establishment licensed by the ODA in compliance with the applicable provisions of OAR Chapter 603, Division 21, Division 24, Division 25, with the exception of OAR 603-025-0020(17), and Division 28.

(3) A food establishment used by a cannabinoid edible processor is considered a licensed premises and must meet the security and other licensed premises requirements in these rules.

Stat. Auth.: ORS 475B.025 & 475B.090

Stats. Implemented: ORS 475B.090 & 475B.135

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 24-2016(Temp), f. 12-30-16, cert. ef. 1-1-17 thru 6-29-17

845-025-3255

Alternating Proprietors

(1) A cannabinoid edible or topical processor may share a food establishment, as defined in ORS 616.695, with another cannabinoid edible or topical processor, or a cannabinoid concentrate processor who qualifies under this rule, if:

(a) The schedule, with specific hours and days that each processor will use the food establishment, is prominently posted at the entrance to the food establishment and has been approved by the Commission:

(A) The schedule must be submitted to the Commission in writing and will be approved if it demonstrates that use of a shared food establishment by multiple processor licensees does not create an increased compliance risk.

(B) A processor licensee may only change the schedule with prior written approval from the Commission.

(b) In addition to the applicable requirements of OAR 845-025-1410, each licensee must designate a separate area to secure any marijuana, cannabinoid products, concentrates or extracts that a licensee stores at the food establishment. The designated area must only be accessible to the licensee. If a cannabinoid processor does not store marijuana, cannabinoid products, concentrates or extracts at the food establishment those items must be stored on a licensed premises.

(2) A food establishment used by a processor licensee is considered a licensed premises and must meet the security and other licensed premises requirements in these rules.

(3) In order to qualify to share a food establishment under this rule:

(a) Concentrates manufactured under this rule must be used in the production of the processor's cannabinoid edibles or topicals; and

(b) Concentrates manufactured under this rule may not be transferred to another licensee.

(4) A processor is strictly liable for any violation found at a shared food establishment during that processor's scheduled time or within that processor's designated area in the food establishment.

(5) Violation of this rule is a Category I violation.

Stat. Auth.: ORS 475B.025 & 475B.090

Stats. Implemented: ORS 475B.090 & 475B.13

Hist.: OLCC 24-2016(Temp), f. 12-30-16, cert. ef. 1-1-17 thru 6-29-17

Oregon Medical Board Chapter 847

Rule Caption: Compensation for Board meeting preparation and Investigative Committee meeting preparation

Adm. Order No.: OMB 1-2017

Filed with Sec. of State: 1-6-2017

Certified to be Effective: 7-1-17

Notice Publication Date: 11-1-2016

Rules Amended: 847-003-0200

Subject: The rule amendment allows compensation to Board members for preparing for Board meetings and Investigative Committee meetings.

Rules Coordinator: Nicole Krishnaswami—(971) 673-2667

847-003-0200

Board Member Compensation

(1) Board members of the Oregon Medical Board shall receive up to \$250 compensation for each day or portion thereof during which the member is actually engaged in the performance of official duties, which includes Board and committee meetings and activities that the Board has pre-approved or requested that the member attend as its representative.

(2) Board members shall receive up to \$100 compensation for preparation for each Board meeting and Investigative Committee meeting that the Board member attends.

(3) The compensation amount shall be in addition to the allowable reimbursement for travel expenses.

Stat. Auth.: ORS 677.235

Stats. Implemented: ORS 292.495, 677.235

Hist.: OMB 25-2013, f. & cert. ef. 10-15-13; OMB 1-2017, f. 1-6-17, cert. ef. 7-1-17

Rule Caption: Allows EMTs to insert supraglottic airway devices and paramedics to maintain ventilators during transport

Adm. Order No.: OMB 2-2017

Filed with Sec. of State: 1-6-2017

Certified to be Effective: 1-6-17

Notice Publication Date: 11-1-2016

Rules Amended: 847-035-0030

Subject: The rule amendment broadens the EMT scope of practice to allow blind insertion of any supraglottic airway device rather than limiting the scope to only cuffed pharyngeal airway devices and removes the limitation on performing tracheobronchial tube suctioning for only endotracheal intubated patients so that EMTs may also perform this suctioning on tracheostomy patients. The rule amendment also adds a provision to allow Paramedics to maintain ventilators during transport if the Paramedic is formally trained on the specific device and is acting under written protocol or direct orders.

Rules Coordinator: Nicole Krishnaswami—(971) 673-2667

847-035-0030

Scope of Practice

(1) The Oregon Medical Board has established a scope of practice for emergency and nonemergency care for emergency medical services providers. Emergency medical services providers may provide emergency and nonemergency care in the course of providing prehospital care as an incident of the operation of ambulance and as incidents of other public or private safety duties, but is not limited to "emergency care" as defined in OAR 847-035-0001.

(2) The scope of practice for emergency medical services providers is the maximum functions which may be assigned to an emergency medical services provider by a Board-approved supervising physician. The scope of practice is not a set of statewide standing orders, protocols, or curriculum.

(3) Supervising physicians may not assign functions exceeding the scope of practice; however, they may limit the functions within the scope at their discretion.

(4) Standing orders for an individual emergency medical services provider may be requested by the Board or Authority and must be furnished upon request.

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(5) An emergency medical services provider, including an Emergency Medical Responder, may not function without assigned standing orders issued by a Board-approved supervising physician.

(6) An emergency medical services provider, acting through standing orders, must respect the patient's wishes including life-sustaining treatments. Physician-supervised emergency medical services providers must request and honor life-sustaining treatment orders executed by a physician, nurse practitioner or physician assistant if available. A patient with life-sustaining treatment orders always requires respect, comfort and hygienic care.

(7) Whenever possible, medications should be prepared by the emergency medical services provider who will administer the medication to the patient.

(8) An Emergency Medical Responder may:

(a) Conduct primary and secondary patient examinations;

(b) Take and record vital signs;

(c) Utilize noninvasive diagnostic devices in accordance with manufacturer's recommendation;

(d) Open and maintain an airway by positioning the patient's head;

(e) Provide external cardiopulmonary resuscitation and obstructed airway care for infants, children, and adults;

(f) Provide care for musculoskeletal injuries;

(g) Assist with prehospital childbirth;

(h) Complete a clear and accurate prehospital emergency care report form on all patient contacts and provide a copy of that report to the senior emergency medical services provider with the transporting ambulance;

(i) Administer medical oxygen;

(j) Maintain an open airway through the use of:

(A) A nasopharyngeal airway device;

(B) A noncuffed oropharyngeal airway device;

(C) A pharyngeal suctioning device;

(k) Operate a bag mask ventilation device with reservoir;

(L) Provide care for suspected medical emergencies, including administering liquid oral glucose for hypoglycemia;

(m) Prepare and administer aspirin by mouth for suspected myocardial infarction (MI) in patients with no known history of allergy to aspirin or recent gastrointestinal bleed;

(n) Prepare and administer epinephrine by automatic injection device for anaphylaxis;

(o) Prepare and administer naloxone via intranasal device or auto-injector for suspected opioid overdose; and

(p) Perform cardiac defibrillation with an automatic or semi-automatic defibrillator, only when the Emergency Medical Responder:

(A) Has successfully completed an Authority-approved course of instruction in the use of the automatic or semi-automatic defibrillator; and

(B) Complies with the periodic requalification requirements for automatic or semi-automatic defibrillator as established by the Authority; and

(q) Perform other emergency tasks as requested if under the direct visual supervision of a physician and then only under the order of that physician.

(9) An Emergency Medical Technician (EMT) may:

(a) Perform all procedures that an Emergency Medical Responder may perform;

(b) Ventilate with a non-invasive positive pressure delivery device;

(c) Insert a supraglottic airway device to facilitate ventilation through the glottic opening by displacing tissue and sealing of the laryngeal area;

(d) Perform tracheobronchial tube suctioning;

(e) Provide care for suspected shock;

(f) Provide care for suspected medical emergencies, including:

(A) Obtain a capillary blood specimen for blood glucose monitoring;

(B) Prepare and administer epinephrine by subcutaneous injection, intramuscular injection, or automatic injection device for anaphylaxis;

(C) Administer activated charcoal for poisonings; and

(D) Prepare and administer albuterol treatments for known asthmatic and chronic obstructive pulmonary disease (COPD) patients suffering from suspected bronchospasm.

(g) Perform cardiac defibrillation with an automatic or semi-automatic defibrillator;

(h) Transport stable patients with saline locks, heparin locks, foley catheters, or in-dwelling vascular devices;

(i) Assist the on-scene Advanced EMT, EMT-Intermediate, or Paramedic by:

(A) Assembling and priming IV fluid administration sets; and

(B) Opening, assembling and uncapping preloaded medication syringes and vials;

(j) Complete a clear and accurate prehospital emergency care report form on all patient contacts;

(k) Assist a patient with administration of sublingual nitroglycerine tablets or spray and with metered dose inhalers that have been previously prescribed by that patient's personal physician and that are in the possession of the patient at the time the EMT is summoned to assist that patient;

(L) In the event of a release of organophosphate agents, the EMT who has completed Authority-approved training may prepare and administer atropine sulfate and pralidoxime chloride by autoinjector, using protocols approved by the Authority and adopted by the supervising physician; and

(m) In the event of a declared Mass Casualty Incident (MCI) as defined in the local Mass Casualty Incident plan, monitor patients who have isotonic intravenous fluids flowing.

(10) An Advanced Emergency Medical Technician (AEMT) may:

(a) Perform all procedures that an EMT may perform;

(b) Initiate and maintain peripheral intravenous (I.V.) lines;

(c) Initiate saline or similar locks;

(d) Obtain peripheral venous blood specimens;

(e) Initiate and maintain an intraosseous infusion in the pediatric patient; and

(f) Prepare and administer the following medications under specific written protocols authorized by the supervising physician or direct orders from a licensed physician:

(A) Analgesics for acute pain: nitrous oxide.

(B) Anaphylaxis: epinephrine;

(C) Antihypoglycemics:

(i) Hypertonic glucose;

(ii) Glucagon;

(D) Nebulized bronchodilators:

(i) Albuterol;

(ii) Ipratropium bromide;

(E) Vasodilators: nitroglycerine;

(F) Naloxone; and

(G) Physiologic isotonic crystalloid solution.

(11) An EMT-Intermediate may:

(a) Perform all procedures that an Advanced EMT may perform;

(b) Initiate and maintain an intraosseous infusion;

(c) Prepare and administer the following medications under specific written protocols authorized by the supervising physician, or direct orders from a licensed physician:

(A) Vasoconstrictors:

(i) Epinephrine;

(ii) Vasopressin;

(B) Antiarrhythmics:

(i) Atropine sulfate;

(ii) Lidocaine;

(iii) Amiodarone;

(C) Analgesics for acute pain:

(i) Morphine;

(ii) Nalbuphine Hydrochloride;

(iii) Ketorolac tromethamine;

(iv) Fentanyl;

(D) Antihistamine: Diphenhydramine;

(E) Diuretic: Furosemide;

(F) Intraosseous infusion anesthetic: Lidocaine;

(G) Anti-Emetic: Ondansetron;

(d) Prepare and administer immunizations in the event of an outbreak or epidemic as declared by the Governor of the state of Oregon, the State Public Health Officer or a county health officer, as part of an emergency immunization program, under the agency's supervising physician's standing order;

(e) Prepare and administer immunizations for seasonal and pandemic influenza vaccinations according to the CDC Advisory Committee on Immunization Practices (ACIP), and/or the Oregon State Public Health Officer's recommended immunization guidelines as directed by the agency's supervising physician's standing order;

(f) Distribute medications at the direction of the Oregon State Public Health Officer as a component of a mass distribution effort;

(g) Prepare and administer routine or emergency immunizations and tuberculosis skin testing, as part of an EMS Agency's occupational health program, to the EMT-Intermediate's EMS agency personnel, under the supervising physician's standing order;

(h) Insert an orogastric tube;

(i) Maintain during transport any intravenous medication infusions or other procedures which were initiated in a medical facility, if clear and

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understandable written and verbal instructions for such maintenance have been provided by the physician, nurse practitioner or physician assistant at the sending medical facility;

- (j) Perform electrocardiographic rhythm interpretation; and
- (k) Perform cardiac defibrillation with a manual defibrillator.

(12) A Paramedic may:

- (a) Perform all procedures that an EMT-Intermediate may perform;

(b) Initiate and maintain mechanical ventilation during transport if formally trained on the particular equipment and if acting under written protocols specific to the particular equipment;

(c) Initiate the following airway management techniques:

- (A) Endotracheal intubation;

- (B) Cricothyrotomy; and

(C) Transtracheal jet insufflation which may be used when no other mechanism is available for establishing an airway;

- (d) Initiate a nasogastric tube;

(e) Provide advanced life support in the resuscitation of patients in cardiac arrest;

- (f) Perform emergency cardioversion in the compromised patient;

(g) Attempt external transcutaneous pacing of bradycardia that is causing hemodynamic compromise;

- (h) Perform electrocardiographic interpretation;

(i) Initiate needle thoracostomy for tension pneumothorax in a pre-hospital setting;

(j) Obtain peripheral arterial blood specimens under specific written protocols authorized by the supervising physician;

(k) Access indwelling catheters and implanted central IV ports for fluid and medication administration;

- (L) Initiate and maintain urinary catheters; and

(m) Prepare and initiate or administer any medications or blood products under specific written protocols authorized by the supervising physician, or direct orders from a licensed physician.

Stat. Auth.: ORS 682.245

Stats. Implemented: ORS 682.245

Hist.: ME 2-1983, f. & ef. 7-21-83; ME 3-1984, f. & ef. 1-20-84; ME 12-1984, f. & ef. 8-2-84; ME 7-1985, f. & ef. 8-5-85; ME 12-1987, f. & ef. 4-28-87; ME 27-1987(Temp), f. & ef. 11-5-87; ME 5-1988, f. & cert. ef. 1-29-88; ME 12-1988, f. & cert. ef. 8-5-88; ME 15-1988, f. & cert. ef. 10-20-88; ME 2-1989, f. & cert. ef. 1-25-89; ME 15-1989, f. & cert. ef. 9-5-89, & corrected 9-22-89; ME 6-1991, f. & cert. ef. 7-24-91; ME 10-1993, f. & cert. ef. 7-27-93; ME 3-1995, f. & cert. ef. 2-1-95; ME 1-1996, f. & cert. ef. 2-15-96; ME 3-1996, f. & cert. ef. 7-25-96; BME 6-1998, f. & cert. ef. 4-27-98; BME 13-1998(Temp), f. & cert. ef. 8-6-98 thru 2-2-99; BME 14-1998, f. & cert. ef. 10-26-98; BME 16-1998, f. & cert. ef. 11-24-98; BME 13-1999, f. & cert. ef. 7-23-99; BME 14-2000, f. & cert. ef. 10-30-00; BME 11-2001, f. & cert. ef. 10-30-01; BME 9-2002, f. & cert. ef. 7-17-02; BME 10-2002, f. & cert. ef. 7-22-02; BME 1-2003, f. & cert. ef. 1-27-03; BME 12-2003, f. & cert. ef. 7-15-03; BME 4-2004, f. & cert. ef. 1-27-04; BME 11-2004(Temp), f. & cert. ef. 4-22-04 thru 10-15-04; BME 12-2004(Temp), f. & cert. ef. 6-11-04 thru 12-8-04; BME 21-2004(Temp), f. & cert. ef. 11-15-04 thru 4-15-05; BME 2-2005, f. & cert. ef. 1-27-05; BME 5-2005, f. & cert. ef. 4-21-05; BME 9-2005, f. & cert. ef. 7-20-05; BME 18-2006, f. & cert. ef. 7-25-06; BME 22-2006, f. & cert. ef. 10-23-06; BME 7-2007, f. & cert. ef. 1-24-07; BME 11-2007, f. & cert. ef. 4-26-07; BME 24-2007, f. & cert. ef. 10-24-07; BME 11-2008, f. & cert. ef. 4-24-08; BME 19-2008, f. & cert. ef. 7-21-08; BME 10-2009, f. & cert. ef. 5-1-09; BME 13-2009, f. & cert. ef. 7-20-09; BME 18-2009, f. & cert. ef. 10-23-09; BME 22-2009(Temp), f. & cert. ef. 10-23-09 thru 4-15-10; BME 5-2010, f. & cert. ef. 1-26-10; BME 8-2010(Temp), f. & cert. ef. 4-26-10 thru 10-15-10; BME 12-2010, f. & cert. ef. 7-26-10; BME 18-2010, f. & cert. ef. 10-25-10; OMB 1-2011, f. & cert. ef. 2-11-11; OMB 5-2011, f. & cert. ef. 4-8-11; OMB 8-2011, f. & cert. ef. 4-25-11; OMB 15-2012, f. & cert. ef. 4-17-12; OMB 30-2012, f. & cert. ef. 10-22-12; OMB 11-2013, f. & cert. ef. 4-5-13; OMB 14-2014, f. & cert. ef. 10-8-14; OMB 5-2015, f. & cert. ef. 4-3-15; OMB 11-2015, f. & cert. ef. 10-13-15; OMB 2-2017, f. & cert. ef. 1-6-17

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Rule Caption: Define Oriental massage within the acupuncture scope of practice

Adm. Order No.: OMB 3-2017

Filed with Sec. of State: 1-6-2017

Certified to be Effective: 1-6-17

Notice Publication Date: 10-1-2016

Rules Amended: 847-070-0005

Subject: The rule amendment adds a definition for Oriental massage and clarifies the definition for physician.

Rules Coordinator: Nicole Krishnaswami—(971) 673-2667

847-070-0005

Definitions

As used in the rules regulating the practice of acupuncture:

(1)(a) “Acupuncture” means an Oriental health care practice used to promote health and to treat neurological, organic or functional disorders by the stimulation of specific points on the surface of the body by the insertion of needles. “Acupuncture” includes the treatment method of moxibustion, as well as the use of electrical, thermal, mechanical or magnetic devices,

with or without needles, to stimulate acupuncture points and acupuncture meridians and to induce acupuncture anesthesia or analgesia.

(b) The practice of acupuncture also includes the following modalities as authorized by the Oregon Medical Board:

(A) Traditional and modern Oriental Medical and acupuncture techniques of diagnosis and evaluation;

(B) Oriental massage, exercise and related therapeutic methods; and

(C) The use of Oriental pharmacopoeia, vitamins, minerals and dietary advice.

(2) “Board” means the Oregon Medical Board for the State of Oregon.

(3) “Clinical training” means supervised clinical training which consists of diagnosis and actual patient treatment which includes insertion of acupuncture needles.

(4) “Committee” means the Acupuncture Advisory Committee.

(5) “Licensed Acupuncturist” means an individual authorized by the Board to practice acupuncture pursuant to ORS Chapter 677.

(6)(a) “Oriental massage” means methods of manual therapy, including manual mobilization, manual traction, compression, rubbing, kneading and percussion, with or without manual implements, for indications including limited range of motion, muscle spasm, pain, scar tissue, contracted tissue and soft tissue swelling, edema and inflammation, as described in instructional programs and materials of Oriental or Asian health care.

(b) Oriental massage as practiced in Oregon does not include high-velocity, short-amplitude, manipulative thrusting procedures to the articulations of the spine or extremities.

(7) “Physician” means an individual licensed to practice medicine as a medical doctor or doctor of osteopathic medicine pursuant to ORS Chapter 677.

Stat. Auth.: ORS 677.265 & 677.759

Stats. Implemented: ORS 677.265, 677.757, 677.759 & 677.780

Hist.: ME 31, f. 9-9-75, ef. 10-11-75; ME 4-1979, f. & ef. 5-1-79; ME 2-1981, f. & ef. 2-3-81; ME 9-1982, f. & ef. 10-27-82; ME 6-1984, f. & ef. 1-20-84; ME 6-1993, f. & cert. ef. 4-22-93; ME 4-1995, f. & cert. ef. 5-3-95; BME 21-2008, f. & cert. ef. 7-21-08; OMB 3-2015, f. & cert. ef. 1-13-15; OMB 3-2017, f. & cert. ef. 1-6-17

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Secretary of State, Archives Division Chapter 166

Rule Caption: Eliminates obsolete note relating to the management of public records, in OAR 166-150 and 166-400

Adm. Order No.: OSA 1-2017

Filed with Sec. of State: 1-13-2017

Certified to be Effective: 1-13-17

Notice Publication Date: 11-1-2016

Rules Amended: 166-150-0005, 166-150-0110, 166-400-0010, 166-400-0015, 166-400-0020, 166-400-0025, 166-400-0030, 166-400-0035, 166-400-0040, 166-400-0045, 166-400-0050, 166-400-0055, 166-400-0060, 166-400-0065

Subject: This is a housekeeping change to ensure that OAR 166-150 and 166-400 do not contain rule text already stated in OAR 166-017. This change only applies to Counties and special districts (OAR 166-150), and schools, school districts, and educational service districts (OAR 166-400). It removes a note stating: ‘NOTE: Inclusion of a records series in this schedule does not require the series be created. If a record is created electronically, it can be retained in electronic format only as long as the retention period is 99 years or less.’

When OAR 166-150 and 166-400 were last updated, OAR 166-017 did not yet contain language to properly guide agencies in the management of electronic records. Updated in May 2016, OAR 166-017 now contains appropriate guidance for the management of electronic records, therefore restating such language in OAR 166-150 and 166-400 is not in alignment with rules for rulemaking (OAR 137-001-0070) and the duplicate information should be removed. OAR 166-017 is the definitive rule for guidance in the management of electronic records.

Rules Coordinator: Julie Yamaka—(503) 378-5199

166-150-0005

Administrative Records

(1) Activity and Room Scheduling Records: Records documenting scheduling and reservations related to public participation and use of various agency activities, events, classes and facilities. Includes schedules, logs, lists, requests, and similar records. (Minimum retention: 1 year)

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(2) Activity Reports, General: Daily, weekly, monthly, or similar reports documenting the activities of employees. Useful for compiling annual reports, planning and budgeting, monitoring work progress and other purposes. Usually tracks type of activity, employees and/or volunteers involved, time spent on activity, work completed, and related information in narrative or statistical form. (Minimum retention: 2 years)

(3) Advertising and Promotion Records (Non-State Fair): Series is used to prepare and produce promotional materials, and to document promotions, advertising campaigns, marketing initiatives and public relations efforts. Records may include event programs and schedules, passes, newsletters, news clippings, paste-ups, drawings, copies of ads, photographs, slides, videotapes, sound recordings, story scripts, posters, brochures, flyers, and correspondence. (Minimum retention: 2 years)

(4) Annual Reports: Reports documenting the program or primary functional activities and accomplishments of the office for the previous year. These are often compiled from monthly, quarterly, or other subsidiary activity reports. Usually includes statistics, narratives, graphs, diagrams, and similar information. (Minimum retention: Permanent)

(5) Audit Records, Internal: Records document the examination of the agency's fiscal condition, internal control, and compliance policies and procedures. Records may also document performance or other financially related audits by agency or contracted auditors. Records may include audit reports, supporting documentation, comments, and correspondence. (Minimum retention: 10 years)

(6) Calendars and Scheduling Records: Records document planning, scheduling, and similar actions related to meetings, appointments, trips, visits and other activities. Includes calendars, appointment books, notes, telephone messages, diaries, and similar records, regardless of format. Depending on content, some telephone messages and similar records may merit inclusion in related program or project files. This applies to records that contain significant information that is not summarized or otherwise included in reports or similar documents. *Calendar and Scheduling information recorded in a personal day planner or personal electronic device may be a public record under ORS Chapter 192.* (Minimum retention: 1 year)

(7) Citizen Awards: Awards presented by the agency to honor volunteers for civic contributions. May include award nominations, award certificates, presentation or ceremony records and photographs, lists of past recipients, and related records. Some records in this series may have historic value. For appraisal assistance contact the Oregon State Archives. (Minimum retention: 6 years)

(8) Communication Logs: Logs document communications made or received through a variety of electronic devices, including but not limited to telephone, smart phone, facsimile (fax), radio, computer-aided dispatch, pager, and teletype, AND are not otherwise specified in this general records retention schedule (OAR 166 Division 150). Logged information may include time, date and disposition of communication, name of caller, number called or received, and action taken. SEE ALSO Correspondence in this section. (Minimum retention: 1 year)

(9) Contracts, Leases, and Agreements*: Documents the duly executed and binding contractual agreements between the agency and other parties. May include contracts, exhibits, bid documents, change orders, proposals, and significant related correspondence. Types of contracts include purchase of equipment and supplies, interagency, personal service, capital construction (documenting building construction, alterations, or repair), grant funding, and others. Information in contracts usually includes contract number, certificate of required insurance, dates, terms, parties involved, period covered, and signatures. (Minimum retention: (a) Construction contract records: 10 years after substantial completion, as defined by ORS 12.135(3) (b) Collective bargaining contract records: Permanent (c) Other contracts, leases and agreements: 6 years after expiration) *Caution: Agencies who enter into contracts with the federal government must ensure that their contracts and agreements meet federal requirements specified in the Code of Federal Regulations.*

(10) Correspondence: Records that: 1. document communications created or received by an agency AND 2. directly relate to an agency program or agency administration AND 3. are not otherwise specified in the County and Special District General Records Retention Schedule (OAR 166-150) or in ORS 192.170. Records may include but are not limited to letters, memoranda, notes and electronic messages that communicate formal approvals, directions for action, and information about contracts, purchases, grants, personnel and particular projects or programs. (Disposition: File with the associated program or administrative records. Retentions for county and special district records are found in the County and Special District General Records Retention Schedule. Communications not meet-

ing the above criteria do not need to be filed and may be retained as needed.)

(11) Fax Reports: Records document facsimile transactions of the agency. Reports may also be used for billing purposes. Information includes date and time fax transmitted or received and recipient/sender's fax number. (Minimum retention: (a) Retain if used for billing: 3 years (b) Retain all other reports: 1 year)

(12) Intergovernmental Agreements*: Agreements entered in-to by the agency with the state, school districts, service districts, cities, or other governmental units. Often refers to consolidating departments, jointly providing administrative officers, and sharing facilities or equipment. Major agreements usually set funding responsibilities, fee apportionment, duration of agreement, rights to terminate agreement, and transfers of property, personnel, and employment benefits. Also includes intergovernmental agreements for common services, equipment, maintenance, etc. (Minimum retention: (a) Significant and historic agreements: Permanent (b) Other agreements: 6 years after expiration)

(13) Key and Keycard Records*: Records document the issuance of keys and keycards to staff to enable access to buildings and sites. Records may include but are not limited to key inventories, key issue forms, key replacement records, and key disposal records. Minimum retention: (a) Retain access and entry logs 3 years (b) Retain other records 2 years after key is turned in)

(14) Legislative Tracking Records: Series used to monitor legislation that may have an impact on an agency's current operations or policies. Records include concept statements, proposals, bill logs, fiscal/organizational impact analysis papers, copies of bills, testimony summaries, committee reports, agendas, and correspondence. (Minimum retention: 2 years)

(15) Lobbyist Records: Records document lobbyist and lobbyist employer activities and are used to report to these activities to the Oregon Government Ethics Commission. Records may include but are not limited to expenditure reports, registration statements, termination records, guidelines, and correspondence. (Minimum retention: (a) Retain expenditure reports 4 years (b) Retain all other records 5 years after last activity)

(16) Mailing Lists: Lists compiled to facilitate billing, community outreach, and other functions of the agency. Information usually includes name of individual or group, address, name and title of contact person, phone number, comments, and similar data. (Minimum retention: Until superseded or obsolete)

(17) Meeting Records, Governing Body*: Records documenting the proceedings of any regularly scheduled, special, executive session, or emergency meeting of any governing body, as described in Oregon's Public Meetings Law (ORS 192.610 to 192.710), that is under agency jurisdiction. These typically consist of boards, commissions, advisory councils, task forces, and similar groups. Records may include minutes, agendas, exhibits, resolutions, staff reports, indexes, meeting packets, tape recordings, and related documentation and correspondence. SEE ALSO Meeting Records, Staff and Meeting Records, in this section and Board, Commission, and Committee in the County Court and Commissioners Records section. (Minimum retention: (a) Minutes, agendas, resolutions, indexes, and exhibits (not retained permanently elsewhere in county records): Permanent (b) Retain executive session minutes: 10 years (c) Audio or visual recordings: 1 year after minutes prepared and approved (d) Other records and exhibits not pertinent to minutes: 5 years)

(18) Meeting Records, Staff: Records documenting meetings within government which are not subject to Oregon's Public Meetings Law (ORS 192.610 to 192.710). These routine staff meetings deal with tasks and actions within existing policies and procedures. Records may include minutes, notes, reports, and related items. Some records may merit inclusion in other record series with longer retention periods if the subject matter of the meeting adds significant information to that series. (Minimum retention: 2 years)

(19) Mitigation Program Records*: Records document the establishment and maintenance of the agency mitigation programs, plans, and procedures. Records may include mitigation plans and strategies, policies, procedures, seismic surveys and structural upgrade records of agency facilities, project reports, hazard mitigation grant records, and related documentation, which may include capital improvement records. SEE ALSO the Emergency Management section. (Minimum retention: (a) Adopted plans: Permanent (b) Other records: for the life of the structure)

(20) News/Press Releases: Prepared statements, announcements, news conference transcripts, and similar records issued to the news media. Subjects include the adoption of new programs, termination of old programs, policy shifts, changes in the status of elected officials or senior administrative personnel, and others. Also may include news releases

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announcing routine events or actions carried out within the scope of existing policies. (Minimum retention: (a) Policy and historic news/press releases: Permanent (b) Routine news/press releases: 2 years)

(21) Notary Public Log Books: Records documenting notarial transactions completed by a notary public and employed by a government agency. Agencies may retain logbooks by agreement with the notary after their separation from employment. *Agencies retaining notary public log books without notary agreements should consult their legal counsel and/or the Secretary of State, Corporation Division for retention instruction.* (Minimum retention: 7 years after date of commission expiration)

(22) Organizational Records: Records documenting the arrangement and administrative structure of an agency. Includes charts, statements, studies, and similar records. May also include studies to determine the merit and feasibility of reorganization plans, as well as other major studies related to the administrative hierarchy. (Minimum retention: 2 years after superseded)

(23) Passport Transmittal Records: Records document the processing of passport applications. May include but is not limited to calendars, copies of transmittals sent to the United States Passport Office. Information includes daily and weekly totals of passports processed, applicants' names, amount paid, and departure date. (Minimum retention: 1 year)

(24) Permit and License Records, Agency-Issued*: Records documenting agency review, background investigations, recommendations and other actions related to permits and licenses issued for various activities not specified elsewhere in this general schedule. Permits may include but are not limited to those for taxi cab drivers, dances, parades, rocket launching, second hand dealers, alarm system dealers, liquor licenses, keeping livestock, and solicitors. Usually includes applications, background investigation reports, permits, licenses, and related records. (If a specific permitting function is included in another records series under a program or functional area such as public works or law enforcement in this general schedule, the retention period specified in that program or functional area supersedes the retention period listed in this series.) (Minimum retention: (a) Retain fee permits of license records: 3 years after expiration, revocation, or denial (b) Retain free permits or license records: 2 years after expiration, revocation, or denial)

(25) Planning Records: Series documents long-range plans and the development of an agency's mission statement and work objectives. Records include strategic plans, mission statements, preliminary drafts, work notes, and related correspondence. (Minimum retention: (a) Mission Statements and plans: 20 years (b) Other records: 5 years)

(26) Policy and Procedure Guidelines and Manuals*: Written instructions, rules, and guidelines in manual form documenting current and past authorized agency policies and procedures. Used for new employee orientation and for ongoing reference. Also useful in establishing past policies or procedures in liability cases, personnel disputes, and other instances. Includes manuals documenting the procedures of departments with higher risk or exposure to liability such as police, fire, emergency medical services, public works, etc. This series also includes routine documentation and basic clerical instructional procedures covering such subjects as formatting letters, data entry, telephone etiquette, and others. Information often includes policy and procedure numbers, revision dates, subject identification, narrative description, authorization information, and effective date. The minimum retention periods refer only to agency-generated manuals. Manuals from other sources should be retained as needed or as mandated by a specific regulating body (federal or state agency, etc.), usually until superseded or obsolete. SEE ALSO Technical Manuals, Specifications, and Warranties in the Public Works-Operations and Maintenance section for published technical manuals and related materials. (Minimum retention: (a) Routine clerical manuals: 2 years after superseded or obsolete (b) Manuals relating to specific construction and/or engineering projects: 10 years after substantial completion, as defined by ORS 12.135(3) (c) One copy of all other manuals: Permanent)

(27) Policy Statements and Directives*: Series documents review, assessment, development, and authorization of an agency's formal policies and procedures that have been approved by a governing body. Records may include authorizing bulletins and advisories, mission and goal statements, manuals, and final policy statements and directives. Information often includes policy and procedure numbers, revision dates, subject identification, narrative description, authorization information, and effective date. SEE ALSO Policy and Procedure Guidelines and Manuals in this section. (Minimum retention: 20 years after superseded or obsolete)

(28) Polygraph Examiners Licensing Records: Documents statutory requirement that each polygraph examiner shall register with the County

Clerk and that the Clerk shall maintain a list of examiners. Includes name of examiner and business address. (Minimum retention: 60 years)

(29) Postal Records: Records documenting transactions with the U.S. Postal Service and private carriers. Includes postage meter records, receipts for registered and certified mail, insured mail, special delivery receipts and forms, loss reports, and related items. (Minimum retention: 3 years)

(30) Professional Membership Records: Records documenting institutional or agency-paid individual memberships and activities in professional organizations. (Minimum retention: 3 years)

(31) Program Accreditation Records: Records document the evaluation, certification, and accreditation of an agency program by a nationally or regionally recognized accrediting organization AND are not otherwise specified in this general records retention schedule (OAR 166 division 150). Records may include but are not limited to self-evaluation reports; reports sent to accrediting organization; statistical data; evaluation reports; final accreditation reports and certifications; and related documentation and correspondence. Some records in this series may have historic value. SEE ALSO Professional Membership Records in this section. (Minimum retention: Retain current and one previous accreditation cycle, destroy)

(32) Public Notice Records*: Records documenting compliance with laws requiring public notice of government activities. Subjects include assessments, elections, land use changes, public meetings and hearings, sale of property, and others. Records include public or legal notices, certificates, affidavits of publication, and similar documents. SEE ALSO Competitive Bid Records in the Financial section for public notices related to bid openings and awards. (Minimum retention: 3 years)

(33) Publications: Published records produced by or for the agency or any of its departments or programs and made available to the public. Includes newsletters, pamphlets, brochures, leaflets, reports, studies, proposals, and similar published records. Does not include publications received from federal, state, private, or other sources — these publications and extra copies of agency-produced publications should be retained as needed. (Minimum retention: (a) Policy and historic publications: Permanent (b) All others: Until superseded or obsolete)

(34) Reports and Studies: Records document special reports or studies conducted on non-fiscal aspects of an agency's programs, services, or projects, compiled by agency personnel, or by consultants under contract that are not noted elsewhere in this schedule. Includes final report distributed either internally or to other entities and the work papers used to compile the report or study. (Minimum retention: 5 years)

(35) Requests and Complaints: Records documenting complaints or requests concerning a variety of agency responsibilities not specified elsewhere in this general schedule. Information often includes name, phone number, and address of person making request or complaint, narration of request or complaint, name of person responding to request or complaint, dates of related activities, and other data. (If a specific request or complaint is listed in another records series under a functional area such as law enforcement in this general schedule, the retention period specified in that functional area supersedes the retention period listed in this series.) (Minimum retention: 2 years after last action)

(36) Resolutions*: Formal statements of decisions or expressions of opinions adopted by the agency. Information includes date, number, and text. SEE ALSO Meeting Records, Governing Body in the County Court and County Commissioners Records section. (Minimum retention: Permanent)

(37) Routing and Job Control Records: Records used to control the routine flow of documents and other items and actions in and between offices in the agency. Includes routing slips, job control records, status cards, receipts for records charged-out, batch slips, and similar records. (Minimum retention: 1 year)

(38) Security Records*: Series documents security provided for agency buildings and grounds. Records include surveillance records, security logs, sign-in sheets, security reports, incident reports, and related records. SEE ALSO Fire and Security Alarm System Records in the Fire and Emergency Medical Services section; Computer System Security Records in the Information and Records Management section; or Alarm Records and Surveillance Tapes in the Law Enforcement section. (Minimum retention: 2 years)

(39) Seminar and Conference Records, Agency-Sponsored: Records documenting the design and implementation of agency sponsored seminars, conferences, workshops, conventions, and similar gatherings. Often includes class descriptions, instructional materials, course outlines, enrollment and attendance records, reports, speeches, planning documentation, and related records. For records documenting registration billings and related fiscal actions, see the Financial Records section. (Minimum retention:

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(a) Significant program records: 5 years (b) Class enrollment and attendance records: 2 years (c) Other records: 1 year)

(40) Seminar and Conference Records, Non-Agency Sponsored: Records documenting activities of seminars, conferences, workshops, conventions, and similar gatherings not sponsored by the agency but attended by agency officials or personnel. May include staff reports, instructional materials, recommendations, related correspondence and memoranda, and similar records. (Minimum retention: 2 years)

(41) Special District Charters*: Constitution, bylaws, and all amendments to agency charters approved by voters or the State Legislature. Generally includes original charter, amendments, and related significant records. (Minimum retention: Permanent)

(42) Special District Codes*: Codified ordinances passed by a special district. Provides reference to all laws for both information and enforcement. Information may include ordinance numbers, amending ordinance numbers, code numbers, and text. (Minimum retention: Permanent)

(43) Special District Ordinances*: Legislative action of a special district to regulate, require, prohibit, govern, control, or supervise any activity, business, conduct, or condition authorized by Oregon Revised Statutes. Ordinances typically include a title, preamble, ordaining clause, subject clause, penalty for violation (when applicable), effective date, authorizing signature and seal. May also include indexes calendars, and documentation presented to support action. (Minimum retention: Permanent)

(44) Special Event and Celebration Records: Records documenting agency-sponsored celebrations of special and historic occasions such as centennials, pioneer days, and similar events. Provides a record of planning and promotional efforts, public attendance and response, major speeches and dedications, and other significant aspects of the celebration. These significant records may include studies, publications, photographs, attendance summaries, final reports, and other significant documents. This series also includes routine documentation related to implementing the promotion and organization of the event. These often include lists, rosters, correspondence, memoranda, volunteer information, and related records. Records may also include scrapbooks, but does not include news clippings. News clippings are not public records and may be discarded. (Minimum retention: (a) Records documenting significant aspects of the event: Permanent (b) Other records: 2 years after event)

(45) Surveys, Polls, and Questionnaires: Records documenting the measurement of public opinion by or for the agency related to various issues, actions, and concerns. May include surveys, polls, questionnaires, summaries, abstracts and significant related records. Examples of summaries include studies which incorporate the significant results of public opinion surveys, abstracts of questionnaires designed to determine the skills and interests of citizens volunteering for agency service, and other records which distill survey data into summary form. (Minimum retention: (a) Summary reports and abstracts: 3 years (b) Other records: Until summary report is completed or 3 years, whichever is sooner)

(46) Visitor Logs: Records document visitors to county buildings. Records name include visitors' names, visitor badges issued, and entrance and exit times. (Minimum retention: 1 year)

(47) Work Orders: Records documenting requests and authorizations, according to existing contracts or agreements, for needed services and repairs to agency property and equipment. May include copy center work orders, printing orders, telephone service and installation requests, repair authorizations, and similar records. (Minimum retention: (a) Retain work completed by county personnel: 1 year (b) Retain work completed by outside vendors: 3 years)

(48) Work Schedules and Assignments: Records documenting the scheduling and assigning of shifts, tasks, projects, or other work to agency employees. Useful for budget and personnel planning and review, assessing employee work performance, and other purposes. May include calendars, schedules, lists, charts, rosters, and related records. (Minimum retention: 5 years)

(49) Year 2000 (Y2K) Planning Records: Records document the planning and development of agency Y2K contingency plans. Records may include but are not limited to meeting minutes, correspondence, draft plans, work notes, plan test results, and final plan. Information includes type of systems vulnerable to Y2K, level of priority, and party responsible for system solution or troubleshooting. (Minimum retention: Destroy)

Stat. Auth.: ORS 192 & 357

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

Hist.: OSA 4-2004, f. & cert. ef. 9-1-04; OSA 2-2005, f. & cert. ef. 5-10-05; OSA 3-2012, f. & cert. ef. 10-29-12; OSA 1-2014, f. & cert. ef. 2-25-14; OSA 1-2017, f. & cert. ef. 1-13-17

166-150-0110

Financial Records

(1) Accounts Payable Records: Records documenting payment of agency bills for general accounts excluding grants. Includes reports, invoices, statements, vouchers, purchase orders, payment authorizations, receipt records, canceled checks or warrants, and similar records. SEE ALSO Grant Records in this section for records documenting expenditure of grant funds. (Minimum retention: 3 years)

(2) Accounts Receivable Records: Records documenting revenues owed to the agency by vendors, citizens, organizations, governments, and others to be credited to general accounts excluding grants. Also documents billing and collection of moneys. May include reports, receipts, invoices, awards, logs, lists, summaries, statements, and similar records. Information often includes, receipt amount, date, invoice number, name, account number, account balance, adjustments, and similar data. SEE ALSO Grant Records in this section for records documenting receipt of grant funds. (Minimum retention: 3 years after collected or deemed uncollectible)

(3) Audit Reports, External: Records documenting annual audits of the financial position of the agency conducted by external auditors in accordance with statutory requirements described in ORS 297.405 through 297.555. Subjects include accounting principles and methods, the accuracy and legality of transactions, accounts, etc., and compliance with requirements, orders, and regulations of other public bodies pertaining to the financial condition or operation of the agency. Information includes accountant's summary, combined financial statements, schedules, balance sheet details, comments, recommendations, and related data. SEE ALSO Internal Audit Records in the Administrative section. (Minimum retention: Permanent)

(4) Balance Status and Projection Reports: Reports created for internal use documenting the status of funds, bank accounts, investments, and other accountings of agency funds. Includes budget allotment and fund reconciliation reports. Also includes projection records related to future receipts and disbursements. Reports are generated on a daily, weekly, monthly, quarterly or similar basis. Information includes date, account balances, type and summary of activity, and related data. (Minimum retention: 3 years)

(5) Bond Records (Employee): Records documenting the posting of fidelity, performance, or position bonds to guarantee the honest and faithful performance of elected officials, individual employees, or groups of employees. Details of bonds vary, however information usually includes name and position(s) of individual or group, amount of coverage, effective and expired dates, and related data. (Minimum retention: 6 years after expiration)

(6) Budget (Adopted) Records: Documenting the final annual financial plan approved by a governing body for all agency expenditures. Information may include budget message, financial summaries, revenues and expenditures, operating programs, debt service, position and wage analysis, overhead allocations, organization charts, previous actual and budgeted amounts, and related data. Duplicate copies should be retained as needed. (Minimum retention: (a) County budgets filed with the County Clerk: Permanent (b) Special district and other budgets: 2 years)

(7) Budget Preparation Records: Records documenting the preparation of department budget requests presented to the specified governing body. May include staff reports, budget instructions, worksheets, surveys, allotment reports, spending plans, contingency plans, budget proposals, financial forecasting reports, and similar records. (Minimum retention: 2 years)

(8) Check Conversion Records: Records document checks received from customers that are electronically deposited after being imaged and converted to an Automated Clearing House (ACH) transaction or Image Replacement Document (IRD) (Minimum Retention: (a) Retain original paper instrument 30 days, destroy (b) Retain ACH transaction or IRD 6 years, destroy)

(9) Competitive Bid Records: Records document the publication, evaluation, rejection and award of quoted bids to vendors and other entities. Records may include but are not limited to requests for proposals (RFPs), requests for qualifications (RFQs), invitations to bid (ITBs), requests for information (RFIs), bid exemption documents, bid and quote lists, notices of bid opening and award, comparison summaries, spreadsheets, tabulation worksheets, bid advertising records, tally sheets, bid specifications, correspondence, and related records. SEE ALSO Purchasing Records in this section. (Minimum retention: (a) Retain accepted bids 10 years after substantial completion (as defined by ORS 12.135(3)) (b) Retain other accepted bids: 6 years after bid awarded or canceled (c) Retain rejected bids and bid exemptions: 2 years after bid awarded or canceled)

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(10) Credit and Debit Receipts: Agency's copy of credit or debit card receipts documenting payment received by an agency. Records include customer's name and account information. (Minimum Retention: Retain 36 months after transaction, destroy)

(11) Credit Slips: Slips issued to citizens who have withdrawn from agency-sponsored classes or activities and are due credit for all or part of fees paid. Information usually includes name of class or activity, date, expiration date, name and address of citizen, and related data. (Minimum retention: 3 years after credit expired or redeemed)

(12) Financial Impact Analysis Records: Records documenting the financial analysis of various agency practices. Useful for planning future budget proposals. Records include reports, studies, worksheets, and similar records. Subjects may include the impact of specific ballot measures, proposals to increase permit fees, sick leave use analysis, and the agency's relationship with various utilities. (Minimum retention: 3 years)

(13) Financial Reports: Reports documenting the general financial condition and operation of the agency. Includes information on the value of all agency owned property and an accounting of all income and expenditures in relation to the final budget. Records may include monthly, quarterly, annual and similar reports. (Minimum retention: (a) Annual reports: Permanent (b) Other reports: 3 years)

(14) General Ledgers: Records documenting the summary of accounts reflecting the financial position of the agency. Information often includes debit, credit, and balance amounts per account, budget, fund, and department numbers, and totals for notes receivable, interest income, amounts due from other funds, federal grants received, bank loans received, cash in escrow, deferred loans received, cash, encumbrances, revenue, accounts receivable, and accounts payable, as well as other data. (Minimum retention: (a) Year end ledgers: 10 years (b) Other general ledgers: 3 years)

(15) Gift and Contribution Records: Records documenting gifts and contributions given to the agency by sources outside of government. Records may include memorial donation records related to money to be used by the agency in the name of an individual. Often contains donor and acknowledgement letters, acquisition lists itemizing purchases with contributed money (books, art, equipment, etc.) checks, receipts, and related records. (Minimum retention: (a) For retention of conditional gift, contribution and donation records: see Contracts and Agreements in the Administrative Records section (b) Retain other records: 3 years)

(16) Grant Records: Records document the application, evaluation, awarding, administration, monitoring, and status of grants in which the agency is the recipient, grantor, allocator, or administrator. Grants may come from federal or state governments or foundations or other funding sources. Records may include but are not limited to applications including project proposals, summaries, objectives, activities, budgets, exhibits, and award notification; grant evaluation records and recommendations concerning grant applications; grant administration records including progress reports, budgets, project objectives, proposals, and summaries; records documenting allocation of funds; contracts; records monitoring project plans and measuring achievement; equipment inventories; financial reports, accounting records, audit reports, expenditure reports, and related correspondence and documentation. (Minimum retention: (a) Retain final reports from significant (as defined by county or special district policy) grants to the county or special district: Permanent (b) Retain records documenting the purchase and/or disposal of real property: 10 years after substantial completion (as defined by ORS 12.135(3)), or 3 years after final disposition, or as specified in agreement, whichever is longer (c) Retain other grant records: 3 years after annual or final expenditure report submitted and approved or, as specified in agreement, whichever is longer (d) Retain unsuccessful grant applications: 1 year after rejection or withdrawal)

(17) Improvement Records, Administrative and Financial: Records documenting the non-technical and financial administration of assessable and non-assessable county improvements including capital improvements, local improvement districts (LID), urban renewal, and economic improvement districts. Records often include affidavits of posting, notices or proposed assessment, certificates of mailing, interested party letters, bid quotes, reports, and awards, expense reports, purchase orders, requisitions, cost analyses, construction and maintenance bonds and insurance, and related administrative and financial records not located elsewhere in this schedule. SEE ALSO Assessment Dockets, Ledgers, and Registers; Bond Authorization Records; and other record series in the Financial section for records documenting legislative actions such as resolutions of intent to assess and ordinances for improvements. (Minimum retention: (a) Retain records of project cost: 3 years after disposal or replacement of facility,

structure, or system (b) Retain all other improvements 10 years after substantial completion (as defined by ORS 12.135(3))

(18) Inventory Records: Inventory records documenting the capitalized assets and expendable property of the agency. Examples of capitalized assets may include but are not limited to buildings, real estate, infrastructure assets, vehicles, equipment, and furniture. Examples of expendable assets include office supplies and other small, office purchases. Information often contains asset number, description, purchase order number, location of asset, date received, purchase price, replacement cost, depreciation, and related data. This record series applies to routine control inventories. SEE ALSO Grant Records for inventories of property purchased with grant funds. For inventories documenting other special uses, see Historic Structure Inventory Records in the Planning and Development section; Bridge Inspection Records in the Public Works-Engineering section; and Property and Evidence Control and Disposition Records in the Law Enforcement section. (Minimum retention: (a) Retain records of capitalized assets: 3 years after disposal or replacement of asset (b) Retain records of expendable property: 3 years or until superseded, whichever is longer)

(19) Petty Cash Fund Records: Records document petty cash activity for the agency. Records include requests and authorizations to establish petty cash funds, ledgers, statements, requests for disbursements, copies of receipts and invoices. (Minimum retention: 3 years)

(20) Purchasing Records: Records documenting orders, authorizations, and evidence of receipt of the purchase of goods and services by the agency. Includes purchase orders and requests, purchase authorizations, requisitions, contract release orders, material and cost specifications, central stores or printing orders, telephone service orders, and similar records. SEE ALSO Competitive Bid Records in this section; and Grant Records in this section for records documenting expenditure of grant funds and Improvement Administrative and Financial Records in this section for related purchasing records. (Minimum retention: 3 years)

(21) Signature Authorization Records: Records documenting the authorization of designated employees to sign fiscal and contractual documents. Useful as an aid for management control over expenditures. Information usually includes authorization date, name, sample signature, position, remarks, conditions, and related data. (Minimum retention: 6 years after authorization superseded or expired)

(22) Subsidiary Ledgers, Journals, and Registers: Records documenting details of transactions such as those related to receipts and expenditures on a daily, monthly, quarterly or similar basis. Includes journals, ledgers, registers, day books, and other account books that provide backup documentation to the general ledger. May include details of revenues, expenditures, encumbrances, cash receipts, warrants, and others. (Information often includes date, payee, purpose, fund credited or debited, check number, and similar or related data. SEE ALSO Grant Records in this section for records documenting transaction of grant funds. (Minimum retention: (a) Year end payroll register: 75 years (b) Trust fund ledgers: 3 years after trust fund closed (c) Other subsidiary ledgers, journals, and registers: 3 years)

(23) Travel Records, Employee: Records documenting requests, authorizations, reimbursements, and other actions related to employee travel. Includes expense reports and receipts, vouchers, requests, authorizations, and related documents. Retention applies to private vehicle usage as well. Information often includes estimated costs, prepayments, final costs, destination, method of transportation, travel dates, approval signatures, and related data. (Minimum retention: 3 years)

(24) Unclaimed Property Report Records: Records document annual reports submitted to the Department of State Lands of financial assets being held for a person or entity that cannot be found. Series includes Holder Report, owner information, correspondence and other related documents. Note: Unclaimed property is not real estate, abandoned personal property, or lost and found items. (Minimum Retention: 3 years after the property is remitted to the Department of State Lands)

(25) Vendor Lists: Lists documenting vendors providing goods and services to the agency. Information usually includes vendor name of person or company, address, and phone number, name of contact person, as well as a description of goods or services provided. (Minimum retention: Until superseded or obsolete)

Stat. Auth.: ORS 192 & 357

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

Hist.: OSA 4-2004, f. & cert. ef. 9-1-04; OSA 2-2005, f. & cert. ef. 5-10-05; OSA 1-2010, f. 7 cert. ef. 5-27-10; OSA 3-2012, f. & cert. ef. 10-29-12; OSA 1-2017, f. & cert. ef. 1-13-17

166-400-0010

Administrative Records

(1) **Activity and Room Scheduling Records** document scheduling and reservations related to public participation and use of various agency

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activities, events, classes and facilities. Includes schedules, logs, lists, requests, and similar records. Minimum retention: 1 year.

(2) **Activity Reports, General** Daily, weekly, monthly, or similar reports documenting the activities of employees. Useful for compiling annual reports, planning and budgeting, monitoring work progress and other purposes. Usually tracks type of activity, employees and/or volunteers involved, time spent on activity, work completed, and related information in narrative or statistical form. Minimum retention: 2 years.

(3) **Annual Reports** document the program or primary functional activities and accomplishments of the office for the previous year. These are often compiled from monthly, quarterly, or other subsidiary activity reports. Usually includes statistics, narratives, graphs, diagrams, and similar information. Minimum retention: Permanent.

(4) **Association and Organization Membership Records** document the membership and participation of the school, district, or ESD in professional and educational associations and organizations. Records may include but are not limited to meeting announcements and agendas; promotional information; meeting, workshop, and conference records; rules and regulations; reports; proposals and planning records; surveys and questionnaires; meeting minutes; and related documentation and correspondence. This series does not include individual faculty or staff membership records unless such membership is paid for by the school, district, or ESD. Minimum retention: 3 years after school year in which records were created.

(5) **Audit Records, Internal** Records document the examination of the agency's fiscal condition, internal control, and compliance policies and procedures. Records may also document performance or other financially related audits by agency or contracted auditors. Records may include audit reports, supporting documentation, comments, and correspondence. Minimum retention: 10 years.

(6) **Bond Election Records** document the process whereby bond measures to finance school construction and improvements are approved by the voters. Records may include but are not limited to certified copies of election results; county election filing forms; precinct and district maps; election tax levy history; type of election; proposals; assessor's certification; statistical reports to the Oregon Department of Education; and related correspondence and documentation. SEE ALSO Bond Records in the Financial Records section. Minimum retention: 5 years after school year in which bond matures.

(7) **Calendars and Scheduling Records** document planning, scheduling and similar actions related to meetings, appointments, trips, visits and other agency activities. Includes calendars, appointment books, notes, telephone messages, diaries, and similar records, regardless of format. Depending on content, some telephone messages and similar records may merit inclusion in related program or project files. This applies to records that contain significant information that is not summarized or otherwise included in reports or similar documents. *Calendar and Scheduling information recorded in a personal day planner or personal electronic device may be a public record under ORS Chapter 192.* Minimum retention: 1 year.

(8) **Child Care Facility License Records** document the annual licensing of school child care facilities by the Employment Department, Child Care Division. Records may include but are not limited to sanitation inspection reports; fire safety reports; fire and other emergency drill records; staff development and training records; staff criminal history checks; staff qualification forms; time sheets, staff first aid cards; staff driving records; staff orientation records; official license; Child Care Division inspection reports and certification; and related correspondence and documentation. Minimum retention: (a) If license expired or renewed: 1 year after expiration or renewal (b) If license revoked: 3 years after revoked.

(9) **Committee and Board Meeting Records** document the activities, decisions, and proceedings of regularly scheduled, special, executive session, or emergency meetings of governing bodies and committees of the school, district, or ESD. Governing bodies may include boards, advisory councils, commissions, site councils, committees, advisory groups, and task forces. Records may include but are not limited to meeting minutes, agendas and agenda packets, exhibits, resolutions, staff reports, sound recordings, membership lists, meeting books, significant correspondence and memorandum, and other supporting documentation. SEE ALSO Budget Records in the Financial Records section. Minimum retention: (a) School board meeting minutes and agendas: Permanent (b) Exhibits, other minutes, and supporting records: 5 years after school year in which records were created (c) Sound recordings, if transcribed or abstracted: 1 year after minutes approved.

(10) **Committee and Board Member Records** document the election or appointment of school, district, or ESD board, budget committee, and other committee members. Records may include but are not limited to date of election and installation, length of term, zone or district represented, and related biographical information about each board or committee member. Minimum retention: 5 years after term expires.

(11) **Conference and Workshop Records** document conferences, seminars, workshops, and training activities attended or sponsored by school, district, or ESD personnel. Records may include but are not limited to agendas, reports, speeches, program records, conference or seminar descriptions and schedules, participant lists, fee records, planning records, evaluations, registration material, handouts, and related correspondence and documentation. Records may also include documentation of attendance for certification, continuing education, or in-service training requirements. Minimum retention: (a) Significant program records - school, district, or ESD sponsored: 5 years after school year in which records were created (b) Other records: 2 years after school year in which records were created.

(12) **Contracts and Agreements** Records document the negotiation, execution, completion, and termination of legal agreements between the school, district, or ESD and other parties, including the Oregon Department of Education. Records include the official contract or agreement, amendments, exhibits, addenda, legal records, contract review records, and related correspondence and documentation. Records do not include leases or property records. Minimum retention: (a) Contracts or agreements documenting building construction, alterations, or repair: 10 years after substantial completion as defined by ORS 12.135(3). (b) Other contracts and agreements: 6 years after expiration.

(13) **Correspondence:** Records that: 1. document communications created or received by an agency AND 2. directly relate to an agency program or agency administration AND 3. are not otherwise specified in the Educational Service Districts, School Districts and Schools General Records Retention Schedule (OAR 166-400) or in educational service districts, school districts and schools special schedules or in ORS 192.170. Records may include but are not limited to letters, memoranda, notes and electronic messages that communicate formal approvals, directions for action, and information about contracts, purchases, grants, personnel and particular projects or programs. **Disposition:** File with the associated program or administrative records. Retentions for program records are found in state agency special schedules; retentions for administrative records are typically found in the State Agency General Records Retention Schedule. Communications not meeting the above criteria do not need to be filed and may be retained as needed.

(14) **Eighth Grade Examination Records** document the examinations given to eighth grade students. Records may include but are not limited to examinations; examinations registers; diploma lists; and related documentation. These records are no longer being created. Minimum retention: Permanent.

(15) **Fax Reports** Records document facsimile transactions of the agency. Reports may also be used for billing purposes. Information includes date and time fax transmitted or received and recipient/sender's fax number. Minimum retention: (a) Retain if used for billing: 3 years (b) Retain all other reports: 1 year.

(16) **Food/Nutrition Service Program Records** document the operation of school food/nutrition service programs. Records may include but are not limited to operations reports; child nutrition program reviews; food service financial records; food supply inventory records; free and reduced price lunch applications and reimbursement claim records; meal production and menu records; meal ticket inventory records; sanitation inspection reports; summer food services records; and related documentation and correspondence. Minimum retention: 3 years (or as specified by 7 CFR 210.7-28 and 225.6-16).

(17) **Health Log Book Records** document the daily activities of and visits to the Health Room/School Nurses Office. Record may include but not limited to student's name, time of visit, reason for visit/ailment, action taken, parental notification, was student sent home or returned to class. Minimum retention: Retain 6 years after school year in which created, destroy.

(18) **Immunization Records, Administrative** Records document the review and report of the immunization status of students to the County health department and the exclusion of students who do not meet the minimum immunization requirements. Records may include but are not limited to the annual Primary Review Summary, school copies of Exclusion Orders for No Record, school copies of Exclusion Orders for Incomplete Information/Insufficient Information, and related documentation. SEE

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ALSO Student Immunization Records in the Student Education Records section. Minimum retention: 1 year.

(19) **Legal Case Records** document a school, district, or ESD's legal actions by in-house or outside counsel. Records may include but are not limited to litigation records, correspondence, staff opinions, research findings, and background notes relating to specific cases. Cases may include but are not limited to Tort Liability Claims, Civil Service Commission cases, unemployment and discrimination cases, bid protests and contract disputes, student/parent complaints, and employee complaints. Minimum retention: 10 years after final disposition of case.

(20) **Legal Opinion and Advice Records** document the legal opinions and advice given to schools, districts, or ESDs by a lawyer or the Attorney General. Records may include legal advice given to private schools. Records may include but are not limited to requests for opinions; opinions; letters of advice; and related correspondence. Minimum retention: (a) Retain copies of legislative bills, statutes: 6 years (b) Retain Administrative Rule Preparation Records: 10 years after appeal of rule (c) Retain all other records: Permanent.

(21) **Legislative Tracking Records** document the development and monitoring of legislation which may have an impact on the programs or policies of a school, district, or ESD. Records may include but are not limited to concept statements, proposals, bill logs, fiscal and organizational impact analysis papers, copies of bills, testimony summaries, committee reports, agendas, record of action, and related correspondence and documentation. Minimum retention: 2 years.

(22) **Lobbyist Records** document lobbyist and lobbyist employer activities, and are used to report these activities to the Oregon Government Ethics Commission. Records may include but are not limited to expenditure reports, registration statements, termination records, guidelines, and correspondence. Minimum retention: (a) Retain expenditure reports: 4 years (b) Retain all other records: 5 years after last activity.

(23) **Mitigation Program Records** document the establishment and maintenance of the agency mitigation programs, plans, and procedures. Records may include mitigation plans and strategies, policies, procedures, seismic surveys and structural upgrade records of agency facilities, project reports, hazard mitigation grant records, and related documentation, which may include capital improvement records. SEE ALSO the Emergency Management section. Minimum retention: (a) Retain adopted plans: Permanent (b) Retain all other records: For the life of the structure.

(24) **Notary Public Log Books** Records document notarial transactions completed by a notary public and employed by a government agency. *Agencies may retain logbooks by agreement with the notary after their separation from employment. Agencies retaining notary public log books without notary agreements should consult their legal counsel and/or the Secretary of State, Corporation Division for retention instruction.* Minimum retention: 7 years after date of commission expiration.

(25) **Oregon School Register Records** document student enrollment, attendance, and membership in elementary and secondary schools and forms the basis for student attendance reporting to the Oregon Department of Education. The register contains student's name and other personally identifiable information, attendance, indication of student non-residency or withdrawal, program membership, whether student was promoted or retained at end of school year, and related information. Minimum retention: Permanent.

(26) **Organization Records** document the lines of organizational hierarchy and administrative responsibility within a program, school, district, or ESD. Records may include but are not limited to drafts and final charts or diagrams, statements, studies, and related documentation. Minimum retention: 4 years after superseded or obsolete.

(27) **Parent-Teacher Organization Records** document the history, development, policies, and actions of parent-teacher organizations under the jurisdiction of the District. Records may include but are not limited to minutes; constitutions and by-laws; committee records; budget and accounting records; handbooks; officer and member rosters; scrapbooks; photographs; and related documentation and correspondence. Minimum retention: (a) Retain minutes, constitutions, by-laws, and committee records 10 years after school year in which records were created. (b) Retain all other records 3 years after school year in which records were created.

(28) **Policy and Planning Records** document the development, assessment, and review of school, district, or ESD policies, programs, and activities. Records may include but are not limited to board policy and district-wide administrative rules; authorizing bulletins and advisories; mission, policy, and goal statements; finalized policy statements and directives; by-laws; regulations; strategic plans; management plans; and related documentation. Minimum retention: (a) Retain annual board adopted policy and

district-wide administrative rules, official copy: Permanent (b) Retain planning documents: 10 years (c) Retain working papers and draft material: 1 year after school year in which final document produced.

(29) **Policy Statements and Directives** Series documents review, assessment, development, and authorization of an agency's formal policies and procedures that have been approved by a governing body. Records may include authorizing bulletins and advisories, mission and goal statements, manuals, and final policy statements and directives. Information often includes policy and procedure numbers, revision dates, subject identification, narrative description, authorization information, and effective date. SEE ALSO Policy and Procedure Guidelines and Manuals in this section. Minimum retention: 10 years after superseded or obsolete.

(30) **Procedure Manuals** Records document internal development and guidelines for consistency and continuity in the operation of a school, district, or ESD department or office. Records may include but are not limited to manuals documenting departmental and program procedures; basic secretarial/clerical instructional procedures; handbooks; desk manuals; emergency response plans; safety plans and procedures; and related documentation and correspondence. Minimum retention: (a) Retain routine clerical manuals: 2 years after superseded or obsolete (b) Retain manuals relating to specific construction and/or engineering projects: 10 years after substantial completion, as defined by ORS 12.135(3) (c) Retain one copy of all other manuals: Permanent.

(31) **Professional Membership Records** document institutional or agency-paid individual memberships and activities in professional organizations. Minimum retention: 3 years.

(32) **Public Notice Records** document compliance with laws requiring public notice of government activities. Subjects include assessments, elections, land use changes, public meetings and hearings, sale of property, and others. Records include public or legal notices, certificates, affidavits of publication, and similar documents. SEE ALSO Competitive Bid Records in the Financial section for public notices related to bid openings and awards. Minimum retention: 3 years.

(33) **Reports and Studies** Records document the school, district, or ESD's curriculum offerings, programs, services, problems, projects, student achievements, financial status, staffing, operations, and activities. Reports may be required to be submitted to the Oregon Department of Education or to other state, federal, or private agencies. Reports may be annual reports compiled from monthly, quarterly, or other subsidiary activity reports. Records may include but are not limited to narrative and statistical reports, studies, performance measures, annual reviews, surveys, plans, proposals, progress reports, evaluation reports, financial data and reports, staffing reports, student attendance accounting reports, accreditation studies, summaries, and other types of reports and documentation. Minimum retention: (a) Retain annual reports and studies with historical value or policy implications: Permanent (b) Retain other reports and studies: 5 years or as required by government or agency (c) Retain working papers and draft material: 1 year after school year in which final document produced.

(34) **Requests and Complaints** Records document complaints or requests concerning a variety of agency responsibilities not specified elsewhere in this general schedule. Information often includes name, phone number, and address of person making request or complaint, narration of request or complaint, name of person responding to request or complaint, dates of related activities, and other data. (If a specific request or complaint is listed in another records series under a functional area such as law enforcement in this general schedule, the retention period specified in that functional area supersedes the retention period listed in this series.) SEE ALSO Correspondence. Minimum retention: 2 years after last action.

(35) **Routing and Job Control Records** used to control the routine flow of documents and other items and actions in and between offices in the agency. Includes routing slips, job control records, status cards, receipts for records charged-out, batch slips, and similar records. Minimum retention: 1 year.

(36) **School Census Records** document the number of students of school age within the county, district, or school. Records may contain but are not limited to the names, ages, birth dates, and address of students; information about the parents or guardians; and related documentation. The actual census-reporting requirement ended in 1971 and this record is no longer being created. Minimum retention: Permanent.

(37) **School, District, Or ESD History Records** document important organizational changes, significant events, celebrations, programs, and projects of the ESD, district, or school. Records may include but are not limited to newsletters, press releases, publications, reports and articles, institution histories, biographies and records of past administrators, faculty,

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or staff, photographs, scrapbooks, newspaper clippings, and related documentation. SEE ALSO Publications in this section. Minimum retention: Permanent.

(38) **Special Education Census Reports** document the number of special education students served by the school and district included in annual census reports to the Oregon Department of Education. Records may include but are not limited to annual reports and district summary reports which includes total number of students and students per district, age of students, and handicapping condition of students; student census information; placement and services provided records; agency information; number of special education teachers; and related documentation. Minimum retention: 5 years after school year in which records were created.

(39) **Special Event and Celebration Records** document agency-sponsored celebrations of special and historic occasions such as centennials, pioneer days, and similar events. Provides a record of planning and promotional efforts, public attendance and response, major speeches and dedications, and other significant aspects of the celebration. These significant records may include studies, publications, photographs, attendance summaries, final reports, and other significant documents. This series also includes routine documentation related to implementing the promotion and organization of the event. These often include lists, rosters, correspondence, memoranda, volunteer information, and related records. Records may also include scrapbooks, but does not include newsclippings. Newsclippings are not public records and may be discarded. Minimum retention: (a) Retain records documenting significant aspects of the event: Permanent (b) Retain all other records: two years after event.

(40) **Staff Meeting Records** document the activities, decisions, and proceedings of school, district, or ESD staff meetings. Records may include but are not limited to minutes, agendas, notes, reports, and related documentation. Minimum retention: Until end of school year.

(41) **Standardization Records** document the process of standardization visits from the Oregon Department of Education to schools, districts, or ESDs. Records may include but are not limited to self-evaluation reports, on-site inspection reports; waiver authorizations; letters of concern; plans of correction; schedules; and related correspondence and documentation. Minimum retention: 6 years after school year in which records were created.

(42) **Student Information and Demographic Records** document the composition of the student population in a variety of sequences, groupings, and lists. Records include demographic profiles of students; student record cards; and other manual or computer produced lists organized by school, class, special program, or other grouping. Records may include but are not limited to student identification information including name, address, birth date, birthplace, parents, and guardians; student demographics including gender, ethnicity, and age; attendance; enrollment dates; previous school attended; student grades and transcript data; health and immunization information; handicapped status; and related documentation. Minimum retention: (a) Retain years ending in 0 and 5 Permanent (b) Retain all others 5 years.

(43) **Student Organization Administrative Records** document the history, development, and policies of student organizations, including student clubs, government, and publications. Records may include but are not limited to student organization annual review forms; minutes; constitutions and bylaws; committee, subcommittee, and task force records; student senate bill and resolution records; handbooks; officer and member rosters; scrapbooks; photographs; and related documentation and correspondence. SEE ALSO Student Organization Financial Records in the Financial Section. Minimum retention: (a) Retain constitution and bylaws: Until superseded or obsolete (b) Retain all other records: 2 years after school year in which records were created.

(44) **Superintendent of Schools Records** document the official and financial affairs of the superintendent of schools concerning teachers, students, and schools located in the county. Records may include but are not limited to annual statements on the condition of common (public) schools in the county; school district boundary records; school district accounts; book purchases; and related documentation. Information contained in the records may include financial information, school curricula, boundary descriptions, facilities, and enrollment and attendance data. These records are no longer being created. Minimum retention: Permanent.

(45) **Surveys, Polls, and Questionnaires** Records document the measurement of public opinion by or for the agency related to various issues, actions, and concerns. May include surveys, polls, questionnaires, summaries, abstracts and significant related records. Examples of summaries include studies which incorporate the significant results of public

opinion surveys, abstracts of questionnaires designed to determine the skills and interests of citizens volunteering for agency service, and other records which distill survey data into summary form. Minimum Retention: (a) Retain summary reports and abstracts: 3 years (b) Retain all other records: Until summary report is completed or 3 years, whichever is sooner.

(46) **Test Administration Records** document the administration of assessment, placement, diagnostic, credit by exam, and other tests. Records may include but are not limited to rosters of test takers; testing rules and regulations; test administration records; examiner's manuals; exams and tests; test order and payment records; placement and test results; summary reports of results; and related correspondence and documentation. Minimum retention: 3 years after school year in which records were created.

(47) **Work Order Records** document requests and authorizations, according to existing contracts or agreements, for needed services and repairs to agency property and equipment. May include copy center work orders, printing orders, telephone service and installation requests, repair authorizations, and similar records. Minimum Retention: (a) Retain work completed by county personnel: 1 year (b) Retain work completed by outside vendors: 3 years.

(48) **Work Schedule and Assignment Records** document the scheduling and assigning of shifts, tasks, projects, or other work to agency employees. Useful for budget and personnel planning and review, assessing employee work performance, and other purposes. May include calendars, schedules, lists, charts, rosters, and related records. Minimum retention: 5 years.

(49) **Year 2000 (Y2K) Planning Records** document the planning and development of agency Y2K contingency plans. Records may include but are not limited to meeting minutes, correspondence, draft plans, work notes, plan test results, and final plan. Information includes type of systems vulnerable to Y2K, level of priority, and party responsible for system solution or troubleshooting. Minimum retention: Destroy.

Stat. Auth.: ORS 192 & 357, Other Auth. Code of Federal Regulations Title 34

Stats. Implemented: ORS 192 & 357

Hist.: OSA 6-1997, f. & cert. ef. 4-22-97; Renumbered from 166-405-0010, OSA 1-2006, f. & cert. ef. 4-17-06; OSA 1-2008, f. & cert. ef. 1-30-08; OSA 3-2012, f. & cert. ef. 10-29-12; OSA 1-2017, f. & cert. ef. 1-13-17

166-400-0015

Curriculum and Instruction Records

(1) **Course Descriptions** Records document the list and description of school courses offered to students. Information may include course content descriptions; number of units' granted; required or elective status; goals, competencies and standards for standard and modified diplomas; and other information relative to educational plans. Minimum retention: 10 years after school year in which records were created

(2) **Curriculum Development** Records document the development and approval process for staff or faculty to develop or revise program curriculum or to update curriculum strategies and instruction. Records may include but are not limited to support documentation, reviews, reports, approvals, and related correspondence and documentation. Minimum retention: 3 years after superseded or obsolete.

(3) **Instructional Materials Selection and Adoption Records** Records document the selection and adoption of textbooks and other instructional materials by schools, districts, and ESDs. Records may include but are not limited to adoption authorization records; lists of state adopted textbooks including titles of books, authors, and publishers; and related documentation. SEE ALSO Supplemental Materials Selection and Adoption Records in the Library and Media Records section. Minimum retention: 6 years after school year in which records were created.

(4) **Teacher Daily Instructional Plans** Records document the instruction of students as planned on a daily basis by teachers. Records may include but are not limited to instructional plans and related documentation and correspondence. Minimum retention: 1 year after school year in which records were created.

(5) **Talented and Gifted Program (TAG) Records** Records document district and school efforts to provide TAG education programs and opportunities for students identified as Talented and Gifted under state guidelines. The records document district and ESD efforts to provide Talented and Gifted Education instruction that challenges high-end learners and meets each student's learning needs. Resources and support materials for districts, schools, teachers, parents, and students are included. SEE ALSO Educational Programs Student Records in Student Education Records section for individual participating student records. Minimum retention: 5 years after school year in which records were created.

Stat. Auth.: ORS 192 & 357, Other Auth. Code of Federal Regulations Title 34

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Stats. Implemented: ORS 192 & 357
Hist.: OSA 6-1997, f. & cert. ef. 4-22-97; Renumbered from 166-406-0010, OSA 1-2006, f.
& cert. ef. 4-17-06; OSA 1-2017, f. & cert. ef. 1-13-17

166-400-0020

Property and Equipment Records

(1) **Architectural Drawings, Blueprints, and Maps Records** document a detailed graphic record of the land and buildings of a school, district, or ESD. The records are a primary source tool for improvement and maintenance projects on existing buildings and/or land, including athletic fields, and for new construction. Records may include but are not limited to drawings; maps; photographs; architectural blueprints; sketches; preliminary planning drawings; as-built drawings and blueprints; surveys; drawings reflecting changes to original plans; soil testing maps; and any other type of graphic representation and related documentation produced relating to buildings, systems, and land. Minimum retention: Life of the structure.

(2) **Asbestos Management Records** Records document the identification and proper handling of asbestos material within school, district, or ESD buildings. Records may include but are not limited to federal inspection reports and management plans required by the Environmental Protection Agency, contact reports, laboratory test results, work orders, project checklists, work precautions, site schematics, and related documentation. The management plan may contain response actions, operations and maintenance, and periodic surveillance plans. SEE ALSO Hazardous Materials Management Records in this section. Minimum retention: (a) Retain management plan: 3 years after superseded or obsolete (b) Retain records of measurements taken to monitor employee exposure to asbestos: 30 years after employee separation per 29 CFR 1910.1020 (c) Retain all other records: 5 years after building or property disposed of

(3) **Building and Grounds Repair, Remodeling, and Construction Records** Records document the condition, repair, and routine maintenance of school, district, or ESD buildings and grounds. Records also document remodeling, improvement, and non-capital construction projects. Records may include but are not limited to floor plans; specifications; layouts; building inspection reports; building permits; maintenance agreements; work logs; and related correspondence and documentation. Records may also include records of remodeling or construction due to American Disabilities (ADA) Act requirements. Minimum retention: (a) Retain floor plans, layouts, specifications, final inspection reports, permits for completed structures: Life of the structure (b) Retain other permits: 2 years after revoked or expired (c) Retain contracts and agreements documenting building construction, alterations, or repair: 10 years after substantial completion (d) Retain all other records: 4 years

(4) **Capital Construction Project Records** Records document the planning, administration, and implementation of current and potential capital construction projects by schools, districts, or ESDs; to project needs for projects; and as a reference to projects once they have been completed. Records may include but are not limited to project descriptions and requirements; plans and plan reviews; project schedules; contract change orders; bid documentation; building permits; contracts and agreements with architects, engineers, consultants, vendors, and contractors; materials and soils reports; progress reports; insurance reports; payment schedules; summary reports; certificates of occupancy; memos; final acceptance statements; and related correspondence and documentation. Minimum retention: (a) Retain contracts and agreements documenting building construction, alterations, or repair: 10 years after expiration as defined by ORS 12.135(3). (b) Retain all other records: Life of the structure

(5) **Damaged/Stolen Property Records** Used to prepare reports relating to damaged or stolen property. Records may include yearly risk report, restoration fund inventory report, policy manual, property transfer report, self-insurance manual, real property report, money and negotiable securities report and a general risk survey. Minimum retention: 4 years

(6) **Equipment Loan Records** Records document the loan of district owned equipment to students. Equipment may include but is not limited to musical instruments and athletic equipment. Records may include loan agreements, parental consent forms, approval forms, return forms, logs, overdue records, and related documentation and correspondence. SEE ALSO Audio-Visual Materials and Equipment Loan Records in the Library and Media Records section. Minimum retention: (a) Retain overdue records: Until equipment is returned or debts reconciled or deemed uncollectible (b) Retain all other records: 2 years after school year in which equipment is returned. (c) Retain loan agreements: 6 years

(7) **Equipment Records** Records document equipment owned by the school, district, or ESD and provides support documentation for warranty, operation, maintenance, service, and repair. Records may include but are not limited to shipping or packing slips; vendor information; operating

manuals; warranties and guarantees; specifications; serial numbers; maintenance agreements or contracts; lease agreements; service reports; maintenance records; damaged/stolen property records; and related correspondence and documentation. SEE ALSO Vehicle Maintenance Records in the Transportation Records section. Minimum retention: 2 years after disposal of equipment

(8) **Facility Use Records** Records document the application for and use of school, district, or ESD facilities by outside individuals or organizations. Records may include but are not limited to the application and contract for using facilities. Information may include name of individual or organization requesting occupancy, type of activity, dates and hours of projected use, facility name and location, use permits, conditions of use, acknowledgment of responsibility for damage or liability resulting from occupancy, insurance documentation, fees and charges, request approval, correspondence, and support documentation. Minimum retention: (a) Retain approved application records: 3 years after school year in which records were created (b) Retain denied applications: 1 year after school year in which records were created

(9) **Hazardous Materials Management Records** Records document the chain of custody of hazardous materials within a school, district, or ESD and relate to the identification, location, safe handling, storage, transportation, and disposal of hazardous waste materials including PCBs, laboratory chemicals, cleaning solvents, and pesticides. Records may include but are not limited to Environmental Protection Agency/Department of Environmental Quality monitoring forms, Department of Transportation Hazardous Waste Manifest forms, material safety data sheets, invoices, work orders, purchase orders, and other working papers. Records document that use and storage of hazardous materials and hazardous waste management has been performed in accordance with state and federal regulations. SEE ALSO Asbestos Management Records in this section. Minimum retention: (a) Retain material safety data sheets: Until superseded or obsolete (b) Retain all other records: 6 years after school year in which records were created.

(10) **Inventory Records** Records document the expendable and non-expendable property, supplies, equipment, and other items owned by the school, district, and ESD. Examples include but are not limited to buildings, real estate, vehicles, equipment, furniture, and supplies. Records may include but are not limited to description, purchase information, value, purchase price, replacement cost, depreciation, quantity, location, date of acquisition, shipping records, and related correspondence and documentation. SEE ALSO Library and Media Inventory Records in the Library and Media Records section. Minimum retention: 2 years after superseded or obsolete.

(11) **Property Disposition Records** Records document the disposition of non-real property and equipment owned by the school, district, or ESD. Disposition is usually through public auction, competitive bidding, or destruction. Records may include but are not limited to description of property, expendable property inventory listings, disposition, disposition requests and notices, equipment transfer records, reason for disposition, condition, authorization, and related correspondence and documentation. Minimum retention: 3 years after disposition of property.

(12) **Property Records** Records document the purchase, ownership, and sale of land or buildings by the school, district, or ESD. Records may include but are not limited to titles and deeds; title search records; property descriptions; title insurance policies and forms; easements; right of ways; appraisals; records of sale; and related documentation and correspondence. SEE ALSO Facility and Equipment Records section and Lease Records in the Financial Records section. Minimum retention: 3 years after property is no longer owned by agency.

(13) **Underground Storage Tank Management Records** Records document the description, location, operation, testing, maintenance, and final disposition of underground storage tanks owned by schools, districts, or ESDs. Records may include documentation of corrective procedures undertaken in the event of spills, leaks, or corrosion. Minimum retention: 25 years after removal

(14) **Utilities Systems Operating And Maintenance Records** Records document the operations and maintenance of school, district, or ESD utility systems. Records may include but are not limited to equipment operations logs, mechanical readings charts, permits, equipment maintenance histories, and related correspondence and documentation. Minimum retention: (a) Retain permits: 5 years (b) Retain all other records: Until equipment is no longer in service.

(15) **Work Orders Records** document requests and authorizations for services and/or repairs to school, district, or ESD property and equipment. Records may include but are not limited to repair requests and

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authorizations, material lists, work order schedules, copy center work orders, printing orders, telephone service orders, and related correspondence. Information includes location and type of work, priority rating, approval signatures and dates, and time and cost estimates. Minimum retention: 3 years after school year in which records were created.

Stat. Auth.: ORS 192 & 357, Other Auth. Code of Federal Regulations Title 34
Stats. Implemented: ORS 192 & 357
Hist.: OSA 6-1997, f. & cert. ef. 4-22-97; Renumbered from 166-407-0010, OSA 1-2006, f. & cert. ef. 4-17-06; OSA 1-2017, f. & cert. ef. 1-13-17

166-400-0025

Financial Records

(1) **Accounts Payable Records** Records document outstanding liabilities and provides a record of payment of bills by the school, district, or ESD, including payments from student body fund accounts, disbursed by school personnel. Records may include but are not limited to invoices, invoice vouchers, statements, vouchers, journal entry forms, purchase orders, payment authorizations, check requests, check registers, reports of receipt of goods or service, canceled checks or warrants, daily batch lists, and related correspondence and documentation. Minimum retention: (a) Retain records documenting expenditure of federal funds: 5 years after final or annual expenditure report accepted (b) Retain all other records: 4 years.

(2) **Accounts Receivable Records** Records document billings and collections and provide a record of money owed to or received by the school, district, or ESD, including receivables for student body fund accounts collected by school personnel, for goods or services rendered. Records may serve as subsidiary ledgers of original entry or input which record the amounts received for goods and services. Records may include but are not limited to aging reports used to monitor accounts which are outstanding and overdue, invoices, invoice registers, billing records, receipts, receipts registers, cash receipt records; account edit sheets, and related documentation. Minimum retention: (a) Records documenting recovery of federal supplied funds: 3 years after final or annual expenditure report accepted (b) All other records: 3 years after collected or deemed uncollectible.

(3) **Audit Reports** Records document the examination of a school, district, or ESD's financial condition by internal or independent auditors. Audits include an examination of the fiscal condition, internal controls and compliance with policies and procedures, accounting principles and methods, the accuracy and legality of transactions, and performance audits. Records may include but are not limited to audit reports (including those completed for student body fund accounts), supporting documentation, accountant's summary, financial statements, balance sheet details, comments, summaries, recommendations, preparation records, and related correspondence and documentation. Minimum retention: (a) Audit report, official copy: Permanent (b) Grant fund audit records: 5 years after final or annual expenditure report accepted (c) Other records: 4 years.

(4) **Bank Transaction Records** Records document the current status and transaction activity of school, district, or ESD funds held in bank accounts, including accounts for student body funds. Records may include but are not limited to account statements, deposit and withdrawal slips, redeemed, void, or canceled checks, check registers, interest payments, reconciliation worksheets or spreadsheets, and related documentation. Minimum retention: (a) Records documenting grant fund transactions: 5 years after final or annual expenditure report accepted (b) Other records: 3 years.

(5) **Bond Records** Records document the authorization and payment of bonds to finance school construction and improvements. Records may include but are not limited to authorizations, supporting financial documentation, bond ratings, and sample copies of bonds issued; paid bonds, coupons, and receipts; bond registers; and related documentation. SEE ALSO Bond Election Records in the Administrative Records section. Minimum retention: 3 years after final payment.

(6) **Budget Preparation Records** Records document the planning, development, estimation, and proposed budget requests for schools, districts, and ESDs. Records may include but are not limited to budget requests, spreadsheets, expenditure projection work papers and reports, budget proposals, budget development schedules, allotment reports, decision packages, spending plans, funding analysis, revenue projection reports, compensation plan proposals, contingency plans, fiscal impact analysis, and related correspondence and documentation. Minimum retention: 2 years.

(7) **Budget Records** Records document the annual financial plan approved by schools, districts, and ESDs. Records may monitor allotments, apportioned fiscal distributions, and expenditures. Records may include but are not limited to budget allotment reports, adopted budgets, budget messages, revenue and expenditure tracking records, status reports, operating

programs, debt service, position and wage analysis, summaries, annual report to Oregon Department of Education, and related correspondence and documentation. Minimum retention: (a) Adopted budget, official copy: 20 years (b) Other records: 3 years.

(8) **Check Conversion Records** Records document checks received from customers that are electronically deposited after being imaged and converted to an Automated Clearing House (ACH) transaction or Image Replacement Document (IRD). Minimum Retention: (a) Retain original paper instrument 30 days, destroy (b) Retain ACH transaction or IRD 6 years, destroy.

(9) **Competitive Bid Records** Records document the publication, evaluation, rejection and award of quoted bids to vendors and other entities. Records may include but are not limited to requests for proposals (RFPs), requests for qualifications (RFQs), invitations to bid (ITBs), requests for information (RFIs), bid exemption documents, bid and quote lists, notices of bid opening and award, comparison summaries, spreadsheets, tabulation worksheets, bid advertising records, tally sheets, bid specifications, correspondence, and related records. SEE ALSO Purchasing Records in this section. Minimum retention: (a) Retain accepted bids 10 years after substantial completion (as defined by ORS 12.135(3)(b)) Retain other accepted bids: 6 years after bid awarded or canceled (c) Retain rejected bids and bid exemptions: 2 years after bid awarded or canceled.

(10) **Credit and Debit Receipts** Agency's copy of credit or debit card receipt documenting payment received by agency. Records include customer's name and account information. Minimum Retention: Retain 36 months after transaction, destroy.

(11) **Credit Slips** Slips issued to citizens who have withdrawn from agency-sponsored classes or activities and are due credit for all or part of fees paid. Information usually includes name of class or activity, date, expiration date, name and address of citizen, and related data. Minimum retention: 3 years after credit expired or redeemed.

(12) **Employee Bond Records** Records document the post of fidelity, performance, or position bonds to guarantee the honest and faithful performance of school, district, and ESD employees. Information may include but is not limited to person's name, amount of coverage, dates, and related documentation. Minimum retention: 6 years after expiration.

(13) **Financial Reports** Records document the financial condition, operation, and activities of schools, districts, and ESDs. Records may include but are not limited to organization and function statements, accounting of income and expenditures, balance sheets, revenue statements, fund balance reports, notes to the financial statements, and exhibits. Exhibits may include a working trial balance by fund type, adjustments to accounting data, cash flow analysis, and other supporting documentation. Reports may also be completed for student body fund accounts. Records may include monthly, quarterly, or annual reports. Minimum retention: (a) Retain annual report, official copy: Permanent (b) Retain working papers and draft material: 1 year after acceptance of Annual Report (c) Retain all other Financial Reports 3 years.

(14) **General Ledgers** Records document all fiscal transactions of the school, district, or ESD. The ledgers summarize the accounts and reflect the financial position of the school, district, or ESD. Information often includes debit, credit, and balance amounts per account; budget, fund, and department numbers; and totals for notes receivable, interest income, amounts due from other funds, federal grants received; bank loans received, cash in escrow, deferred loan received, cash, encumbrances, revenue, accounts receivable, and accounts payable; and related documentation and data. SEE ALSO Subsidiary Ledgers, Journals, and Registers in this section. Minimum retention: (a) Retain year-end ledgers: 10 years (b) Retain all other general ledgers: 3 years.

(15) **Gift and Contribution Records** Records document gifts and contributions to the school, district, and ESD, including contributions to student body funds. Records may include but are not limited to memorial donation records related to money to be used by the institution in the name of an individual, donor and acknowledgment letters, acquisition lists itemizing purchases made with contributed money, checks, receipts, and related correspondence and documentation. Minimum retention: (a) Retain conditional gift, contribution, and donation records: 6 years after expiration of agreement or conditions met (b) Retain all other records: 3 years.

(16) **Grant Records** Records document the application, evaluation, awarding, administration, monitoring, and status of grants in which the agency is the recipient, grantor, allocator, or administrator. Grants may come from federal or state governments or foundations or other funding sources. Records may include but are not limited to applications including project proposals, summaries, objectives, activities, budgets, exhibits, and award notification; grant evaluation records and recommendations con-

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cerning grant applications; grant administration records including progress reports, budgets, project objectives, proposals, and summaries; records documenting allocation of funds; contracts; records monitoring project plans and measuring achievement; equipment inventories; financial reports, accounting records, audit reports, expenditure reports, and related correspondence and documentation. Minimum retention: (a) Retain final reports from significant grants to the School, District, ESD: Permanent (b) Retain records documenting the purchase and/or disposal of real property: 10 years after substantial completion (as defined by ORS 12.135(3)), or 3 years after final disposition, or as specified in agreement, whichever is longer (c) Retain other grant records: 3 years after annual or final expenditure report submitted and approved or, as specified in agreement, whichever is longer (d) Retain unsuccessful grant applications: 1 year after rejection or withdrawal.

(17) **Investment Records** Records document financial investments made by schools, districts, or ESDs. Records may include but are not limited to time certificates of deposit, interest income distribution, and tax anticipation notes. Information includes date purchased, date received, date matured, accrued interest, total interest to date, and related documentation. Minimum retention: 3 years after investment maturity.

(18) **Lease Records** Records document the lease or rental of school, district, or ESD owned property to other parties, and lease or rental of facilities from other parties. Records may include but are not limited to include leases, rental agreements, amendments, addenda, authorizations, and related correspondence and documentation. Leases are typically for office space, equipment, machinery, real estate, or facilities. Minimum retention: 6 years after expiration.

(19) **Petty Cash Fund Records** Records document petty cash activity for a school (including student body funds), district, or ESD. Records include but are not limited to requests and authorizations to establish petty cash funds, ledgers, statements, requests for disbursements, copies of receipts and invoices, and related documentation. Minimum retention: 3 years.

(20) **Purchasing Records** Records document the purchase of goods and services by a school, district, or ESD, including purchases through a student body fund account. Records may include but are not limited to purchase orders and requests; purchase authorizations; requisitions; contract release orders; price agreements; material and cost specifications; copy, print, service, and other types of work orders, receipt and delivery documentation, and related correspondence and documentation. Minimum retention: (a) Retain records documenting expenditure of federal funds: 5 years after final or annual expenditure report accepted (b) Retain all other records: 3 years.

(21) **Revenue Records** Records document application for and receipt of funds from local, state, and federal revenue sources and disbursement to the school, district, or ESD. Records include funds received directly from federal agencies or apportioned to the school, district, or ESD through the Oregon Department of Education or other state agencies. Records may include but are not limited to projection reports of forecasted revenue earnings; revenue registers listing revenue earned; fund applications and awards; performance and financial reports; supporting fiscal documentation; reimbursement requests and claim records; and related correspondence. Local revenue sources may include tax levies, tuition, local government units, adult continuing education programs, summer school programs, schools transportation and food service programs, community services programs, textbook and other rentals, and private contributions. Intermediate revenue sources may include county school funds, ESD equalization and special program funds, and state timber revenue funds. State revenue sources may include basic school support funds, common school funds, state timber revenue funds, and special education, driver education, vocational education, and special school assistance funds. Federal revenue sources may include migrant education, Indian education, and other funds. Minimum retention: (a) Retain records of revenue from federal and state sources: 5 years after final or annual expenditure report accepted (b) Retain all other records: 3 years.

(22) **Signature Authorization Records** Records document that designated school, district, or ESD employees are authorized to sign fiscal and contractual documents, including those involving student body funds. Minimum retention: 6 years after authorization superseded or expired.

(23) **Student Organization Financial Records** Records document the budgeting, accounting, and financial affairs of student organizations including student clubs, government, and publications. Records may include but are not limited to bank statements, deposit slips, cancelled checks/vouchers, receipts, and related documentation and correspondence.

Minimum retention: 3 years after school year in which records were created.

(24) **Subsidiary Ledgers, Journals, and Registers** Records document details of fiscal transactions by a school, district, or ESD such as those related to receipts and expenditures on a daily, monthly, quarterly, or similar basis. Records include journals, ledgers, registers, day books, transaction reports, trial balance reports, and other account books or reports that provide documentation for the general ledger or financial reports. Records may include details of revenues, expenditures, encumbrances, cash receipts, warrants, and other financial records. Information often includes date, payee, purpose, fund credited or debited, check number, and related data. SEE ALSO General Ledgers in this section and Payroll Registers in the Payroll Records section. Minimum retention: (a) Retain year end payroll register: 75 years (b) Retain trust fund ledgers: 3 years after trust fund closed (c) Retain all other subsidiary ledgers, journals, and registers: 3 years.

(25) **Travel Expense Records** Records document requests, authorizations, travel advances and reimbursement claims made by school, district, or ESD employees for travel and related expenses. Records may include but are not limited to travel expense reports and receipts, supporting documentation, and related correspondence. Minimum retention: 3 years.

(26) **Unclaimed Property Report** Records document annual reports submitted to the Department of State Lands of financial assets being held for a person or entity that cannot be found. Series includes Holder Report, owner information, correspondence and other related documents. Note: Unclaimed property is not real estate, abandoned personal property, or lost and found items. Minimum Retention: 3 years after the property is remitted to the Department of State Lands.

(27) **Vendor Records** Records document vendors and suppliers providing goods and services to the school, district, or ESD. Records may include but are not limited to lists name and address of vendor or company; description of goods and services provided; catalogs; promotional and advertising materials; product specification sheets; copies of purchase orders and requisitions; packing slips; price quotations; and related correspondence and documentation. Minimum retention: Until superseded or obsolete.

Stat. Auth.: ORS 192 & 357, Other Auth. Code of Federal Regulations Title 34
Stats. Implemented: ORS 192 & 357

Hist.: OSA 6-1997, f. & cert. ef. 4-22-97; Renumbered from 166-408-0010, OSA 1-2006, f. & cert. ef. 4-17-06; OSA 1-2010, f. & cert. ef. 5-27-10; OSA 3-2012, f. & cert. ef. 10-29-12; OSA 1-2017, f. & cert. ef. 1-13-17

166-400-0030 Information and Records Management Records

(1) **Computer System Maintenance** Records document the maintenance of school, school district, or ESD computer systems and is used to ensure compliance with any warranties or service contracts; schedule regular maintenance and diagnose system or component problems; and document systems backups. Records may include but are not limited to computer equipment inventories, hardware performance reports, component maintenance records (invoices, warranties, maintenance logs, correspondence, maintenance reports, and related records), system backup reports and backup tape inventories, and related documentation. Minimum retention: (a) Retain records related to system or component repair or service: Life of the system or component (b) Retain records related to regular or essential records backups: 1 year after superseded or obsolete

(2) **Computer System Program Documentation** Records document the addition, modification, or removal of software from a school, school district, or ESD computer system.

Records usually fall into six categories: 1. records that document operating systems; 2. records that document the in-house creation and modification of application programs; 3. records that document the structure and form of data sets; 4. records that document the use of commercial software packages; 5. records that document the structure of the system; and 6. records that document system-to-system communication.

Records may include but are not limited to system overviews, operation logs, job listings, operator instruction manuals, system development logs, system specifications and changes (including narrative and flow chart descriptions), conversion notes, data set logs, data set inventories, data set record layouts, hard copies of tables, data dictionaries, data directories, programming logs, program specifications and changes, record layouts, user views, control program table documentation, program listings, commercial software manuals, and related correspondence and documentation. SEE ALSO Software Management Records in this section. Minimum retention: (a) Retain migration plans: until superseded or obsolete (b) Retain all other records: 1 year after system superseded or obsolete.

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(3) **Computer System Security Records** Records documenting the security of the computer systems. Includes employee access requests, passwords, access authorizations, encryption keys, and related documentation. Minimum retention: 3 years after superseded

(4) **Computer System Wiring Records** Records documenting the wiring of the computer network system. Includes blueprints or drawings of building computer system wiring, cables, computer equipment connections, and related documentation. Minimum retention: Current plus previous version.

(5) **Federal Communications Commission (FCC) License Records** Records document the process of obtaining licenses for television, wireless, radio, and mobile communication frequencies from the Federal Communication Commission. Records may include but are not limited to applications, correspondence, legal opinions, license, excess capacity agreements, contract approval records, and related documentation. Minimum retention: 5 years after school year in which license expires.

(6) **Filing System Records** Records document the establishment, maintenance, alteration, or abolition of school, school district, or ESD filing systems. Records may include but are not limited to include master file lists, organizational charts, program descriptions, and correspondence. Minimum retention: 3 years after superseded or abolished.

(7) **Forms Development Records** Records document the development of new or revised forms used by a school, school district, or ESD. Records may include but are not limited to sample forms, drafts, revisions, form logs/listings, proposals, authorizations and illustrations. Minimum retention: Until superseded or obsolete.

(8) **Information Service Subscription Records** Records document school, district, or ESD subscriptions to information services. Records may include but are not limited to subscriptions, invoices, and correspondence. Minimum retention: 3 years.

(9) **Information System Planning and Development Records** Records document the planning and development of school, school district, or ESD information systems. Although these records typically document computerized information systems, they may also document manual filing systems and microfilm systems. The records are used to insure that planned systems will help the institution fulfill its missions, are cost-effective, conform to adopted information standards, and integrate with existing institution information systems. Records may vary according to the level of documentation required for each system, but may include information technology plans, feasibility studies, cost-benefit analyses, institution studies and surveys, system specifications and revisions, component proposals, technical literature, vendor literature and proposals, and correspondence. Minimum retention: (a) Retain implemented systems: Life of the system (b) Retain unimplemented systems: 3 years

(10) **Microfilm and Image Quality Control Records** Records document that microfilm and images produced by or for public schools, school districts, or ESDs conforms to the specifications required by Oregon Administrative Rules 166-25-005 to 166-25-030. Records may include but are not limited to microfilmed records lists, microfilm reel indexes, service bureau transmittals, film inspection reports, methylene blue certifications, camera/processor/duplicator inspection reports, equipment and operator logs, and correspondence. Minimum retention: Same as related microfilm or digital image.

(11) **Public Records Disclosure Request Records** Records document requests for disclosure of public records and provides a record of school, district, or ESD responses. Records may include but are not limited to requests for disclosure, types of records requested, request logs, notation of transfer to another district, approvals, denials, copies of petitions to the Attorney General for review of denials of disclosure, Attorney General Orders to grant or deny disclosure, correspondence, and related documentation. Minimum retention: (a) Retain approved requests: 5 years. (b) Retain denied requests: 2 years after last action

(12) **Records Management Records** Records document the authorized retention, scheduling, inventory, and disposition of school, district, or ESD public records. Records may include but are not limited to records retention schedules, inventory worksheets, schedule authorizations, procedure guidelines, transmittals, destruction authorizations, reports, and correspondence. Minimum retention: (a) Retain destruction records permanent (b) Retain all other records 5 years after superseded.

(13) **Software Management Records** Records document the use of software in school, district, or ESD information systems to insure that institution software packages are compatible, that license and copyright provisions are complied with, and that upgrades are obtained in a timely manner. Records may include but are not limited to software purchase records, soft-

ware inventories, software licenses, site licenses, and correspondence. Minimum retention: 2 years after software disposed of or upgraded.

(14) **Telecommunications System Management Records** Records document the creation, modification, or disposition of school, district, or ESD telecommunications systems. Records may include but are not limited to equipment records, Federal Communications Commission records, repair order forms, system planning records, telecommunications maintenance contracts, telecommunications service orders, and correspondence. Minimum retention: (a) Retain repair and service order records: 4 years. (b) Retain all other records: 1 year after system superseded or obsolete

(15) **User Support Records** Records documenting troubleshooting and problem-solving assistance provided by information systems personnel to users of the systems (computer, telecommunications, etc). Records may include assistance requests, resolution records, and related documentation. Information may include name of requester, date, time, location, and description of problem and resolution. Minimum retention: 1 year

Stat. Auth.: ORS 192 & 357, Other Auth. Code of Federal Regulations Title 34

Stats. Implemented: ORS 192 & 357

Hist.: OSA 6-1997, f. & cert. ef. 4-22-97; Renumbered from 166-409-0010, OSA 1-2006, f. & cert. ef. 4-17-06; OSA 1-2017, f. & cert. ef. 1-13-17

166-400-0035

Library and Media Records

(1) **Acquisition and Deaccession Records** Records document the process of requesting, purchasing, and acquiring, as well as deaccessioning, books, periodicals, audio-visual, and other library materials. Records may include but are not limited to accession and deaccession registers; correspondence with publishers; questionnaires; request forms; bibliographic data; receipt notations; and related documentation. SEE ALSO Library Catalog Records in this section. Minimum retention:(a) Retain registers: Until superseded or obsolete (b) Retain all other records: 3 years after school year in which records were created.

(2) **Audio-Visual Materials and Equipment Loan Records** Records document the loan, rental, scheduling, and delivery of audio-visual or media material and equipment to school, district, or ESD faculty or staff. Records may include but are not limited to request forms; extension and cancellation records; borrower identification; title and material identification; shipping or delivery information; booking records; attendance and number of times media used or shown; usage statistics; accounting records concerning the cost of material; and related documentation. Minimum retention: (a) Retain extension and cancellation records: 1 month (b) Retain equipment inventories: 3 years after superseded or obsolete (c) Retain all other records: 3 years after school year in which records were created.

(3) **Circulation Records** Records document the borrowing of circulating library, audio-visual, media, and learning resource center materials by students and faculty. Records may include but are not limited to name of the borrower, title of material borrowed, due date, overdue status, overdue notices, and related documentation. Records may be exempt from public disclosure per ORS 192.502(21). Minimum retention: (a) Retain overdue records: Until material is returned or debts reconciled or deemed uncollectible (b) Retain all other records: 1 year after school year in which records were created.

(4) **Copyright and Duplication Records** Records document permission received from authors, publishers, producers, and distributors of video programs and other media and materials to allow the school, district, and ESD to duplicate the material without copyright infringement. Records may include but are not limited to agreements which state the terms and conditions, copyright releases, authorizing signatures, and related documentation and correspondence. Minimum retention: 6 years after agreement expires.

(5) **Library and Media Inventory Records** Records document approved lists of books, periodicals, audio-visual materials, and other library materials. Records may include but are not limited to annual inventories; and lists of books, periodicals, audio-visual materials, and other materials; and lists of books and materials on specific subjects. Lists document material approved for use in the school or district; materials that may be borrowed from centralized media and resource centers; and are used in the acquisition of materials. Records generally include titles, bibliographic descriptions, and identification numbers. Minimum retention: 3 years after superseded.

(6) **Library Catalog Records** Records document the maintenance, and retrieval of the holdings of the school library; professional library; teaching resource center; and audio-visual, media, or resource center of the school, district, and ESD. Records may include but are not limited to the card or electronic catalog which contains the bibliographic records of the holdings; holdings records which contain data on items in circulation; and

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related documentation. SEE ALSO Acquisition and Deaccession Records in this section. Minimum retention: Until superseded or disposal of material.

(7) **Supplemental Materials Selection and Adoption Records** Records document the process of evaluation, selection, and approval of supplemental educational materials for use by a school, district, or ESD and inclusion in the library, learning resource center, or media center. Records may also be used for budget, audit, and insurance purposes. Supplemental materials may include library books, periodicals, audio-visual materials, instructional computer software, and related materials. Records may include but are not limited to bibliographic data; summary of content; evaluations; evaluator records including applications, rosters, and expense records; records documenting citizen complaints about educational material; and related correspondence and documentation. Minimum retention: 7 years after school year in which records were created.

Stat. Auth.: ORS 192 & 357, Other Auth. Code of Federal Regulations Title 34
Stats. Implemented: ORS 192 & 357
Hist.: OSA 6-1997, f. & cert. ef. 4-22-97; Renumbered from 166-410-0010, OSA 1-2006, f. & cert. ef. 4-17-06; OSA 1-2017, f. & cert. ef. 1-13-17

166-400-0040

School Administration Records

(1) **Communication Logs** Logs document communications made or received through a variety of electronic devices, including but not limited to telephone, smart phone, facsimile (fax), radio, computer-aided dispatch, pager, and teletype, AND are not otherwise specified in this general records retention schedule (OAR 166 division 400). Logged information may include time, date and disposition of communication, name of caller, number called or received, and action taken. SEE ALSO Correspondence in the Administrative Records section. Minimum retention: 1 year

(2) **District Boundary Records** Records document the formation, consolidation, and reorganization of school districts and their boundaries. Records may include but are not limited to boundary board meeting minutes; boundary board hearing records; board decisions; maps and plats; land records; boundary descriptions; and related documentation. Minimum retention: Permanent.

(3) **District Clerk's Records** Records document the administration of the school district and the reporting of this general and financial information to the county school superintendent. The district clerk's record books may contain but are not limited to reports of annual school meetings, special school meetings, and district board meetings; financial reports, receipts, and accounts; teacher contracts; annual census of school-aged children; payroll information; summary of subjects taught; records of school boundaries; and related documentation. The school register and record books may contain but are not limited to records of visitors; records of students registration, attendance, and department; general school statistics; teacher salary records; program and class records; evaluations of student progress; data on parents and guardians; and related documentation. These records are no longer being created. Minimum retention: Permanent.

(4) **Interscholastic Athletic Activity Program Records** Records document student eligibility and participation in interscholastic competitive sports and athletic activities, athletic event and team publicity, and athletic events scheduling. Records may include but are not limited to team standings; win/loss records; All-Star selections; team member information; statistics; event and practice schedules; and related documentation and correspondence. Minimum retention: 5 years after school year in which records were created.

(5) **Key and Keycard Records** Records document the issuance of keys and keycards to staff to enable access to buildings and sites. Records may include but are not limited to key inventories, key issue forms, key replacement records, and key disposal records. Minimum retention: (a) Retain access and entry logs 3 years (b) Retain other records 2 years after key is turned in

(6) **Mailing Lists** Records document the compilation of names and addresses of persons and organizations by a school, district, or ESD for mailing purposes. Lists are used to facilitate billing, outreach activities, and other functions of the school, district, or ESD. Minimum retention: Until superseded or obsolete.

(7) **Parking Records** Records document parking provided for the public or school, district, or ESD staff or students. Records include parking permits and applications, special permits, permit receipts, parking citations, appeal petitions, and related correspondence and documentation. Minimum retention: (a) Retain citation records: 3 years after resolved (b) Retain all other records: 3 years.

(8) **Postal Records** Records document transactions with the U.S. Postal Service and private carriers. Records may include but are not limited

ed to postage meter records, receipts for express deliveries, registered and certified mail; insured mail, special delivery receipts and forms, loss reports, and related correspondence. Minimum retention: 3 years after school year in which records were created.

(9) **Press Releases** Records document school, district, or ESD information that is officially released to the media for dissemination to the public. Records may include press or news releases, public service announcements, and related documentation. Minimum retention: (a) Policy and Historic press/news releases: Permanent (b) Routine news/press releases: 2 years

(10) **Publications** Records document publications produced by a school, district, or ESD for educational or informational purposes, or to communicate information about programs, policies, services, and events. Records include publications produced by individual school staff, offices, and students. Types of publications may include but are not limited to catalogs, books, magazines, newsletters, rosters, directories, brochures, pamphlets, media guides, guidebooks, proceedings, programs, schedules, yearbooks, manuals, newspapers, calendars, and flyers. Records may include but are not limited to working papers, mock-ups, drafts, photographs, final publications, and publications on the school, district, or ESD's Internet home page. SEE ALSO Press Releases in this section. Minimum retention: (a) Retain significant publications, official copy: Permanent (b) Retain preparation records: Until published (c) Retain all other publications and records: 2 years

(11) **Scheduling Records** Records document the scheduling and reservations related to in-house participation in and use of various school, district, or ESD activities, events, classes, facilities, and meeting rooms. Records may include but are not limited to schedules, logs, lists, classroom assignments, requests, and related correspondence and documentation. Minimum retention: 2 years after school year in which records were created

(12) **Security Records** Records document security provided for school, district, or ESD building and grounds. Security may be provided by an on-site public safety office and public safety officers. Records may include but are not limited to security logs, sign-in sheets, visitor logs, security activity reports, incident reports, statistical information, and related correspondence and documentation. SEE ALSO Key Issuance Records in this section. Minimum retention: 3 years after school year in which records were created

(13) **Student Handbooks** Records document school rules and regulations and student rights and responsibilities. Information may include but is not limited to general school information, academic requirements, dress codes, rules of student conduct, freedoms, and student grievance procedures. Minimum retention: (a) Retain official copy: Permanent (b) Retain all other copies: Until superseded or obsolete.

(14) **Visitor Logs** Records document visitors to agency buildings. Records name include visitors' names, visitor badges issued, and entrance and exit times. Minimum retention: 1 year

Stat. Auth.: ORS 192 & 357, Other Auth. Code of Federal Regulations Title 34
Stats. Implemented: ORS 192 & 357
Hist.: OSA 6-1997, f. & cert. ef. 4-22-97; Renumbered from 166-405-0010, OSA 1-2006, f. & cert. ef. 4-17-06; OSA 2-2006, f. & cert. ef. 7-26-06; OSA 3-2012, f. & cert. ef. 10-29-12; OSA 1-2017, f. & cert. ef. 1-13-17

166-400-0045

Payroll Records

(1) **Deduction Authorization Records** Records documenting employee application and authorization for voluntary payroll deductions, direct bank deposits, and related actions. Payroll deductions are directly deposited or remitted to the authorized financial institution, insurance company, or other agency or vendor. Records may include insurance applications, enrollment cards, deduction authorizations, approval notices, deduction terminations, and related records. Minimum retention: 3 years after superseded, terminated, or employee separates.

(2) **Deduction Registers** Registers or records serving the same function of documenting voluntary and/or required deductions from the gross pay of agency employees. Types of deductions include federal income and social security taxes, state tax, workers' compensation, union dues, insurance, deferred compensation, credit union, parking permit, prewritten checks, garnishments, levies, charitable contributions, and others. Information may include employee name and number, pay period, social security number, total deductions, net pay, check number, and related data. Minimum retention: (a) Retain registers documenting state and federal taxes: 5 years (b) Retain all other registers: 3 years.

(3) **Employee Payroll Records** Records document school, district, or ESD individual employee pay history. Records include but are not limited to source documents authorizing payroll deductions and withholding such

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as retirement enrollment forms, insurance applications, and beneficiary designations, leave authorization records, pay related personnel action documents, garnishment orders, child support claim records, electronic deposit authorizations, work out of class and overtime authorizations, deduction reports, and correspondence. SEE ALSO Employee Personnel Records in the Personnel Records section. Minimum retention: (a) Retain PERS enrollment forms, official copy: 75 years after date of hire (b) Retain all other records: 3 years after employee separation.

(4) **Employee Time and Attendance Records** Records document school, district, or ESD employee attendance and time worked. Records may include but are not limited to time cards or sheets; monthly summary reports of employee attendance; forms used to record attendance, sick, vacation, overtime, and compensatory time; leave requests and approval forms; leave records; absence, sick, and vacation leave summary reports; overtime authorization or certification; staff attendance logs; substitute teacher logs; and related documentation and correspondence. Minimum retention: 4 years.

(5) **Federal and State Tax Records** Records, in addition to those itemized in this section, used to report the collection, distribution, deposit, and transmittal of federal and state income taxes as well as social security tax. Examples include the federal miscellaneous income statement (1099), request for taxpayer identification number and certificate (W-9), employer's quarterly federal tax return (941, 941E), tax deposit coupon (8109), and similar federal and state completed forms. Minimum retention: (a) Retain for the retention of records documenting expenditure of grant funds: see Grant Records in the Financial section (b) Retain all other records: 4 years.

(6) **Garnishment Records** Records documenting requests and court orders to withhold wages from employee earnings for garnishments, tax levies, support payments, and other reasons. Usually includes original writs of garnishment, orders to withhold for the Oregon Department of Human Resources, federal or state tax levies, recapitulations of amounts withheld, and related records. Information usually includes employee name and number, name of agency ordering garnishment, amount, name of party to whom payment is submitted, dates, and related data. Minimum retention: 3 years after resolution.

(7) **Leave Applications** Applications or requests submitted by employees for sick, vacation, compensatory, personal business, family and medical leave, long term leave, and other leave time. Information usually includes employee name, department, date, leave dates requested, type of leave requested, and related data. SEE ALSO Employee Time Records in this section. Minimum retention: 3 years.

(8) **Leave Balance Reports** Reports documenting individual employee accrual and use of sick, vacation, compensatory, personal business, family and medical leave, and other leave time. Information usually includes employee name and number, social security number, leave beginning balance, leave time accrued, leave time used, ending balance, and related data. SEE ALSO Employee Benefits Records in the Personnel section. Minimum retention: (a) Retain year-end leave balance reports: 75 years after date of hire (b) Retain all other reports: 4 years.

(9) **Payroll Administrative Reports** Records document school, district, or ESD payroll statistics, payroll budget preparation, projections, workload and personnel management, and payroll research. Records may include but are not limited to recapitulation reports organizing wages, deductions, and other data into categories such as quarter-to-date, year-to-date, fiscal year-to-date, department, division, section, employee/employer contributions, and others. Minimum retention: 3 years.

(10) **Payroll Registers Records** document the earnings, voluntary and required deductions, and withholdings of school, district, and ESD employees. Records include but are not limited to monthly listings of all paid employees with details of their earnings and deductions. Minimum retention: (a) Retain year-end payroll register: 75 years (b) Retain leave accrual and monthly payroll registers: 10 years (c) Retain all other registers: 3 years

(11) **Unemployment Compensation Claim** Records Records document claims submitted by former school, district, or ESD employees for unemployment compensation. Records include but are not limited to claims, notices, reports, claim determination appeal records, and related documentation and correspondence. Minimum retention: 3 years

(12) **Unemployment Reports** Records document school, district, or ESD employee earnings on a quarterly basis. Records are used to determine the costs and charges in the event of an unemployment compensation claim. Information in the records includes employee name, social security number, quarterly earnings, days worked, totals, and other data. Minimum retention: 3 years

(13) **Wage and Tax Statements Annual** statements documenting individual employee earnings and withholdings for state and federal income taxes and social security tax. Also known as federal tax form W-2. Information includes agency name and tax identification number, employee name and social security number, wages paid, amounts withheld, and related data. Minimum retention: 5 years

(14) **Withholding Allowance Certificates** Certificates documenting the exemption status of individual agency employees. Also described as W-4 forms. Information includes employee name and address, social security number, designation of exemption status, and signature. Minimum retention: 5 years after superseded or employee separates

Stat. Auth.: ORS 192 & 357, Other Auth. Code of Federal Regulations Title 34

Stats. Implemented: ORS 192 & 357

Hist.: OSA 6-1997, f. & cert. ef. 4-22-97; Renumbered from 166-411-0010, OSA 1-2006, f. & cert. ef. 4-17-06; OSA 1-2017, f. & cert. ef. 1-13-17

166-400-0050

Personnel Records

(1) **Affirmative Action Records** Records document school, district, and ESD compliance with the statutes and regulations of the U.S. Equal Opportunity Commission dealing with affirmative action. Records may include but are not limited to plans, updates, policy statements, reports, and supporting information. SEE ALSO Equal Employment Opportunity Commission Compliance Records in this section. Minimum retention: (a) Retain plans, updates, and policy statements: Permanent (b) Retain all other records: 3 years.

(2) **Benefits Continuation Records** Records document notifications to employees or dependents informing them of their rights to continue insurance coverage after termination of during disability or family leave. Continuation may be under COBRA or another provision. Notice is also sent to a third party administrator who administers the extended coverage. The records typically consist of notices sent and correspondence. Records may be filed with the Employee Benefits Records or Employee Personnel Records. SEE ALSO Employee Payroll Records in the Payroll section. Minimum retention: 3 years after employee separation of eligibility expired

(3) **Collective Bargaining Records** Records document the negotiations and contractual agreements between a school, district, or ESD and an employee bargaining unit. Records may include but are not limited to union contracts and amendments; tentative agreements; arbitrator's recommendations; negotiation work notes; strike contingency plans; management counter proposals; negotiation updates; newspaper clippings; press releases; research background material; employee classification printouts; minutes, sound recordings, and exhibits; published manuals; and related correspondence and documentation. Minimum retention: (a) Retain contracts: 75 years after contract expires (b) Retain all other records: 6 years after contract expires

(4) **Comparable Worth Study Records** Records documenting the analysis, study, and resolution of pay equity, alleged job discrimination, and related issues involving the agency and its employees. May include job content questionnaire summaries, position allocation reports, personnel reclassification studies, job category listings, study outlines, graphs, tables, and significant related records. Minimum retention: (a) Retain final study or report: Permanent (b) Retain all other records: 5 years

(5) **Compensation Plan Records** Records document the development, operation, and maintenance of the school, district, or ESD's personnel compensation plans. Records include compensation plans; salary surveys; merit matrixes; pay range tables; and related correspondence and documentation. Minimum retention: (a) Retain compensation plans: 20 years (b) Retain pay range tables, merit matrixes: Until superseded (c) Retain all other records: 3 years.

(6) **Criminal Background Check** Records Records document the pre-employment or periodic criminal record check made on prospective or current staff, faculty, and volunteers by schools, districts, or ESDs. Records include but are not limited to a Fingerprint-Based Criminal History Verification form documenting the result of a criminal history background check coordinated by the Oregon Department of Education through the FBI and Oregon Law Enforcement Data System (LEDS). The form includes name and other personal identifying information, indication of existence or absence of criminal record, and related documentation. Records may be retained as part of the Employee Personnel Record. SEE ALSO Employee Personnel Records and Recruitment and Selection Records in this section. Minimum retention: (a) Retain background check logs until superseded or obsolete (b) Retain fingerprint cards until return of card or receipt of investigation findings (c) Retain all other records 90 days, destroy.

(7) **Disciplinary Action Records** Records documenting termination, suspension, progressive disciplinary measures, and other actions against

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employees. May include statements, investigative records, interview and hearing records, findings, and related records. May be filed with Employee Personnel Records. Minimum retention: (a) Retain investigations resulting in termination: 10 years after employee separation (b) Retain investigations resulting in disciplinary action or exoneration: 3 years after resolution (c) Retain unfounded investigations: 3 years.

(8) **Drug Testing Records** Records document the testing of current and prospective employees for controlled substances prohibited by policy, procedure, or statute. Records may include but are not limited to the documentation of test results, the collection process, the random sample process, and those documenting the decision to administer reasonable suspicion drug testing. Minimum retention: (a) Retain positive test results: 5 years (b) Retain negative test results: 1 year.

(9) **Employee Benefits Records** Records document school, district, or ESD individual employee benefit information such as selection of insurance plans, retirement, pension, and disability plans, deferred compensation plans, and other benefit program information. Records may include but are not limited to plan selection and application forms, enrollment records, contribution and deduction summaries, personal data records, authorizations, beneficiary information, and related documentation. Records may be filed with the individual Employee Personnel Record. SEE ALSO Employee Payroll Records in the Payroll Records section. Minimum retention: (a) Retain PERS enrollment records, official copy: 75 years after date of hire (b) Retain all other records: 3 years after employee separation or eligibility expired.

(10) **Employee Medical Records** Records document school, district, or ESD individual employee work related medical history. These records are not personnel records and must be kept physically separate from employee personnel records, in a separate location, as required by the Americans with Disabilities Act. Records may include but are not limited to medical examination records (pre-employment, pre-assignment, periodic, or episodic), X-rays, records of significant health or disability limitations related to job assignments, documentation of work related injuries or illnesses, hearing test records, hazard exposure records, drug testing records, first-aid incident records, physician statements, release consent forms, and related correspondence. SEE ALSO Hazard Exposure Records in this section. Minimum retention: (a) Retain hazard exposure records: 30 years after separation (b) Retain all other records: 6 years after separation.

(11) **Employee Personnel Records** Records document school, district, and ESD individual employee work history. Records may include but are not limited to applications; notices of appointment; training and licensure (certification) records; records of health limitations; in service training records; salary schedules; tuition reimbursement records; personnel actions; performance evaluations; teacher evaluation reports; letters of commendation and recommendation; letters of reprimand; notices of disciplinary action; notices of layoff; letters of resignation; home address and telephone disclosures; emergency notification forms; oaths of office; grievance and complaint records; pension, retirement, disability, and leave records; and related correspondence and documentation. SEE ALSO Criminal History Check Records, Recruitment and Selection Records, Employee Medical Records, and Employee Benefits Records in this section. Minimum retention: (a) Retain employment applications (most recent and first successful), teacher licensure (certification) records, personnel actions, oaths of office, home address/telephone disclosures, emergency notification form (most recent): 75 years after date of hire (b) Retain grievance, complaint, and disciplinary records: 3 years (c) Retain all other records: 3 years after separation.

(12) **Employment Eligibility** Verification Forms (I-9) Records document the filing of U.S. Immigration and Naturalization Service Form I-9 form which verifies that an applicant or employee is eligible to work in the United States. Information includes employee information and verification data such as citizenship or alien status and signature, and employer review and verification data such as documents which establish identity and eligibility, and employer's signature certifying that documents have been checked. Minimum retention: 3 years or 1 year after employee separation, whichever is longer (8 CFR 274a-2).

(13) **Employee Recognition Records** Recognition of employees for special service to the agency. May include service awards, recognition certificates, commendations, award nominations, lists of past recipients, and presentation or ceremony records and photographs. Some records in this series may have historic value. For appraisal assistance contact the Oregon State Archives. SEE ALSO Employee Suggestion Award Records in this section. Minimum retention: 6 years.

(14) **Employee Suggestion Award Records** Records documenting an employee suggestion program where employees may submit suggestions

that improve effectiveness, efficiency, and economy in agency operations. Employees may receive awards for adopted suggestions. Records may include suggestion forms and evaluations, award information, and related documentation. SEE ALSO Employee Recognition Records in this section. Minimum retention: (a) Retain adopted suggestions: 2 years (b) Retain suggestions not adopted: 1 year.

(15) **Equal Employment Opportunity Commission Compliance** Records Records document school, district, or ESD compliance with the U.S. Equal Employment Opportunity Commission regulations. Records may include but are not limited to reports; anti-discrimination committee meeting records and reports; workplace analyses; discrimination complaint policies and procedures; complaints; reports; exhibits; withdrawal notices; copies of decisions; hearings and meeting records; report listing number of employees by gender, race, and job classification; and related correspondence and documentation. SEE ALSO Affirmative Action Records in this section. Minimum retention: (a) Retain plans, updates, and policy statements: Permanent (b) Retain complaint records and documentation: 3 years after final decision issued (c) Retain all other records: 3 years.

(16) **Grievance Records** Records document grievances brought by or against employees of schools, districts, or ESDs. Records may include but are not limited to notice of grievance; informal discussion notes; format hearing notes (including audio tapes); final summary statements or reports; private arbitrator or Employment Relations Board rulings; correspondence; and supporting documentation. Minimum retention: 3 years.

(17) **Hazard Exposure Records** Records document a school, district, or ESD employee's exposure to hazardous conditions such as chemicals, toxic substances, blood-borne pathogens, biological agents, bacteria, virus, fungus, radiation, noise, dust, heat, cold, vibration, repetitive motion, or other dangerous work related conditions. These records are not personnel records and should be maintained in an Employee Medical File. Records may include but are not limited to hearing test records, radiation measurement records, blood test or other laboratory results, incident reports, first-aid records, X-rays, work station air sampling reports, and correspondence. SEE ALSO Employee Medical Records in this section. Minimum retention: 30 years after separation (per 29 CFR 1910.20).

(18) **Layoff, Dismissal, and Non-Renewal** Records Records document the procedures and computations used in laying off, dismissing, or non-renewal of contracts of school, district, and ESD employees. Records may include but are not limited to service credit computations, service credit lists, layoff ranking lists, layoff notice letters, employee layoff election forms, documentation in support of action taken, and related correspondence. Minimum retention: 3 years after final disposition.

(19) **Personnel Research** Records Records document the study and analysis of personnel issues such as comparative salary, pay equity, collective bargaining, fringe benefits, manning standards, minimum qualifications, recruitment, training, job discrimination, and related issued involving the school, district, or ESD and its employees. Records may include but are not limited to questionnaires, data, summary reports, studies, surveys, and related documentation. Minimum retention: (a) Retain final study or report: Permanent (b) Retain all other records: 5 years

(20) **Photo Identification Records** Photographs and other records used to identify agency employees, private security personnel, contract workers, and others. May include photographs taken for agency identification cards, driver's license photographs, and information such as name, date of birth, physical description, identification number, driver's license number, and other data. Minimum retention: Until superseded or obsolete

(21) **Position Description and Classification Records** Records document job descriptions and the studies and evaluations of school, district, or ESD positions to determine if reclassification is appropriate. Records may include but are not limited to current and new job descriptions, organizational charts, classification specifications, desk audits, classification review reports, and related correspondence and documentation. Minimum retention: 3 years after superseded or obsolete

(22) **Recruitment and Selection Records** Records document the recruitment and selection of agency employees. Records may also document the recruitment and selection of contracted service providers such as attorneys, auditors, insurance agents, labor consultants, and others. Records may include but are not limited to job announcements and descriptions, applicant lists, applications and resumes, position advertisement records, civil service and other examination records, classification specifications, affirmative action records, interview questions, interview and application scoring notes, applicant background investigation information, letters of reference, civil service records, position authorization forms, certification of eligibles, recruitment summary records (job announcement, position description, documentation relating to the announcement and test, and test

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items and rating levels), and related correspondence and documentation. SEE ALSO Employee Personnel Records and Employment Eligibility Verification Forms (I-9) in this section. Minimum retention: (a) Retain announcement records, position description, and records documenting creation of test and rating scale 10 years (b) Retain unsolicited applications and resumes 3 months if not returned to solicitor (c) Retain unsuccessful applications and other records 3 years after position filled or recruitment cancelled

(23) **Teacher Registration and Licensure (Certification) Records** Records document the registration and licensure (certification) of school teachers, including substitute teachers. Records may include but are not limited to licensure (certification) records which list teacher name, type of license (certificate), date of licensure (certification), salary, days taught; Oregon Department of Education licensure (certification) reports which list type of license (certificate), teacher, and district; and related documentation. Early records may include county superintendent administered examination results, copies of examinations, and teacher salary information. SEE ALSO Employee Personnel Records in this section. Minimum retention: (a) Retain licensed (Certificated) Personnel Reports: 2 years after school year in which records were created (b) Retain substitute teachers records: 1 year after school year in which records were created (c) Retain all other records: 75 years after date of hire

(24) **Training Program Records** Records document the design, implementation, and administration of training programs and opportunities provided to school, district, and ESD employees, including in service training for faculty. Records may include but are not limited to class, workshop, or conference descriptions; instructor certifications; planning documentation; instructional materials; course outlines; class enrollment and attendance records; training certification forms; and related correspondence and documentation. Minimum retention: 3 years after school year in which records were created.

(25) **Volunteer Program Records** Records document the activities and administration of volunteer programs in the school, district, or ESD. Records may include but are not limited to volunteer hour statistics; volunteer program publicity records; insurance requirement records; volunteer training and orientation records; inactive volunteer files; and related correspondence and documentation. Minimum retention: (a) Retain volunteer worker records: 3 years after separation (b) Retain all other records: 5 years

(26) **Wellness Program Records** Records document the development, operation, and activities of a school, district, or ESD wellness program. Records may include but are not limited to program statements, health and safety surveys, committee minutes, newsletters, and related correspondence and documentation. Minimum retention: 3 years after school year in which records were created.

Stat. Auth.: ORS 192 & 357, Other Auth. Code of Federal Regulations Title 34

Stats. Implemented: ORS 192 & 357

Hist.: OSA 6-1997, f. & cert. ef. 4-22-97; Renumbered from 166-412-0010, OSA 1-2006, f. & cert. ef. 4-17-06; OSA 1-2017, f. & cert. ef. 1-13-17

166-400-0055

Safety and Risk Management Records

(1) **Accident and Injury Reports** Records document accidents, including workers' compensation accidents, and injuries to students, faculty, staff, and visitors on school, district, or ESD property, or during school related activities. Records include accident and injury reports; State Accident Insurance Fund (SAIF) accident reports; occupational injury investigations and reports; employee identification and physical assessment records; vehicle accident reports; and related correspondence and documentation. SEE ALSO Legal Case Files and Records in the Administrative Records section, and Insurance Claim Records, State Accident Insurance Fund (SAIF) Claim Records, Tort Liability Claim Records, and Workers' Compensation Claim Records in this section. Minimum retention: (a) Retain employee hazard exposure records: 30 years after employee separation (or as specified by 29 CFR 1910.20) (b) Retain other records, if no claim filed: 3 years (c) Retain other records, if claim filed: Transfer to claim record

(2) **Contractor Liability Insurance Verification Records** Letters or certificates of coverage provided by insurance companies declaring that specific contractors are covered by appropriate liability insurance. Information usually includes insurance company name and address, issue date, expiration date, amount of coverage, type of coverage, special provisions, signature of insurance company representative, and related data. Minimum retention: (a) Retain if related to county or special district improvement project: 10 years after substantial completion, (as defined by ORS 12.135(3)) (b) Retain all other records: 6 years after expiration

(3) **Contractor Performance Bond Records** Records documenting the posting of performance guarantees or surety bonds by contractors performing work for the agency. May include letters, certificates, copies of bonds, and similar records. Information usually includes name of individual or company covered, amount of coverage, effective and expires dates, name of bonding agent, authorized signatures, and related data. Minimum retention: (a) Retain if related to county or special district improvement project: 10 years after substantial completion, (as defined by ORS 12.135(3)) (b) Retain all other bond records: 6 years after expiration

(4) **Disaster Preparedness Plan Records** Records document school, district, or ESD plans and procedures to take in case of a major disaster which has destroyed or compromised the operations of a school, district, or ESD. Components of the recovery plan include but are not limited to physical plant repair and restoration; equipment restoration; electronic data restoration including steps to reload data, recover data, and reconnect networks; reestablish telephone connections; essential records protection; and related procedures and needs dealing with risk management, public relations, and financial issues. Minimum retention: Until superseded or obsolete

(5) **Emergency Response and Safety Plans and Procedures** Records document a school, district, or ESD's plans to promote a safe work environment for employees; procedures to follow in the event of emergency; and student safety instruction records. Records may include but are not limited to step-by-step procedures; safety plans; fire drill reports; records instructing students about safety on school buses; and related documentation. Fire drill reports are submitted annually to the local fire bureau. Minimum retention: (a) Retain fire drill reports: 1 year after school year in which records were created (b) Retain all other records: 1 year after superseded or obsolete

(6) **Hazard Communications Program Records** Records documenting participation in the Hazard Communications Program as required by the Oregon Occupational Safety and Health Administration (OR-OSHA). These records may be useful as documentation for exposure and other claims because they include chemical content, safe handling instructions, and other facts about a product at a given time in the past. Usually includes plans, reports, and material safety data sheets (MSDS). Information included in the material safety data sheets includes product name, manufacturer's address and phone number, hazardous ingredients contained, ingredient description, carcinogenicity, quantity of ingredients, fire and explosion data, health hazard data, radioactivity data, spill and leak pressures, safe handling and use information, special use precautions and related data. Minimum retention: 75 years after superseded or obsolete

(7) **Hazardous Substance Employer Survey Records** Series documents the locations, quantities, and individuals responsible for specific hazardous chemicals housed by an agency. This record is sent to the State Fire Marshal. Records include hazardous chemical compositions, lot numbers, and emergency disposition instructions. Minimum retention: Until superseded or obsolete

(8) **Insurance Claim Records** Records document school, district, or ESD requests for payment of insurance claims involving personal injury, property damage, motor vehicle accidents, and others. Records may include but are not limited to auto, liability, and property claim reports; estimates of repairs; accident reports; police reports; photographs; summaries; reviews; audio and video recordings and transcriptions; and related correspondence and documentation. SEE ALSO Legal Case Files and Records in the Administrative Records section, and State Accident Insurance Fund (SAIF) Claim Records, Tort Liability Claim Records, and Workers' Compensation Claim Records in this section. Minimum retention: 5 years after final disposition of claim.

(9) **Insurance Policy Records** Records document the terms and conditions of insurance policies between the school, district, or ESD and the insurers. Types of insurance include liability, property, group employee health and life, motor vehicle, workers' compensation, flood, and others. Records may include but are not limited to policies, endorsements, rate change notices, and related documentation. SEE ALSO Risk Factor Evaluation Records in this section. Minimum retention: (a) Retain property, liability, and employee group insurance: 75 years after expiration if no claims pending (b) Retain all other insurance: 6 years after expiration if no claims pending

(10) **Liability Claims Records** Records documenting various types of liability claims filed against the agency. These include personal injury, property damage, motor vehicle accident, false arrest, and others. Records often include reports, photographs, summaries, reviews, notices, audio and videotapes, transcriptions of recorded statements, memoranda, correspondence, and related documents. Minimum retention: (a) Retain if action

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taken: 10 years after case closed, dismissed, or date of last action (b) Retain if no action taken: 3 years

(11) **Liability Waivers Records** document the release of the school, district, or ESD from liability related to various activities that include student, volunteer, or citizen involvement. Records may include but are not limited to release forms with terms, date, signatures, and related information. Minimum retention: 3 years after school year in which records were created

(12) **Master Material Safety Data Records** Series documents all hazardous chemicals used and held by an agency. Records include hazardous materials safety sheets, safety instructions, and emergency instructions. Minimum retention: Until superseded or obsolete

(13) **Occupational Injury and Illness Records** Series is used to provide the Oregon Occupational Safety and Health Administration (OR-OSHA) with workers' compensation claim information about agency employees. Records may include logs and summaries, serious injury reports, injury cost reports, and annual occupational injuries and illnesses surveys. Minimum retention: 6 years

(14) **Risk Factor Evaluation Records** The series is used to assess various risk factors for an agency and determine appropriate insurance needs. Records may include studies, worksheets, yearly risk reports, restoration fund inventory reports, policy manuals, property transfer reports, self insurance manuals, real property reports, money and negotiable securities reports, a general risk survey and correspondence. Minimum retention: 4 years

(15) **Property Damage Records Reports**, photographs, and other records documenting damage to agency property such as signs, trees, picnic tables, buildings, fountains, and fences. Information often includes type and location of property damaged, description of damage, date and time of damage (if known), name and address of individual who caused damage (if known), value of damage, billing costs, and related data. Minimum retention: (a) Retain if litigated: see Civil Case Files in the Counsel or District Attorney section for retention (b) Retain if not litigated: 3 years after date of last action

(16) **Safety Committee Records** Records document the actions of workplace safety committees which oversee or advise on school, district, or ESD safety issues. Records may include but are not limited to minutes, agendas, exhibits, reports, resolutions, sound recordings, indexes, and related correspondence and documentation. Minimum retention: 3 years

(17) **Safety Inspection and Compliance Records** Records document fire and safety inspections of school, district, or ESD equipment and facilities and documents compliance with state and local safety regulations. Types of inspections may include fire and fire alarm inspections; equipment safety inspections; building inspections; elevator and boiler inspections; and related inspections. Records may include but are not limited to safety inspection reports; schedules of inspections; follow-up actions; and related correspondence and documentation. Minimum retention: 10 years.

(18) **Accident Insurance Fund Claim Records** Records document job-related injury and illness compensation claims made by school, district, and ESD employees to the Accident Insurance Fund and the resulting claim disposition. Records may include but are not limited to injury reports (Workers Compensation Division Form 801), notices of claim acceptance or denial, determination orders, medical reports, notices of closure, employer's payroll reports, Workers Compensation Board hearing transcripts, board orders, claim disposition agreement documents, agency investigation reports, appeal letters, vocational rehabilitation records, legal documents, and correspondence. Does not include workers' compensation program records. Minimum retention: (a) Retain injury reports: 1 year (b) Retain all other records: 6 years after settlement of claim.

(19) **Tort Liability Claim Records** Records document tort liability claims against the school, district, or ESD. Records may include but are not limited to accident and injury reports; liability claim summaries; invoices; correspondence; photographs; investigation reports; legal documents; statistical summary reports; reviews; notices; audio/videotapes; statements; and related documentation. SEE ALSO Legal Case Files and Records in the Administrative Records section, and Insurance Claim Records and State Accident Insurance Fund (SAIF) Claim Records in this section. Minimum retention: (a) Retain statistical reports: 5 years (b) Retain other records, if action taken: 10 years after final disposition of claim (c) Retain other records, if no action taken: 3 years

(20) **Vehicle Accident Records** Records documenting accidents involving agency vehicles. May include dispatch reports with information such as name and address of parties involved, date and time, complaint, description of damage, and other data. Records may also contain motor vehicle accident reports which include the driver's name, address, phone

number, date of birth, and driver's license number, as well as passenger and witness names, description of events, make and model of vehicle(s), vehicle identification number, and related data. Photographs and correspondence also may be part of these records. Minimum retention: (a) Retain if litigated: SEE ALSO Civil Case Files in Legal Counsel section (b) Retain if not litigated: 3 years

(21) **Workers' Compensation Claim Records** Records documenting the processing of individual employee claims of job related injuries or illnesses, but not those describing actual medical conditions. Includes records satisfying the procedural requirements of the State Workers' Compensation Division and the State Workers' Compensation Board, as well as those of (depending on agency arrangements) the State Accident Insurance Fund (SAIF), private insurance providers, or self-insurance. Records may include claim disposition notices, claim reporting and status forms; injury reports; determination orders; insurance premium data; hearing requests; safety citations; inspection reports; medical status updates and reports; investigation reports; reimbursement and payment records; and related correspondence and documentation. SEE ALSO Employee Medical Records in the Personnel section for records describing the job related injury or illness and the related subsequent medical condition of the employee. These often include workers' compensation accident reports, medical reports, vocational rehabilitation evaluations, disability determinations and related records. Minimum retention: (a) Retain records describing injuries and illnesses: SEE Employee Medical Records in the Personnel Records section (b) Retain all other records: 6 years after claim closed or final action

(22) **Workers' Compensation Reports** Records document the activities of the worker's compensation program. Records include a variety of reports including but not limited to claims summary reports; status reports; Occupational Safety and Health Administration (OSHA) logs and summaries; financial reports; and related documentation. Minimum retention: (a) Retain OSHA logs and summaries, official copy: 5 years after end of year to which they relate (b) Retain all other records: 3 years

Stat. Auth.: ORS 192 & 357, Other Auth. Code of Federal Regulations Title 34

Stats. Implemented: ORS 192 & 357

Hist.: OSA 6-1997, f. & cert. ef. 4-22-97; Renumbered from 166-413-0010, OSA 1-2006, f. & cert. ef. 4-17-06; OSA 1-2017, f. & cert. ef. 1-13-17

166-400-0060

Student Education Records

(1) **Alternative School Referral Records** Records document referrals sent to alternative schools seeking placement of students whose public school attendance and/or disciplinary record has been unsatisfactory. Referral form indicates acceptance or non-acceptance of student in private alternative program; funding source; signatures of referring school principal and alternative program director; student name, age, date of birth, student number; and parent's name and address. Minimum retention: 3 years after school year in which records were created.

(2) **Student Athletic Activity Records** Records document student eligibility and participation in interscholastic competitive sports and athletic activities, athletic event and team publicity, and athletic events scheduling. Records may include but are not limited to parental consent forms; Oregon School Activities Association eligibility forms and reports; and related documentation and correspondence. Minimum retention: 5 years after school year in which records were created.

(3) **Attendance Records** Records document the attendance of students in school. Records may include but are not limited to teacher or school attendance register; classroom daily attendance sheet; weekly attendance and truancy records; excused and unexcused absence records; tardiness records; notes from parents/guardians; and related documentation. The attendance recorded on the Oregon Student Record is a summary of this information. SEE ALSO Oregon Student Record in this section. Minimum retention: 3 years after school year in which records were created.

(4) **Behavioral Records, Major (Class/Group A)** Records document major student behavioral infractions which result in the identification of students for suspensions or expulsions. Records may include but are not limited to psychological tests; personality tests; group or individual intelligence tests; individual education programs; physician statements; state or local government agency reports; and related correspondence and documentation. Minimum retention: Until student turns 21.

(5) **Behavioral Records, Minor (Class/Group B)** Records document minor student behavioral infractions which do not result in the identification of a student for suspension, expulsion, or special education services. Records may include but are not limited to minor behavioral referrals; records of conversations; parent notes regarding student behavior; written behavioral agreements; detention records; bus citations; functional behav-

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ior assessments; and related correspondence and documentation. Minimum retention: Until end of school year.

(6) **Child Abuse Reports Records** document suspected child abuse reported by school staff or faculty. Records may include but are not limited to notes and observations of the child, record of contact with the State Office for Services to Children and Families or law enforcement agency, and related documentation. Minimum retention: 3 years after school year in which records were created.

(7) **Child Care Facility Residency Records** document students who live or have lived in childcare facilities, which are licensed to provide care for five or more children. Records may include but are not limited to reports filed semi-annually with the Oregon Department of Education. Minimum retention: 3 years after school year in which records were created.

(8) **Certificate of Advanced Mastery (CAM) Records** document student progress to fulfilling the State requirements for awarding of a CAM certification. Records may include but are not limited to planning records, test results, work samples, and the CAM award. Minimum retention: Until student reaches age 21 or graduates, whichever is longer.

(9) **Certificate of Initial Mastery (CIM) Records** document student progress to fulfilling the State requirements for awarding of a CIM certification. Records may include but are not limited to planning records, test results, and the CIM award. Minimum retention: Until student reaches age 21 or graduates, whichever is longer.

(10) **Compensatory Education Programs Student Records** document the placement and participation of students in compensatory educational programs, which provide a variety of supplemental education services to children. Programs may or may not be all or partially funded from federal sources. Compensatory programs may include but are not limited to Children Living in Poverty, Migratory Children, Neglected and Delinquent Children, Bilingual Education, Native Children, Parent Involvement, and Civil Rights. Records may include but are not limited to background information, grade placement, instructional and cumulative service, student profile forms, placement evaluation forms, withdrawal records and related correspondence and documentation. Minimum retention: (a) Retain records that show compliance with all federal program requirements: 5 years after school year in which records were created (b) Retain all other records: 3 years after school year in which records were created.

(11) **Compulsory Attendance Excuse Records** document the formal excuse of a student under sixteen years of age from compulsory school attendance. Records may include but are not limited to names and addresses of student and parent or guardian; reason for request; academic information; recommendations and approval of school district; and related correspondence and documentation. Minimum retention: Until student reaches age 21 or graduates, whichever is longer.

(12) **Educational Programs Student Records** document the placement and participation of students in educational programs which provide a variety of education services to children. Programs may or may not be all or partially funded from federal sources. Educational programs may include but are not limited to Talented and Gifted, Alternative Learning, Early Childhood, Professional Technical Education, School-to-Work, Cooperative Work Experience, and Distance Learning. Records may include but are not limited to background information, grade placement, instructional and cumulative service, student profile forms, placement evaluation forms, and related correspondence and documentation. Minimum retention: (a) Records that show compliance with all federal program requirements: 5 years after school year in which records were created (b) Other records: 3 years after school year in which records were created.

(13) **Grade Records** document student progress and grades awarded by teachers, and serve as the basis for the student's official academic record. Records may include test, assignment, paper, and homework scores; and final grades for students. Records may include but are not limited to teacher grade books; grade confirmation reports; grade change records; final grade rosters; and related documentation. SEE ALSO Report Cards in this section. Minimum retention: 6 years after school year in which records were created.

(14) **Grade Reports**, Administrative Records document grades received by students in a variety of reports organized by school, class, special program, or other grouping which are used by staff and faculty. Records may include but are not limited to administrative reports, counselors' reports, teachers' reports, grade point average reports, failure reports, honor roll reports, supplemental grade reports, class lists, and other manual or computer produced reports. Minimum retention: 3 years after school year in which records were created.

(15) **Grievance Records** document grievances or complaints brought forward by students against the school, district, or ESD concerning student conduct and violations of student rights and responsibilities. Records may include but are not limited to notices of grievance; written description of the complaint; informal discussion notes; formal hearing notes (including audio tapes); summary of interviews with witnesses; final summary statements; resolution of grievance; appeals documentation; and related documentation and correspondence. Minimum retention: 3 years after resolution.

(16) **Education Counseling Records** document the advice, assistance, evaluation, and educational planning provided for individual students by school guidance counselors. Records may include but are not limited to school performance and attitude; educational planning records; post-high school plans and career goals; college and scholarship applications records; letters of recommendation; list of honors and activities; information necessary for referral to social service agencies; correspondence; and related documentation. Minimum retention: 3 years after school year in which records were created.

(17) **High School Dual Program Student Records** document student participation in programs between community colleges and high schools which offer professional, technical, and other college courses to high school students for college credit. Records may include but are not limited to program approval records; application forms; course descriptions; examinations; competency evaluations and profiles; transmittal forms; registration forms; and related documentation and correspondence. Minimum retention: 3 years after school year in which records were created.

(18) **Home Schooling Records** document the basic educational career of a student being educated in a home school program. Records may include but are not limited to notification form or letter of intent to educate student at home; testing information; test results; census reports to the Oregon Department of Education; non-compliance notices; and related correspondence and documentation. SEE ALSO Oregon Student Record in this section. Minimum retention: 75 years after school year in which records were created.

(19) **Inter-District Transfer Agreement Records** document the application process for allowing a non-resident student to attend school out of district through an inter-district transfer agreement. Records may include but are not limited to procedures, administrative guidelines, inter-district transfer agreements, certificates of residency, and related correspondence and documentation. Minimum retention: 6 years after expiration.

(20) **Intervention Programs Student Records** document the assessment of students considered for referral to district-approved supplemental intervention programs and to determine appropriate follow-up actions. Programs may or may not be all or partially funded from federal sources. Programs may include but are not limited to Teen Parent, Alcohol and Drug Prevention, and Violence Prevention and Intervention. Records may include but are not limited to referrals, reports by assessment providers, consent forms, treatment and other reports, program class and support group attendance records, behavioral/discipline records, and related documentation and correspondence. Minimum retention: (a) Retain records that show compliance with all federal program requirements: 5 years after school year in which records were created (b) Retain all other records: 3 years after school year in which records were created.

(21) **Non-Resident Student Records** document attendance of non-resident students attending district-financed programs; non-resident dependent children; and other non-resident students for whom the district does not pay tuition. Records are used to report attendance to the Oregon Department of Education and to document reimbursement claims from the Oregon Basic School Support Fund. Records may include but are not limited to attendance reports; basic school support fund reports; and related documentation. Minimum retention: 3 years after school year in which records were created.

(22) **Parent-Teacher Conference Records** document a teacher's report to parents or guardians of student's progress prior to end of grading period and may indicate problem areas or areas in which student is excelling. Minimum retention: 3 years after school year in which records were created.

(23) **Parental/Custodial Delegation Records** document who has parental or custodial responsibility for a student. Records may include but are not limited to specification of rights or abridgment of rights for non-custodial parents; restraining orders and other court documents; informal documents signed by natural parent(s); and related correspon-

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dence and documentation. Minimum retention: Until student reaches age 21 or graduates, whichever is longer.

(24) **Personal/Locker Search Records** Records document searches of a student or student's locker. Records include student name, what was searched, when, what was found, and what report was made. Minimum retention: 3 years after school year in which records were created.

(25) **Psychological Guidance and Counseling Records** Records document student psychological health care responsibilities and activities performed by school or district health professionals or non-health staff. Records that are made or maintained separately and solely by a licensed health care professional who is not employed by the educational agency or institution, and are not used for education purposes of planning, are excluded from educational record provisions. See Oregon Department of Education student health record policies for further clarification. Minimum retention: Until student turns 21 or 5 years after last action.

(26) **Registration Records** Records document registration or enrollment of students in elementary, middle, and high school. Records may include but are not limited to enrollment applications registration forms completed annually by the parent or guardian for each student at the time of admittance to school. Information contained in the records generally include student name, address, date and place of birth; parent or guardian name and address; student demographic information such as race and language spoken at home; authorization for school to act in behalf of parent or guardian in case of emergency; class scheduling data; student assignments, such as lockers, counselors, and buses; and related correspondence and documentation. Registration information may be used to create student transcripts, attendance records, and to verify or determine residency status. Minimum retention: (a) Retain completed registrations 3 years after school year in which records were created (b) Retain incomplete/withdrawn registration records 3 years after school year in which records were created.

(27) **Report Cards Records** document the periodic report by a school about a student's social, emotional, and physical progress. Information includes but is not limited to full legal name of student; teacher's name; name and address of school; indication of attendance during reporting period; grades; and other related information. This information must be recorded on the Oregon Student Record by the beginning of the next school year. SEE ALSO Grade Records and Oregon Student Record in this section. Minimum retention: (a) If information has been recorded on Oregon Student Record: 6 years after school year in which records were created (b) If information has not been recorded on Oregon Student Record: 75 years.

(28) **Special Education Student Records** Records document students participating in special education programs and early intervention special education services. Records may include speech/hearing, academic, motor, occupational and/or physical therapy, vision/hearing, interdisciplinary team, and classroom observation reports; records relating to student behavior including psychological and social work reports; assessments obtained through other agencies; contact sheets; severity rating scales; test result records; physician's statements; parental consent records; educational program meeting records; request for hearing records; eligibility statements; individualized education plans (IEP); individualized family service plans (IFSP); and related correspondence and documentation. Minimum retention: (a) Records documenting speech pathology and physical therapy services: Until student reaches age 21 or 5 years after last seen, whichever is longer (b) ESD copies, if program at district level: Transfer records to home district after end of student participation (c) Readable photocopies of records necessary to document compliance with State and Federal audits retained by the former educational agency or institution when a student transfers out of district: 5 years after end of school year in which original record was created.

(29) **Student Health Records** Records document student health care responsibilities and activities performed by school or district health professionals or non-health staff. These records are maintained by the school nurse or another individual designated by the district to maintain confidential health information. Records may include but are not limited to medication administration records; records of nursing assessment and nursing care given in the school setting; School Health Management Plans prepared by the nurse for students with special health needs, medical records from outside health care providers and health care agencies; and psychological diagnostic test reports. Health information provided to Special Education for determining eligibility and IEP activity is maintained in the Special Education record and forwarded upon transfer of the student record. School nurse records are medical records subject to issues of confidentiality and exemption from disclosure per ORS 192.496. Health record information is protected and should be treated as other student records. Records that are

made or maintained separately and solely by a licensed health care professional who is not employed by the educational agency or institution, and are not used for education purposes of planning, are excluded from educational record provisions. See Oregon Department of Education student health record policies for further clarification. SEE ALSO Student Health Screening Records and Student Immunization Records in this section. Minimum retention: Until student reaches age 21 or graduates, whichever is longer.

(30) **Student Health Screening Records** Records document the health screening status of students and mandated certifications of health. Required health screening records include vision and hearing screening results; Certificate of Immunization Status; and Tuberculosis (TB) Clearance Certificate (if required by law according to the student's birth country). Records may also include but are not limited to communications related to health and safety and directed to the school from the parent/guardian or health care provider regarding the student's attendance, participation, or activities; communications which are directed to the school by health care providers; and documentation of first aid given, and instructions sent to parents/guardians regarding these screening and first aid events. These records are part of the Student Education Record and are transferred if the student transfers to a new district. See Oregon Department of Education student health record policies for further clarification. SEE ALSO Student Health Records and Student Immunization Records in this section. Minimum retention: Until student reaches age 21 or graduates, whichever is longer.

(31) **Student Immunization Records** Records document the immunization status of an individual student. Records include but are not limited to the Certificate of Immunization Status (CIS), which includes student identification information, vaccine history, and medical and religious exemptions, and records tracking susceptible for those students not yet completely immunized. Records must be retained as part of the Student Health Screening Record and are transferred if the student transfers to a new district. SEE ALSO Student Health Screening Records and Student Health Records in this section, and Immunization Records, Administrative in the Administrative Records section. Minimum retention: (a) Retain certificate of Immunization Status (CIS): Until student reaches age 21 or graduates whichever is longer (b) Retain immunization Status Records – Susceptible (Tracking Cards): Until student attendance ends.

(32) **Oregon Student Record** Records document a core set of information about an individual student (including a home-schooled student) and his/her educational career, birth through age 21. Records include name and address of the educational agency or institution; full legal name of the student; student's birth date and place of birth; name of parents/guardians; date of entry into the school; name of school previously attended; subjects taken; marks received; credits earned; attendance; date of withdrawal from school; social security number (as provided on a voluntary basis by parent or eligible student); and such additional information as the educational agency or institution may prescribe. Minimum retention: (a) Retain original: 75 years (b) Retain readable photocopy retained by the former educational agency or institution when a student transfers out of district: 1 year.

(33) **Transfer Application Records** Records document the authorization for transfer of students between schools within the district. Records may include but are not limited to applications for transfer which generally contain name and grade of student; reasons for transfer request; name of present school; name of school to which transfer is requested; authorizing signatures; and related correspondence and documentation. Minimum retention: 3 years after school year in which records were created.

(34) **Truancy Records** Records document non-attendance or truancy of students in elementary, middle, or high schools. Records may include but are not limited to notices of non-attendance or truancy; staff reports; investigations; hearing records; suspension notifications; and related correspondence and documentation. Minimum retention: 3 years after school year in which records were created.

(35) **Tutoring Records** Records document tutoring services provided to students. Records may include but are not limited to registration records, tutor training records, tutor personnel records, tutor class records, tutorial hours, and related documentation. Minimum retention: 3 years after school year in which records were created.

(36) **Withdrawal Records** Records document withdrawal from school by students between the ages of sixteen and eighteen by the mutual consent of parent or guardian and the school administration. Records may include but are not limited to withdrawal agreements which generally contain name and address of student and family; reason for request; student agreement not to loiter on school premises; agreement by staff to assist student with educational planning; and related correspondence and documen-

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tation. Records may also include withdrawal slips which assess student status at time of withdrawal and may include assessment of fees paid or refunded; status of textbooks, library materials, locks, and other materials used by the student; grades; attendance; and related documentation. Minimum retention: 3 years after school year in which records were created.

Stat. Auth.: ORS 192 & 357, Other Auth. Code of Federal Regulations Title 34
Stats. Implemented: ORS 192 & 357
Hist.: OSA 6-1997, f. & cert. ef. 4-22-97; Renumbered from 166-414-0010, OSA 1-2006, f. & cert. ef. 4-17-06; OSA 2-2006, f. & cert. ef. 7-26-06; OSA 3-2009, f. & cert. ef. 6-24-09; OSA 1-2010, f. & cert. ef. 5-27-10; OSA 1-2017, f. & cert. ef. 1-13-17

166-400-0065

Transportation Records

(1) **Bus Driver Records** Records document the status and conditions of employment of school bus drivers. Records may include but are not limited to lists of drivers; driving permit and license information; first aid certification; driver training records, examinations, and skill evaluations; change of employment status records; and related correspondence and documentation. Records may also contain copies of physical examinations, accident reports, and insurance documentation. Records may supplement the personnel files of the bus driver. SEE ALSO Employee Personnel Records in the Personnel Records section. Minimum retention: 4 years after school year in which records were created

(2) **Bus Incident and Vandalism Reports** Records document reports of vandalism and other incidents occurring on or near school buses. Reports are submitted by the bus drivers and are used to determine action to be taken. Reports consist of a narrative account of the incident; student discipline referral form which notifies schools of disciplinary problems; and related documentation. Student behavioral records may be transferred to the student's education record. Minimum retention: 1 year after school year in which records were created

(3) **Bus Schedule and Route Records** Records document the process of establishing and monitoring bus routes and schedules. Records may include but are not limited to bus route reports providing stop to stop directions for bus drivers; driver input forms detailing changes in stop times, students dropped, safety problems, and other changes to the bus schedule; surveys of alternative routes to be used during inclement weather; reports listing stops and stop times; tiering reports which include bus lines and routes, first and last scheduled stops, and start and finish times for each route; transportation logs; and related documentation. Minimum retention: (a) Retain annual bus route reports: 5 years after school year in which records were created (b) Retain all other records: 1 year after school year in which records were created

(4) **Bus Service Records** Records document the school bus service provided by the school district. Records may include but are not limited to dispatch files containing correspondence, reports, daily transportation forms, driver input forms, bus stop deactivation notices, bus schedule change notices, and similar documentation; release statements by parents of special education students releasing the district from responsibility for students left unattended at a bus stop; requests for school bus service for students normally ineligible for service; quarterly reports on student transportation operations including information on vehicle utilization, student loads, and vehicle distribution; transportation requirement forms requesting changes in transportation services provided by contractors or district fleet; and related documentation and correspondence. Minimum retention: (a) Retain quarterly reports: 10 years after school year in which records were created (b) Retain release forms: 3 years after school year in which records were created (c) Retain all other records: 1 year after school year in which records were created

(5) **Fuel Records** Records documenting the amount of gasoline, diesel, and oil used by agency-owned vehicles. Often includes logs, reports, and related documents. Minimum retention: 2 years

(6) **Transportation Complaint Reports** Records document complaints relating to students, drivers, schedules, or other school bus transportation problems. Records may include but are not limited to complaint forms, correspondence, and related documentation, and the district's response. Minimum retention: 3 years after school year in which complaint resolved

(7) **Transportation Safety Records** Records document safety hazards and safe routes and monitor student safety when taking school transportation. Records may include but are not limited to safety check records which detail pedestrian routes taken by student to and from school and identify number of traffic lanes, posted speeds, and types of crossings; safe stop reports which identify bus stops with safety hazards; railroad crossing reports which consist of annual reports to the Oregon Public Utility Commission which list location of railroad track crossings on school bus

routes, name of railroad, and names of intersecting streets; and related documentation. Minimum retention: (a) Retain hazard reports: 1 year after school year in which hazard eliminated (b) Retain all other records: 1 year after school year in which records were created.

(8) **Vehicle Maintenance Records** Records document the maintenance of school buses and other vehicles owned by the school, district, or ESD. Records may include but are not limited to maintenance agreements; annual and semiannual inspection and certification reports; preventive maintenance inspection reports; specified routine maintenance information; reports on expenditures and costs of repairs; new bus check lists; bus breakdown records; repair notices and orders; operations reports listing gas and oil consumption, mileage, and cost of gas, oil, and maintenance; and related documentation. Minimum retention: (a) Retain annual reports: 5 years after school year in which records were created (b) Retain all other records: 3 years after disposal of vehicle.

(9) **Vehicle Records** Records document school, district, or ESD ownership and administration of vehicles such as cars, vans, trucks, and buses. Records may include but are not limited to title application materials; titles; registrations; vehicle warranties, vehicle inventories, and related documentation and correspondence. Minimum retention: (a) Retain title application materials: Until title received (b) Retain titles: Until vehicle disposed of (c) Retain all other records: 3 years after disposal of vehicle.

(10) **Vehicle Usage Records** Records document the use of school, district, or ESD owned vehicles such as cars, trucks, vans, or buses. Records may include but are not limited to scheduling records; transportation request forms; list of vehicles with vehicle number and description; mileage; billing documentation and worksheets; billing reports; and related documentation and correspondence. Minimum retention: 3 years.

Stat. Auth.: ORS 192 & 357, Other Auth. Code of Federal Regulations Title 34
Stats. Implemented: ORS 192 & 357
Hist.: OSA 6-1997, f. & cert. ef. 4-22-97; Renumbered from 166-415-0010, OSA 1-2006, f. & cert. ef. 4-17-06; OSA 1-2017, f. & cert. ef. 1-13-17

Secretary of State, Audits Division Chapter 162

Rule Caption: Considerations and Criteria for Selecting Performance Audit Topics

Adm. Order No.: AUDIT 1-2017

Filed with Sec. of State: 1-5-2017

Certified to be Effective: 1-5-17

Notice Publication Date: 12-1-2016

Rules Adopted: 162-050-0030

Subject: ORS 297.070 specifies that the Secretary of State shall adopt rules specifying criteria to be considered for conducting a performance or program audit.

Rules Coordinator: Julie A. Sparks—(503) 986-2262

162-050-0030

Audit Selection Criteria

The Audits Division of the Office of the Secretary of State is responsible for producing performance audits that result in reports and recommendations that can generate significant improvements in government programs to benefit the public. An annual audit schedule is produced in consultation with the Secretary and considering Legislative priorities, with the goal of using audit resources efficiently and strategically. An essential element for all audits is a determination that the topic is auditable; that is, there is reliable data to answer the audit question and a feasible scope and methodology for conducting an audit in accordance with professional auditing standards. The following are other considerations and criteria used by the Division when choosing topics for performance audits.

(1) Mandated audits — audits required by law (one-time or recurring audits);

(2) Issues relating to an agency or program mission — audits that can help an agency better achieve its mission;

(3) Audits of agencies — audits of agencies and/or important programs within agencies that have not been audited for some time;

(4) Public safety/vulnerable populations — topics relating to public safety and protecting vulnerable populations (e.g., emergency preparedness, child welfare);

(5) Significant challenges facing the state — topics can involve multiple agencies and/or levels of government (e.g., improving K-12 education, workforce development and economic development)

(6) Cost savings, revenue enhancements — topics that have potential to produce significant cost savings or large increases in revenue;

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(7) Efficiency and effectiveness — topics that have the potential for increased economy, efficiency, or effectiveness of a program;

(8) High risk topics/large impacts — topics that are high risk, where we suspect the controls in place over a program are weak, and the resulting effects potentially large;

(9) Troubled agencies/programs — multiple ideas/problems at a single agency or program;

(10) Emerging/time sensitive issues — agencies facing emerging issues or problems, or trying to design more effective service delivery options for key programs.

Stat. Auth.: ORS 297
Stats. Implemented: ORS 297.070
Hist.: AUDIT 1-2017, f. & cert. ef. 1-5-17

Veterinary Medical Examining Board Chapter 875

Rule Caption: Reduces and clarifies experience requirements for out-of-state applicants for Certified Veterinary Technician licensure.

Adm. Order No.: VMEB 1-2017

Filed with Sec. of State: 1-12-2017

Certified to be Effective: 1-12-17

Notice Publication Date: 8-1-2016

Rules Amended: 875-030-0010

Subject: Reduces and clarifies CVT license eligibility for out-of-state applicants.

Rules Coordinator: Lori V. Makinen—(971) 673-0224

875-030-0010

Criteria for Becoming a Certified Veterinary Technician (CVT)

In order to be licensed as a CVT, an individual must:

(1) Pass the examinations referred to in OAR 875-030-0020; and

(2) Hold a certificate in veterinary technology (or a comparable certificate) from a college accredited by the American Veterinary Medical Association, or other program approved by the Board; or

(3) Have been actively licensed or registered in good standing as a veterinary technician in another state or states for a period of at least four years and:

(a) Have been employed as a licensed veterinary technician or instructor of veterinary technology performing duties substantially equivalent to those in OAR 875-030-0040 for a minimum of four years; and

(b) Pass the examinations referred to in OAR 87-030-0020; and

(c) Provide notarized letters confirming clinical competency as a veterinary technician or instructor from at least a veterinarian or college official who supervised the applicant pursuant to (a) of this section; and

(d) Provide W2 federal tax forms or other Board-approved proof of employment as a licensed veterinary technician or instructor; and

(e) Provide proof of CE as required in OAR 875-010-0090 that is current at the time of application.

Stat. Auth.: ORS 686.210

Stats. Implemented: ORS 686.350 - 686.370

Hist.: VE 5, f. & ef. 8-3-76; VME 3-1983, f. & ef. 1-21-83; VME 2-1989, f. 8-29-89, cert. ef. 10-1-89; VME 1-1991, f. & cert. ef. 1-24-91; VME 3-1991, f. & cert. ef. 12-9-91; VME 3-1992, f. & cert. ef. 10-9-92, Renumbered from 875-010-0025; VMEB 2-2000, f. & cert. ef. 6-21-00; VMEB 1-2006, f. & cert. ef. 2-8-06; VMEB 2-2006, f. & cert. ef. 5-11-06; VMEB 10-2008, f. & cert. ef. 7-22-08; VMEB 15-2008, f. & cert. ef. 12-15-08; VMEB 3-2009, f. & cert. ef. 10-15-09; VMEB 3-2010, f. & cert. ef. 5-6-10; VMEB 2-2011, f. & cert. ef. 3-2-11; VMEB 4-2014, f. & cert. ef. 1-17-14; VMEB 6-2014, f. & cert. ef. 10-20-14; VMEB 9-2016, f. & cert. ef. 12-13-16; VMEB 1-2017, f. & cert. ef. 1-12-17

Rule Caption: Corrects omission in practice limitations for persons not licensed as Certified Veterinary Technicians.

Adm. Order No.: VMEB 2-2017

Filed with Sec. of State: 1-12-2017

Certified to be Effective: 1-12-17

Notice Publication Date: 8-1-2016

Rules Amended: 875-030-0050

Subject: Prohibits work under indirect supervision for persons not licensed as Certified Veterinary Technicians.

Rules Coordinator: Lori V. Makinen—(971) 673-0224

875-030-0050

Practice Limitations for Individuals not Certified as Veterinary Technicians

(1) Persons who are not licensed by this Board as CVTs may, under the supervision of a licensed veterinarian, perform all acts that a CVT may perform except:

(2) Induce anesthesia, except to place an endotracheal tube to establish an airway in emergencies (OAR 875-030-0040(2)(b)(E));

(3) Operate X-ray equipment unless the person has completed 20 hours training in radiograph safety (2)(b)(G) as required by the Oregon State Health Division (OAR 333);

(4) Perform dental extractions (2)(e)(G);

(5) Administer rabies vaccine (2)(e)(H); and

(6) Inject or implant a permanent identification device (875-030-0040(I)).

(7) Perform any duties under indirect supervision as defined in OAR 875-005-0005(13)(c).

Stat. Auth.: ORS 686.210

Stats. Implemented: ORS 686.350 - 686.370

Hist.: VE 5, f. & ef. 8-3-76; VME 3-1983, f. & ef. 1-21-83; VME 2-1989, f. 8-29-89, cert. ef. 10-1-89; VME 1-1991, f. & cert. ef. 1-24-91; VME 3-1991, f. & cert. ef. 12-9-91; VME 3-1992, f. & cert. ef. 10-9-92, Renumbered from 875-010-0025; VMEB 1-2002(Temp), f. & cert. ef. 4-23-02 thru 10-20-02; Administrative correction 12-2-02; VMEB 1-2008, f. & cert. ef. 2-11-08; VMEB 5-2008, f. & cert. ef. 5-12-08; VMEB 12-2008, f. & cert. ef. 7-22-08; VMEB 16-2008, f. & cert. ef. 12-15-08; VMEB 4-2014, f. & cert. ef. 1-17-14; VMEB 2-2016(Temp), f. & cert. ef. 8-4-16 thru 1-4-17; VMEB 7-2016, f. & cert. ef. 12-13-16; VMEB 2-2017, f. & cert. ef. 1-12-17

Rule Caption: Corrects citation governing Certified Veterinary Technician interns' work in veterinary practices.

Adm. Order No.: VMEB 3-2017

Filed with Sec. of State: 1-12-2017

Certified to be Effective: 1-12-17

Notice Publication Date: 8-1-2016

Rules Amended: 875-010-0045

Subject: Corrects inaccurate citation referencing CVT student interns' work in veterinary practices.

Rules Coordinator: Lori V. Makinen—(971) 673-0224

875-010-0045

Student Interns

(1) Any person wishing to work in Oregon as a student intern may do so if he or she is engaged in a student intern program administered by a veterinary college or university, or a veterinary technology program, approved by the Board or the American Veterinary Medical Association.

(2) Supervision of student interns. All acts which a student intern may perform must be under the direct supervision of a licensed veterinarian. "Direct supervision" means that each act shall be performed by the student intern only after receiving specific directions from and in the presence of an Oregon licensed veterinarian. Certified Veterinary Technician student interns may work under direct supervision of a licensed veterinarian or Certified Veterinary Technician.

(3) Veterinary student interns may perform the following acts:

(a) Obtaining and Recording Information. Student interns may obtain and record the following information:

(A) Complete admission records, including recording the statements made by the client concerning the patient's problems and history. Student interns may also record their own observations of the patient. However, student interns cannot state or record their opinion concerning diagnosis of the patient;

(B) Maintain daily progress records, surgery logs, X-ray logs, Drug Enforcement Agency logs, and all other routine records as directed by the supervising veterinarian.

(b) Perform surgery, if relevant coursework has been successfully completed, and if determined by the supervising veterinarian to be competent in basic surgical techniques;

(c) Preparation of patients, instruments, equipment, and medicants for surgery. Student interns may:

(A) Prepare and sterilize surgical packs;

(B) Clip, surgically scrub, and disinfect the surgical site in preparation for surgery;

(C) Administer preanesthetic drugs as prescribed by the supervising veterinarian;

(D) Position the patient for anesthesia;

(E) Administer anesthesia as prescribed by the supervising veterinarian;

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(F) Operate anesthetic machines, oxygen equipment, and monitoring equipment.

(d) Collection of specimens and performance of laboratory procedures. Preceptees and Student Interns may:

(A) Collect urine, feces, sputum, and all other excretions for laboratory analysis;

(B) Collect blood samples for laboratory;

(C) Collect skin scrapings;

(D) Perform routine laboratory procedures including urinalysis, fecal analyses, hematological, and serological examinations.

(e) Assisting the veterinarian in diagnostic medical and surgical procedures. Student interns may assist supervising veterinarians in the following diagnostic, medical, and surgical proceedings:

(A) Take the patient's temperature, pulse and respiration;

(B) Medically bathe the patient;

(C) Administer topical, oral, hypodermic, and intravenous medication as directed by the supervising veterinarian;

(D) Operate diagnostic imaging equipment;

(E) Perform dental prophylaxis, including operating ultrasonic dental instruments.

(f) Student interns may perform other acts not specifically enumerated herein under the supervision of a veterinarian licensed to practice veterinary medicine in the State of Oregon.

(4) Certified Veterinary Technician student interns may perform all the acts enumerated in OAR 875-030-0040(2) and may not perform the acts prohibited in OAR 875-030-0040(3).

Stat. Auth.: ORS 686.210

Stats. Implemented: ORS 686.040(13)

Hist.: VE 7-1978, f. & ef. 7-10-78; VME 2-1994, f. & cert. ef. 11-30-94; VMEB 1-2006, f. & cert. ef. 2-8-06; VMEB 1-2010, f. & cert. ef. 5-6-10; VMEB 3-2014, f. & cert. ef. 1-17-14; VMEB 1-2016(Temp), f. & cert. ef. 8-4-16 thru 1-4-17; VMEB 4-2016(Temp), f. & cert. ef. 12-12-16 thru 6-9-17; VMEB 8-2016, f. & cert. ef. 12-13-16; VMEB 10-2016(Temp), f. & cert. ef. 12-14-16 thru 6-11-17; VMEB 3-2017, f. & cert. ef. 1-12-17

Rule Caption: Requires Continuing Education for veterinarians in pain management and antibiotic use.

Adm. Order No.: VMEB 4-2017

Filed with Sec. of State: 1-12-2017

Certified to be Effective: 1-12-17

Notice Publication Date: 8-1-2016

Rules Amended: 875-010-0090

Subject: Requires veterinarians to obtain Continuing Education of one hour each in appropriate analgesic and anesthetic methods and judicious antibiotic use.

Rules Coordinator: Lori V. Makinen—(971) 673-0224

875-010-0090

Continuing Education Requirements (CE)

(1) All active licensees, including veterinarians and certified veterinary technicians, must comply with the CE provided in this rule in order to renew their licenses.

(2) Licensees wishing to renew their license must complete the minimum required number of CE hours every two years. Veterinarians shall report 30 hours of CE to the Board with license renewals for every odd-numbered year. Certified veterinary technicians shall report 15 hours of CE to the Board for every even-numbered year. The required hours may be obtained online and be satisfied with any combination of the following continuing education activities:

(a) Attendance at scientific workshops or seminars approved by the Board or by the American Association of Veterinary Boards Registry of Approved Continuing Education (RACE).

(b) A maximum of four hours for veterinarians or two hours for certified veterinary technicians reading approved scientific journals. One subscription to an approved journal is equal to one hour of credit.

(c) A maximum of six hours for veterinarians or three hours for certified veterinary technicians of workshops or seminars on non-scientific subjects relating to the practice of veterinary medicine such as communication skills, practice management, stress management, or chemical impairment.

(d) A minimum for veterinarians of one hour each in judicious antibiotic use and appropriate analgesic and anesthetic methods.

(3) Workshops, seminars, and prepared materials on scientific and non-scientific subjects relating to veterinary medicine sponsored by the following organizations are approved:

(a) American Veterinary Medical Association (AVMA) and Canadian Veterinary Medical Association (CVMA);

(b) Specialty and allied groups of the American Veterinary Medical Association and Canadian Veterinary Medical Association;

(c) Regional meetings such as the Inter-Mountain Veterinary Medical Association, Central Veterinary Conference, and Western Veterinary Conference;

(d) Any state or province veterinary medical association;

(e) Any local or regional veterinary medical association;

(f) The American Animal Hospital Association;

(g) American and Canadian Veterinary Schools accredited by the American Veterinary Medical Association;

(h) All federal, state or regional veterinary medical academies or centers;

(i) Other programs receiving prior approval by the Board;

(j) The Board may approve other sponsors for lectures or prepared materials upon written request by the attending veterinarian or the sponsor.

(4) Scientific journals and publications relating to veterinary medicine are approved by the Board to satisfy a maximum of four hours of non-lecture CE activities.

(5) Study in a graduate resident program at an AVMA-approved veterinary school will satisfy the CE requirements for the year in which the veterinarian is enrolled in such program.

(6) Postgraduate coursework in veterinary science or veterinary public health at an AVMA- or Board-approved educational institution will satisfy CE requirements on a semester or credit hour basis for the reporting period in which the coursework occurs.

(7) Reporting CE credits.

(a) At the time of making application for license renewal in years when CE reporting is required, the veterinarian shall certify on the application form that 30 hours of CE, and the veterinary technician shall certify on the application form that 15 hours of CE, as set forth in this rule have been satisfied. Proof of participation in such CE programs must be kept by the licensee for a period of at least two years, and the licensee must permit the Board to inspect CE records. Failure to keep or provide these records to the Board shall constitute grounds for non-renewal of the license, or, if the license has been issued for that year, for revocation of the license;

(b) Proof of compliance with the CE requirement of this rule may be supplied through registration forms at lectures, certificates issued by the sponsors of lectures, subscriptions to journals, and other documentation approved by the Board.

(8) The Board may approve CE programs presented by non-veterinarians, if program content is pertinent or complementary to veterinary medicine.

Stat. Auth.: ORS 686.210

Stats. Implemented: ORS 686.410 - 686.420

Hist.: VMEB 1-2006, f. & cert. ef. 2-8-06; VMEB 2-2006, f. & cert. ef. 5-11-06; VMEB 1-2008, f. & cert. ef. 2-11-08; VMEB 2-2008(Temp), f. & cert. ef. 2-11-08 thru 8-9-08; Administrative correction 8-21-08; VMEB 13-2008, f. & cert. ef. 12-15-08; VMEB 1-2009, f. & cert. ef. 4-20-09; VMEB 2-2013, f. & cert. ef. 10-29-13; VMEB 3-2014, f. & cert. ef. 1-17-14; VMEB 6-2016, f. & cert. ef. 12-12-16; VMEB 4-2017, f. & cert. ef. 1-12-17

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123-061-0030	12-22-2016	Amend	2-1-2017	141-068-0090	1-12-2017	Adopt	2-1-2017
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125-246-0350	1-1-2017	Amend	2-1-2017	141-075-0060	1-12-2017	Repeal	2-1-2017
125-246-0360	1-1-2017	Amend	2-1-2017	141-075-0080	1-12-2017	Repeal	2-1-2017
125-246-0555	1-1-2017	Amend	2-1-2017	141-075-0110	1-12-2017	Repeal	2-1-2017
125-246-0570	1-1-2017	Amend	2-1-2017	141-075-0130	1-12-2017	Repeal	2-1-2017
125-247-0110	1-1-2017	Amend	2-1-2017	141-075-0140	1-12-2017	Repeal	2-1-2017
125-247-0185	1-1-2017	Amend	2-1-2017	141-075-0145	1-12-2017	Repeal	2-1-2017
125-247-0275	1-1-2017	Amend	2-1-2017	141-075-0150	1-12-2017	Repeal	2-1-2017
125-247-0287	1-1-2017	Amend	2-1-2017	141-075-0155	1-12-2017	Repeal	2-1-2017
125-247-0288	1-1-2017	Amend	2-1-2017	141-075-0160	1-12-2017	Repeal	2-1-2017
125-247-0305	1-1-2017	Amend	2-1-2017	141-075-0165	1-12-2017	Repeal	2-1-2017
125-247-0550	1-1-2017	Amend	2-1-2017	141-075-0170	1-12-2017	Repeal	2-1-2017
125-247-0691	1-1-2017	Amend	2-1-2017	141-075-0175	1-12-2017	Repeal	2-1-2017
137-105-0001	11-17-2016	Amend	1-1-2017	141-075-0180	1-12-2017	Repeal	2-1-2017
137-105-0010	11-17-2016	Amend	1-1-2017	141-075-0190	1-12-2017	Repeal	2-1-2017
137-105-0020	11-17-2016	Amend	1-1-2017	141-075-0195	1-12-2017	Repeal	2-1-2017
137-105-0025	11-17-2016	Adopt	1-1-2017	141-075-0200	1-12-2017	Repeal	2-1-2017
137-105-0030	11-17-2016	Amend	1-1-2017	141-075-0205	1-12-2017	Repeal	2-1-2017
137-106-0001	11-17-2016	Adopt	1-1-2017	141-075-0210	1-12-2017	Repeal	2-1-2017
137-106-0010	11-17-2016	Adopt	1-1-2017	141-075-0215	1-12-2017	Repeal	2-1-2017
137-106-0030	11-17-2016	Adopt	1-1-2017	141-075-0220	1-12-2017	Repeal	2-1-2017
137-106-0040	11-17-2016	Adopt	1-1-2017	141-075-0225	1-12-2017	Repeal	2-1-2017
141-067-0130	1-12-2017	Amend	2-1-2017	141-075-0230	1-12-2017	Repeal	2-1-2017
141-067-0150	1-12-2017	Amend	2-1-2017	141-075-0235	1-12-2017	Repeal	2-1-2017
141-067-0155	1-12-2017	Amend	2-1-2017	141-075-0240	1-12-2017	Repeal	2-1-2017
141-067-0170	1-12-2017	Amend	2-1-2017	141-075-0245	1-12-2017	Repeal	2-1-2017
141-067-0180	1-12-2017	Amend	2-1-2017	141-075-0250	1-12-2017	Repeal	2-1-2017
141-067-0195	1-12-2017	Amend	2-1-2017	141-075-0255	1-12-2017	Repeal	2-1-2017
141-067-0200	1-12-2017	Repeal	2-1-2017	141-075-0260	1-12-2017	Repeal	2-1-2017
141-067-0215	1-12-2017	Amend	2-1-2017	141-075-0265	1-12-2017	Repeal	2-1-2017
141-067-0220	1-12-2017	Amend	2-1-2017	141-075-0270	1-12-2017	Repeal	2-1-2017
141-067-0270	1-12-2017	Amend	2-1-2017	141-075-0275	1-12-2017	Repeal	2-1-2017
141-067-0300	1-12-2017	Amend	2-1-2017	141-075-0280	1-12-2017	Repeal	2-1-2017
141-068-0000	1-12-2017	Adopt	2-1-2017	141-075-0285	1-12-2017	Repeal	2-1-2017
141-068-0010	1-12-2017	Adopt	2-1-2017	141-075-0290	1-12-2017	Repeal	2-1-2017
141-068-0020	1-12-2017	Adopt	2-1-2017	141-075-0295	1-12-2017	Repeal	2-1-2017
141-068-0030	1-12-2017	Adopt	2-1-2017	141-075-0300	1-12-2017	Repeal	2-1-2017
141-068-0040	1-12-2017	Adopt	2-1-2017	141-075-0305	1-12-2017	Repeal	2-1-2017
141-068-0050	1-12-2017	Adopt	2-1-2017	141-075-0310	1-12-2017	Repeal	2-1-2017
141-068-0060	1-12-2017	Adopt	2-1-2017	141-075-0315	1-12-2017	Repeal	2-1-2017

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141-075-0325	1-12-2017	Repeal	2-1-2017	150-316-0086	1-1-2017	Amend	2-1-2017
141-075-0330	1-12-2017	Repeal	2-1-2017	150-316-0100	1-1-2017	Repeal	2-1-2017
141-075-0335	1-12-2017	Repeal	2-1-2017	150-316-0210	1-1-2017	Repeal	2-1-2017
141-075-0400	1-12-2017	Repeal	2-1-2017	150-316-0215	1-1-2017	Repeal	2-1-2017
141-075-0405	1-12-2017	Repeal	2-1-2017	150-316-0359	1-1-2017	Amend	2-1-2017
141-075-0460	1-12-2017	Repeal	2-1-2017	150-316-0435	1-1-2017	Amend	2-1-2017
141-075-0465	1-12-2017	Repeal	2-1-2017	150-316-0517	1-1-2017	Repeal	2-1-2017
141-075-0470	1-12-2017	Repeal	2-1-2017	150-320-0010	1-1-2017	Repeal	2-1-2017
141-075-0475	1-12-2017	Repeal	2-1-2017	150-320-0040	1-1-2017	Amend	2-1-2017
141-075-0480	1-12-2017	Repeal	2-1-2017	150-321-0340	1-1-2017	Amend	2-1-2017
141-075-0520	1-12-2017	Repeal	2-1-2017	150-321-0810	1-1-2017	Amend	2-1-2017
141-075-0525	1-12-2017	Repeal	2-1-2017	150-323-0130	1-1-2017	Amend	2-1-2017
141-075-0530	1-12-2017	Repeal	2-1-2017	150-323-0150	1-1-2017	Amend	2-1-2017
141-075-0535	1-12-2017	Repeal	2-1-2017	150-418-0010	1-1-2017	Adopt	2-1-2017
141-075-0540	1-12-2017	Repeal	2-1-2017	162-050-0030	1-5-2017	Adopt	2-1-2017
141-075-0545	1-12-2017	Repeal	2-1-2017	166-150-0005	1-13-2017	Amend	2-1-2017
141-075-0550	1-12-2017	Repeal	2-1-2017	166-150-0110	1-13-2017	Amend	2-1-2017
141-075-0555	1-12-2017	Repeal	2-1-2017	166-400-0010	1-13-2017	Amend	2-1-2017
141-075-0560	1-12-2017	Repeal	2-1-2017	166-400-0015	1-13-2017	Amend	2-1-2017
141-075-0565	1-12-2017	Repeal	2-1-2017	166-400-0020	1-13-2017	Amend	2-1-2017
141-075-0570	1-12-2017	Repeal	2-1-2017	166-400-0025	1-13-2017	Amend	2-1-2017
141-075-0575	1-12-2017	Repeal	2-1-2017	166-400-0030	1-13-2017	Amend	2-1-2017
141-125-0100	1-12-2017	Amend	2-1-2017	166-400-0035	1-13-2017	Amend	2-1-2017
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141-125-0120	1-12-2017	Amend	2-1-2017	166-400-0045	1-13-2017	Amend	2-1-2017
141-125-0140	1-12-2017	Amend	2-1-2017	166-400-0050	1-13-2017	Amend	2-1-2017
141-125-0160	1-12-2017	Amend	2-1-2017	166-400-0055	1-13-2017	Amend	2-1-2017
141-125-0170	1-12-2017	Amend	2-1-2017	166-400-0060	1-13-2017	Amend	2-1-2017
150-090-0020	1-1-2017	Adopt	2-1-2017	166-400-0065	1-13-2017	Amend	2-1-2017
150-118-0150	1-1-2017	Amend	2-1-2017	199-001-0010	11-17-2016	Amend	1-1-2017
150-294-0430	1-1-2017	Amend	2-1-2017	199-005-0080	11-17-2016	Adopt	1-1-2017
150-294-0840	1-1-2017	Amend	2-1-2017	199-040-0027	11-17-2016	Adopt	1-1-2017
150-305-0068	1-1-2017	Amend	2-1-2017	213-003-0001	1-1-2017	Amend	2-1-2017
150-305-0130	1-1-2017	Amend	2-1-2017	213-004-0001	1-1-2017	Amend	2-1-2017
150-305-0140	1-1-2017	Amend	2-1-2017	213-017-0004	1-1-2017	Amend	2-1-2017
150-305-0142	1-1-2017	Amend	2-1-2017	213-017-0005	1-1-2017	Amend	2-1-2017
150-305-0202	1-1-2017	Amend	2-1-2017	213-017-0006	1-1-2017	Amend	2-1-2017
150-305-0360 T	12-21-2016	Amend(T)	2-1-2017	213-017-0008	1-1-2017	Amend	2-1-2017
150-307-0470	1-1-2017	Repeal	2-1-2017	213-017-0011	1-1-2017	Amend	2-1-2017
150-307-0510	1-1-2017	Amend	2-1-2017	213-018-0075	1-1-2017	Amend	2-1-2017
150-311-0120	1-1-2017	Repeal	2-1-2017	213-019-0007	1-1-2017	Amend	2-1-2017
150-311-0130	1-1-2017	Repeal	2-1-2017	213-019-0008	1-1-2017	Amend	2-1-2017
150-311-0510	1-1-2017	Repeal	2-1-2017	213-019-0011	1-1-2017	Amend	2-1-2017
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150-314-0140	1-1-2017	Amend	2-1-2017	213-019-0015	1-1-2017	Amend	2-1-2017
150-314-0150	1-1-2017	Amend	2-1-2017	213-071-0010	12-29-2016	Adopt	2-1-2017
150-314-0485	1-1-2017	Amend	2-1-2017	213-071-0015	12-29-2016	Adopt	2-1-2017
150-315-0070	1-1-2017	Amend	2-1-2017	213-071-0020	12-29-2016	Adopt	2-1-2017
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150-315-0082	1-1-2017	Repeal	2-1-2017	250-020-0091	12-5-2016	Amend(T)	1-1-2017
150-315-0084	1-1-2017	Repeal	2-1-2017	250-020-0091(T)	12-5-2016	Suspend	1-1-2017
150-315-0120	1-1-2017	Repeal	2-1-2017	255-060-0011	1-3-2017	Amend(T)	2-1-2017
150-315-0121	1-1-2017	Adopt	2-1-2017	255-060-0016	1-3-2017	Amend(T)	2-1-2017
150-315-0125	1-1-2017	Adopt	2-1-2017	255-085-0010	1-3-2017	Amend(T)	2-1-2017
150-315-0190	1-1-2017	Repeal	2-1-2017	255-085-0020	1-3-2017	Amend(T)	2-1-2017

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257-050-0145	11-18-2016	Amend(T)	1-1-2017	309-012-0220	12-1-2016	Repeal	1-1-2017
257-095-0000	12-14-2016	Adopt(T)	1-1-2017	309-012-0230	12-1-2016	Repeal	1-1-2017
257-095-0010	12-14-2016	Adopt(T)	1-1-2017	309-014-0000	12-1-2016	Amend	1-1-2017
257-095-0030	12-14-2016	Adopt(T)	1-1-2017	309-014-0005	12-1-2016	Amend	1-1-2017
257-095-0040	12-14-2016	Adopt(T)	1-1-2017	309-014-0010	12-1-2016	Amend	1-1-2017
257-095-0050	12-14-2016	Adopt(T)	1-1-2017	309-014-0015	12-1-2016	Amend	1-1-2017
257-095-0060	12-14-2016	Adopt(T)	1-1-2017	309-014-0020	12-1-2016	Amend	1-1-2017
257-095-0070	12-14-2016	Adopt(T)	1-1-2017	309-014-0021	12-1-2016	Adopt	1-1-2017
257-095-0080	12-14-2016	Adopt(T)	1-1-2017	309-014-0022	12-1-2016	Adopt	1-1-2017
257-095-0090	12-14-2016	Adopt(T)	1-1-2017	309-014-0023	12-1-2016	Adopt	1-1-2017
257-095-0100	12-14-2016	Adopt(T)	1-1-2017	309-014-0025	12-1-2016	Amend	1-1-2017
259-008-0025	12-22-2016	Amend	2-1-2017	309-014-0030	12-1-2016	Amend	1-1-2017
259-008-0045	1-1-2017	Amend	2-1-2017	309-014-0035	12-1-2016	Amend	1-1-2017
259-008-0060	1-1-2017	Amend	2-1-2017	309-014-0036	12-1-2016	Adopt	1-1-2017
259-009-0062	12-22-2016	Amend	2-1-2017	309-014-0037	12-1-2016	Amend	1-1-2017
291-079-0030	11-30-2016	Repeal	1-1-2017	309-014-0040	12-1-2016	Amend	1-1-2017
291-079-0040	11-30-2016	Repeal	1-1-2017	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
309-008-0250	11-30-2016	Adopt	1-1-2017	309-018-0160	11-28-2016	Amend	1-1-2017
309-008-0300	11-30-2016	Adopt	1-1-2017	309-018-0210	11-28-2016	Amend	1-1-2017
309-008-0400	11-30-2016	Adopt	1-1-2017	309-018-0215	11-28-2016	Amend	1-1-2017
309-008-0500	11-30-2016	Adopt	1-1-2017	309-019-0100	11-30-2016	Amend	1-1-2017
309-008-0600	11-30-2016	Adopt	1-1-2017	309-019-0105	11-30-2016	Amend	1-1-2017
309-008-0700	11-30-2016	Adopt	1-1-2017	309-019-0105	12-28-2016	Amend(T)	2-1-2017
309-008-0800	11-30-2016	Adopt	1-1-2017	309-019-0110	11-30-2016	Amend	1-1-2017
309-008-0800	1-1-2017	Amend(T)	2-1-2017	309-019-0110	12-28-2016	Amend(T)	2-1-2017
309-008-0900	11-30-2016	Adopt	1-1-2017	309-019-0115	12-28-2016	Amend(T)	2-1-2017
309-008-0900	1-1-2017	Amend(T)	2-1-2017	309-019-0120	12-28-2016	Amend(T)	2-1-2017
309-008-0905	1-1-2017	Adopt(T)	2-1-2017	309-019-0125	11-30-2016	Amend	1-1-2017
309-008-1000	11-30-2016	Adopt	1-1-2017	309-019-0125	12-28-2016	Amend(T)	2-1-2017
309-008-1100	11-30-2016	Adopt	1-1-2017	309-019-0130	11-30-2016	Amend	1-1-2017
309-008-1100	1-1-2017	Amend(T)	2-1-2017	309-019-0130	12-28-2016	Amend(T)	2-1-2017
309-008-1200	11-30-2016	Adopt	1-1-2017	309-019-0135	11-30-2016	Amend	1-1-2017
309-008-1200	1-1-2017	Amend(T)	2-1-2017	309-019-0135	12-28-2016	Amend(T)	2-1-2017
309-008-1300	11-30-2016	Adopt	1-1-2017	309-019-0140	11-30-2016	Amend	1-1-2017
309-008-1300	1-1-2017	Amend(T)	2-1-2017	309-019-0140	12-28-2016	Amend(T)	2-1-2017
309-008-1400	11-30-2016	Adopt	1-1-2017	309-019-0145	11-30-2016	Amend	1-1-2017
309-008-1500	11-30-2016	Adopt	1-1-2017	309-019-0145	12-28-2016	Amend(T)	2-1-2017
309-008-1600	11-30-2016	Adopt	1-1-2017	309-019-0150	12-28-2016	Amend(T)	2-1-2017
309-011-0024	12-27-2016	Amend	2-1-2017	309-019-0151	12-28-2016	Adopt(T)	2-1-2017
309-011-0026	12-27-2016	Amend	2-1-2017	309-019-0152	12-28-2016	Adopt(T)	2-1-2017
309-011-0028	12-27-2016	Amend	2-1-2017	309-019-0155	12-28-2016	Amend(T)	2-1-2017
309-011-0031	12-27-2016	Adopt	2-1-2017	309-019-0160	12-28-2016	Amend(T)	2-1-2017
309-011-0032	12-27-2016	Amend	2-1-2017	309-019-0165	12-28-2016	Amend(T)	2-1-2017
309-011-0034	12-27-2016	Amend	2-1-2017	309-019-0175	11-30-2016	Amend	1-1-2017
309-011-0036	12-27-2016	Amend	2-1-2017	309-019-0175	12-28-2016	Amend(T)	2-1-2017
309-012-0130	12-1-2016	Repeal	1-1-2017	309-019-0180	12-28-2016	Amend(T)	2-1-2017
309-012-0140	12-1-2016	Repeal	1-1-2017	309-019-0185	12-28-2016	Amend(T)	2-1-2017
309-012-0150	12-1-2016	Repeal	1-1-2017	309-019-0195	11-30-2016	Amend	1-1-2017
309-012-0160	12-1-2016	Repeal	1-1-2017	309-019-0210	11-30-2016	Amend	1-1-2017
309-012-0170	12-1-2016	Repeal	1-1-2017	309-019-0215	11-30-2016	Amend	1-1-2017
309-012-0180	12-1-2016	Repeal	1-1-2017	309-019-0215	12-28-2016	Amend(T)	2-1-2017
309-012-0190	12-1-2016	Repeal	1-1-2017	309-019-0220	11-30-2016	Amend	1-1-2017
309-012-0200	12-1-2016	Repeal	1-1-2017	309-019-0225	11-30-2016	Adopt	1-1-2017

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309-019-0226	12-28-2016	Adopt(T)	2-1-2017	309-027-0050	12-5-2016	Adopt	1-1-2017
309-019-0230	11-30-2016	Adopt	1-1-2017	309-027-0060	12-5-2016	Adopt	1-1-2017
309-019-0230	12-28-2016	Amend(T)	2-1-2017	309-032-0850	12-1-2016	Amend	1-1-2017
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309-019-0240	11-30-2016	Adopt	1-1-2017	309-032-0870	12-1-2016	Amend	1-1-2017
309-019-0240	12-28-2016	Amend(T)	2-1-2017	309-032-0890	12-1-2016	Amend	1-1-2017
309-019-0241	12-28-2016	Adopt(T)	2-1-2017	309-033-0210	12-29-2016	Amend	2-1-2017
309-019-0242	12-28-2016	Adopt(T)	2-1-2017	309-033-0410	12-29-2016	Amend	2-1-2017
309-019-0245	11-30-2016	Adopt	1-1-2017	309-033-0432	12-29-2016	Amend	2-1-2017
309-019-0245	12-28-2016	Amend(T)	2-1-2017	309-033-0510	12-29-2016	Amend	2-1-2017
309-019-0248	11-30-2016	Adopt	1-1-2017	309-033-0530	12-29-2016	Amend	2-1-2017
309-019-0250	11-30-2016	Adopt	1-1-2017	309-033-0610	12-29-2016	Amend	2-1-2017
309-019-0255	11-30-2016	Adopt	1-1-2017	309-033-0710	12-29-2016	Amend	2-1-2017
309-019-0270	12-28-2016	Adopt(T)	2-1-2017	309-033-0720	12-29-2016	Amend	2-1-2017
309-019-0275	12-28-2016	Adopt(T)	2-1-2017	309-033-0740	12-29-2016	Amend	2-1-2017
309-019-0280	12-28-2016	Adopt(T)	2-1-2017	309-033-0910	12-29-2016	Amend	2-1-2017
309-019-0285	12-28-2016	Adopt(T)	2-1-2017	309-033-0970	12-29-2016	Amend	2-1-2017
309-019-0290	12-28-2016	Adopt(T)	2-1-2017	309-039-0500	11-30-2016	Amend	1-1-2017
309-019-0295	12-28-2016	Adopt(T)	2-1-2017	309-039-0510	11-30-2016	Amend	1-1-2017
309-022-0100	12-1-2016	Amend	1-1-2017	309-039-0530	11-30-2016	Amend	1-1-2017
309-022-0105	12-1-2016	Amend	1-1-2017	309-039-0580	11-30-2016	Amend	1-1-2017
309-022-0105	12-29-2016	Amend(T)	2-1-2017	330-063-0010	12-21-2016	Amend	2-1-2017
309-022-0110	12-29-2016	Amend(T)	2-1-2017	330-063-0015	12-21-2016	Amend	2-1-2017
309-022-0115	12-29-2016	Amend(T)	2-1-2017	330-063-0020	12-21-2016	Amend	2-1-2017
309-022-0125	12-29-2016	Amend(T)	2-1-2017	330-063-0025	12-21-2016	Amend	2-1-2017
309-022-0130	12-29-2016	Amend(T)	2-1-2017	330-070-0010	1-1-2017	Amend	2-1-2017
309-022-0135	12-1-2016	Amend	1-1-2017	330-070-0013	1-1-2017	Amend	2-1-2017
309-022-0140	12-29-2016	Amend(T)	2-1-2017	330-070-0014	1-1-2017	Amend	2-1-2017
309-022-0155	12-29-2016	Amend(T)	2-1-2017	330-070-0022	1-1-2017	Amend	2-1-2017
309-022-0160	12-29-2016	Amend(T)	2-1-2017	330-070-0024	1-1-2017	Amend	2-1-2017
309-022-0175	12-1-2016	Amend	1-1-2017	330-070-0025	1-1-2017	Amend	2-1-2017
309-022-0175	12-29-2016	Amend(T)	2-1-2017	330-070-0026	1-1-2017	Amend	2-1-2017
309-022-0180	12-29-2016	Amend(T)	2-1-2017	330-070-0027	1-1-2017	Amend	2-1-2017
309-022-0192	12-29-2016	Adopt(T)	2-1-2017	330-070-0029	1-1-2017	Amend	2-1-2017
309-022-0195	12-29-2016	Amend(T)	2-1-2017	330-070-0060	1-1-2017	Amend	2-1-2017
309-022-0200	12-29-2016	Amend(T)	2-1-2017	330-070-0073	1-1-2017	Amend	2-1-2017
309-022-0205	12-1-2016	Amend	1-1-2017	330-092-0015	12-21-2016	Amend	2-1-2017
309-022-0205	12-29-2016	Amend(T)	2-1-2017	330-160-0015	12-21-2016	Amend	2-1-2017
309-022-0210	12-29-2016	Amend(T)	2-1-2017	330-160-0030	12-21-2016	Amend	2-1-2017
309-022-0215	12-29-2016	Amend(T)	2-1-2017	330-160-0035	12-21-2016	Amend	2-1-2017
309-022-0220	12-29-2016	Amend(T)	2-1-2017	330-160-0080	12-21-2016	Adopt	2-1-2017
309-022-0225	12-29-2016	Amend(T)	2-1-2017	330-160-0090	12-21-2016	Adopt	2-1-2017
309-022-0230	12-29-2016	Amend(T)	2-1-2017	331-910-0000	1-6-2017	Amend	2-1-2017
309-023-0100	12-29-2016	Adopt	2-1-2017	331-910-0005	1-6-2017	Amend	2-1-2017
309-023-0110	12-29-2016	Adopt	2-1-2017	331-910-0010	1-6-2017	Amend	2-1-2017
309-023-0120	12-29-2016	Adopt	2-1-2017	331-910-0015	1-6-2017	Amend	2-1-2017
309-023-0130	12-29-2016	Adopt	2-1-2017	331-910-0025	1-6-2017	Amend	2-1-2017
309-023-0140	12-29-2016	Adopt	2-1-2017	331-910-0030	1-6-2017	Amend	2-1-2017
309-023-0150	12-29-2016	Adopt	2-1-2017	331-910-0035	1-6-2017	Amend	2-1-2017
309-023-0160	12-29-2016	Adopt	2-1-2017	331-910-0040	1-6-2017	Amend	2-1-2017
309-023-0170	12-29-2016	Adopt	2-1-2017	331-910-0045	1-6-2017	Amend	2-1-2017
309-023-0180	12-29-2016	Adopt	2-1-2017	331-910-0050	1-6-2017	Amend	2-1-2017
309-027-0010	12-5-2016	Adopt	1-1-2017	331-910-0055	1-6-2017	Amend	2-1-2017
309-027-0020	12-5-2016	Adopt	1-1-2017	331-910-0060	1-6-2017	Amend	2-1-2017
309-027-0030	12-5-2016	Adopt	1-1-2017	331-910-0070	1-6-2017	Amend	2-1-2017

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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	333-008-0010	11-28-2016	Amend	1-1-2017
331-915-0020	1-6-2017	Amend	2-1-2017	333-008-0023	11-28-2016	Amend	1-1-2017
331-915-0025	1-6-2017	Amend	2-1-2017	333-008-0040	11-28-2016	Amend	1-1-2017
331-915-0030	1-6-2017	Amend	2-1-2017	333-008-0600	11-28-2016	Amend	1-1-2017
331-915-0035	1-6-2017	Amend	2-1-2017	333-008-1020	11-28-2016	Amend	1-1-2017
331-915-0040	1-6-2017	Amend	2-1-2017	333-008-1110	11-28-2016	Amend	1-1-2017
331-915-0045	1-6-2017	Repeal	2-1-2017	333-008-1190	11-28-2016	Repeal	1-1-2017
331-915-0050	1-6-2017	Amend	2-1-2017	333-008-1200	11-28-2016	Amend	1-1-2017
331-915-0055	1-6-2017	Amend	2-1-2017	333-008-1200	12-31-2016	Amend(T)	2-1-2017
331-915-0060	1-6-2017	Amend	2-1-2017	333-008-1200(T)	11-28-2016	Repeal	1-1-2017
331-915-0065	1-6-2017	Amend	2-1-2017	333-008-1225	11-28-2016	Repeal	1-1-2017
331-915-0070	1-6-2017	Amend	2-1-2017	333-008-1230	11-28-2016	Amend	1-1-2017
331-915-0075	1-6-2017	Amend	2-1-2017	333-008-1230	12-31-2016	Amend(T)	2-1-2017
331-915-0080	1-6-2017	Amend	2-1-2017	333-008-1230(T)	11-28-2016	Repeal	1-1-2017
331-915-0085	1-6-2017	Amend	2-1-2017	333-008-1255	11-28-2016	Adopt	1-1-2017
333-004-0000	1-10-2017	Amend	2-1-2017	333-008-1500	11-28-2016	Amend	1-1-2017
333-004-0010	1-10-2017	Amend	2-1-2017	333-008-1500(T)	11-28-2016	Repeal	1-1-2017
333-004-0020	1-10-2017	Amend	2-1-2017	333-008-1505	11-28-2016	Amend	1-1-2017
333-004-0030	1-10-2017	Amend	2-1-2017	333-008-1505(T)	11-28-2016	Repeal	1-1-2017
333-004-0040	1-10-2017	Amend	2-1-2017	333-008-1620	11-28-2016	Amend	1-1-2017
333-004-0050	1-10-2017	Amend	2-1-2017	333-008-1730	11-28-2016	Amend	1-1-2017
333-004-0060	1-10-2017	Amend	2-1-2017	333-008-1740	11-28-2016	Amend	1-1-2017
333-004-0070	1-10-2017	Amend	2-1-2017	333-008-1740(T)	11-28-2016	Repeal	1-1-2017
333-004-0080	1-10-2017	Amend	2-1-2017	333-008-1760	11-28-2016	Amend	1-1-2017
333-004-0110	1-10-2017	Amend	2-1-2017	333-008-1770	11-28-2016	Amend	1-1-2017
333-004-0120	1-10-2017	Amend	2-1-2017	333-008-1820	11-28-2016	Amend	1-1-2017
333-004-0130	1-10-2017	Amend	2-1-2017	333-008-2080	11-28-2016	Amend	1-1-2017
333-004-0140	1-10-2017	Amend	2-1-2017	333-008-2120	11-28-2016	Amend	1-1-2017
333-004-0150	1-10-2017	Amend	2-1-2017	333-008-2130	11-28-2016	Repeal	1-1-2017
333-004-0160	1-10-2017	Amend	2-1-2017	333-008-2190	11-28-2016	Amend	1-1-2017
333-007-0010	11-28-2016	Amend	1-1-2017	333-008-9900	11-28-2016	Amend	1-1-2017
333-007-0010(T)	11-28-2016	Repeal	1-1-2017	333-008-9910	12-31-2016	Adopt(T)	2-1-2017
333-007-0090	11-28-2016	Amend	1-1-2017	333-010-0405	12-12-2016	Amend	1-1-2017
333-007-0090	12-2-2016	Amend(T)	1-1-2017	333-010-0415	12-12-2016	Amend	1-1-2017
333-007-0090	12-15-2016	Amend(T)	1-1-2017	333-010-0435	12-12-2016	Amend	1-1-2017
333-007-0100	11-28-2016	Amend	1-1-2017	333-016-2035	12-1-2016	Adopt	1-1-2017
333-007-0100(T)	11-28-2016	Repeal	1-1-2017	333-016-2040	12-1-2016	Adopt	1-1-2017
333-007-0200	11-28-2016	Amend	1-1-2017	333-016-2050	12-1-2016	Adopt	1-1-2017
333-007-0210	11-28-2016	Amend	1-1-2017	333-016-2060	12-1-2016	Adopt	1-1-2017
333-007-0220	11-28-2016	Amend	1-1-2017	333-016-2070	12-1-2016	Adopt	1-1-2017
333-007-0300	11-28-2016	Amend	1-1-2017	333-016-2090	12-1-2016	Adopt	1-1-2017
333-007-0310	12-2-2016	Amend(T)	1-1-2017	333-023-0805	1-10-2017	Amend	2-1-2017
333-007-0315	12-2-2016	Amend(T)	1-1-2017	333-023-0820	1-10-2017	Amend	2-1-2017
333-007-0320	12-2-2016	Amend(T)	1-1-2017	333-023-0830	1-10-2017	Adopt	2-1-2017
333-007-0320	12-15-2016	Amend(T)	1-1-2017	333-028-0220	7-1-2017	Amend	2-1-2017
333-007-0350	12-2-2016	Amend(T)	1-1-2017	333-028-0230	7-1-2017	Amend	2-1-2017
333-007-0350	12-15-2016	Amend(T)	1-1-2017	333-028-0234	7-1-2017	Adopt	2-1-2017
333-007-0360	12-2-2016	Amend(T)	1-1-2017	333-028-0238	7-1-2017	Adopt	2-1-2017
333-007-0360	12-15-2016	Amend(T)	1-1-2017	333-028-0240	7-1-2017	Amend	2-1-2017
333-007-0410	12-2-2016	Amend(T)	1-1-2017	333-028-0250	7-1-2017	Amend	2-1-2017

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333-046-0010	12-22-2016	Adopt	2-1-2017	333-070-0135	1-1-2017	Repeal	1-1-2017
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
333-046-0040	12-22-2016	Adopt	2-1-2017	333-070-0150	1-1-2017	Repeal	1-1-2017
333-046-0050	12-22-2016	Adopt	2-1-2017	333-070-0160	1-1-2017	Am. & Ren.	1-1-2017
333-046-0060	12-22-2016	Adopt	2-1-2017	333-070-0200	1-1-2017	Adopt	1-1-2017
333-046-0070	12-22-2016	Adopt	2-1-2017	333-535-0086	12-23-2016	Amend	2-1-2017
333-046-0080	12-22-2016	Adopt	2-1-2017	407-007-0210	12-1-2016	Amend	1-1-2017
333-046-0090	12-22-2016	Adopt	2-1-2017	407-007-0210(T)	12-1-2016	Repeal	1-1-2017
333-046-0100	12-22-2016	Adopt	2-1-2017	407-007-0250	12-1-2016	Amend	1-1-2017
333-046-0110	12-22-2016	Adopt	2-1-2017	407-007-0250(T)	12-1-2016	Repeal	1-1-2017
333-046-0120	12-22-2016	Adopt	2-1-2017	407-007-0279	12-1-2016	Amend	1-1-2017
333-046-0130	12-22-2016	Adopt	2-1-2017	407-007-0279(T)	12-1-2016	Repeal	1-1-2017
333-064-0100	12-2-2016	Amend(T)	1-1-2017	407-007-0290	12-1-2016	Amend	1-1-2017
333-064-0100	12-15-2016	Amend(T)	1-1-2017	407-007-0290(T)	12-1-2016	Repeal	1-1-2017
333-064-0110	12-2-2016	Amend(T)	1-1-2017	407-007-0320	12-1-2016	Amend	1-1-2017
333-064-0110	12-15-2016	Amend(T)	1-1-2017	407-007-0320(T)	12-1-2016	Repeal	1-1-2017
333-068-0005	1-1-2017	Repeal	1-1-2017	407-007-0330	12-1-2016	Amend	1-1-2017
333-068-0010	1-1-2017	Repeal	1-1-2017	407-007-0330(T)	12-1-2016	Repeal	1-1-2017
333-068-0015	1-1-2017	Repeal	1-1-2017	407-045-0800	12-1-2016	Amend	1-1-2017
333-068-0020	1-1-2017	Repeal	1-1-2017	407-045-0810	12-1-2016	Repeal	1-1-2017
333-068-0025	1-1-2017	Repeal	1-1-2017	407-045-0820	12-1-2016	Amend	1-1-2017
333-068-0030	1-1-2017	Repeal	1-1-2017	407-045-0825	12-1-2016	Adopt	1-1-2017
333-068-0035	1-1-2017	Repeal	1-1-2017	407-045-0830	12-1-2016	Repeal	1-1-2017
333-068-0040	1-1-2017	Repeal	1-1-2017	407-045-0850	12-1-2016	Repeal	1-1-2017
333-068-0045	1-1-2017	Repeal	1-1-2017	407-045-0860	12-1-2016	Repeal	1-1-2017
333-068-0050	1-1-2017	Repeal	1-1-2017	407-045-0870	12-1-2016	Repeal	1-1-2017
333-068-0055	1-1-2017	Repeal	1-1-2017	407-045-0880	12-1-2016	Repeal	1-1-2017
333-068-0060	1-1-2017	Repeal	1-1-2017	407-045-0885	12-1-2016	Adopt	1-1-2017
333-068-0065	1-1-2017	Repeal	1-1-2017	407-045-0886	12-1-2016	Adopt	1-1-2017
333-069-0005	1-1-2017	Repeal	1-1-2017	407-045-0887	12-1-2016	Adopt	1-1-2017
333-069-0010	1-1-2017	Repeal	1-1-2017	407-045-0890	12-1-2016	Amend	1-1-2017
333-069-0015	1-1-2017	Repeal	1-1-2017	407-045-0895	12-1-2016	Adopt	1-1-2017
333-069-0020	1-1-2017	Repeal	1-1-2017	407-045-0900	12-1-2016	Repeal	1-1-2017
333-069-0030	1-1-2017	Repeal	1-1-2017	407-045-0910	12-1-2016	Amend	1-1-2017
333-069-0040	1-1-2017	Repeal	1-1-2017	407-045-0920	12-1-2016	Repeal	1-1-2017
333-069-0050	1-1-2017	Repeal	1-1-2017	407-045-0930	12-1-2016	Repeal	1-1-2017
333-069-0060	1-1-2017	Repeal	1-1-2017	407-045-0940	12-1-2016	Amend	1-1-2017
333-069-0070	1-1-2017	Repeal	1-1-2017	407-045-0940	1-13-2017	Amend(T)	2-1-2017
333-069-0080	1-1-2017	Repeal	1-1-2017	407-045-0950	12-1-2016	Amend	1-1-2017
333-069-0085	1-1-2017	Am. & Ren.	1-1-2017	407-045-0955	12-1-2016	Adopt	1-1-2017
333-069-0090	1-1-2017	Repeal	1-1-2017	407-045-0960	12-1-2016	Repeal	1-1-2017
333-069-0100	1-1-2017	Adopt	1-1-2017	407-045-0970	12-1-2016	Repeal	1-1-2017
333-069-0120	1-1-2017	Adopt	1-1-2017	407-045-0980	12-1-2016	Repeal	1-1-2017
333-070-0075	1-1-2017	Repeal	1-1-2017	409-055-0030	12-22-2016	Amend	2-1-2017
333-070-0080	1-1-2017	Repeal	1-1-2017	409-055-0030(T)	12-22-2016	Repeal	2-1-2017
333-070-0085	1-1-2017	Repeal	1-1-2017	409-055-0040	12-22-2016	Amend	2-1-2017
333-070-0090	1-1-2017	Repeal	1-1-2017	409-055-0045	12-22-2016	Amend	2-1-2017
333-070-0095	1-1-2017	Repeal	1-1-2017	409-055-0050	12-22-2016	Amend	2-1-2017
333-070-0100	1-1-2017	Repeal	1-1-2017	409-060-0110	12-22-2016	Amend	2-1-2017
333-070-0105	1-1-2017	Repeal	1-1-2017	409-060-0120	12-22-2016	Amend	2-1-2017
333-070-0110	1-1-2017	Repeal	1-1-2017	409-060-0140	12-22-2016	Amend	2-1-2017
333-070-0115	1-1-2017	Am. & Ren.	1-1-2017	409-060-0150	12-22-2016	Amend	2-1-2017
333-070-0120	1-1-2017	Am. & Ren.	1-1-2017	409-110-0025	11-29-2016	Renumber	1-1-2017
333-070-0125	1-1-2017	Repeal	1-1-2017	409-110-0030	11-29-2016	Renumber	1-1-2017

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409-110-0040	11-29-2016	Renumber	1-1-2017	410-141-3145(T)	1-13-2017	Repeal	2-1-2017
409-110-0045	11-29-2016	Renumber	1-1-2017	410-141-3160	1-1-2017	Amend(T)	2-1-2017
410-120-0000	1-1-2017	Amend	2-1-2017	410-141-3260	1-1-2017	Amend	2-1-2017
410-120-0000(T)	1-1-2017	Repeal	2-1-2017	410-141-3260	1-13-2017	Amend	2-1-2017
410-120-1230	1-1-2017	Amend	2-1-2017	410-141-3260(T)	1-1-2017	Repeal	2-1-2017
410-121-0030	12-1-2016	Amend	1-1-2017	410-141-3260(T)	1-13-2017	Repeal	2-1-2017
410-121-0030	1-1-2017	Amend(T)	2-1-2017	410-141-3300	1-1-2017	Amend	2-1-2017
410-121-0030(T)	12-1-2016	Repeal	1-1-2017	410-141-3300	1-1-2017	Amend	2-1-2017
410-121-0040	12-1-2016	Amend	1-1-2017	410-141-3300	1-13-2017	Amend	2-1-2017
410-121-0040	1-1-2017	Amend(T)	2-1-2017	410-141-3300(T)	1-1-2017	Repeal	2-1-2017
410-121-0040(T)	12-1-2016	Repeal	1-1-2017	410-141-3300(T)	1-13-2017	Repeal	2-1-2017
410-123-1220	1-1-2017	Amend(T)	2-1-2017	410-141-3395	1-1-2017	Amend	2-1-2017
410-123-1260	1-1-2017	Amend(T)	2-1-2017	410-141-3435	12-1-2016	Amend	1-1-2017
410-125-0085	1-1-2017	Amend	2-1-2017	410-170-0110	11-29-2016	Amend	1-1-2017
410-125-0085(T)	1-1-2017	Repeal	2-1-2017	410-170-0110(T)	11-29-2016	Repeal	1-1-2017
410-125-0360	1-1-2017	Amend	2-1-2017	411-004-0040	12-28-2016	Amend	2-1-2017
410-125-0360(T)	1-1-2017	Repeal	2-1-2017	411-027-0170	12-28-2016	Amend	1-1-2017
410-129-0020	1-1-2017	Amend(T)	1-1-2017	411-030-0033	12-28-2016	Amend	2-1-2017
410-129-0040	1-1-2017	Amend(T)	1-1-2017	411-030-0068	12-28-2016	Amend	2-1-2017
410-129-0070	1-1-2017	Amend(T)	1-1-2017	411-030-0070	12-28-2016	Amend	2-1-2017
410-129-0190	1-1-2017	Suspend	1-1-2017	411-305-0010	1-1-2017	Am. & Ren.	2-1-2017
410-131-0040	1-1-2017	Amend(T)	1-1-2017	411-305-0020	1-1-2017	Am. & Ren.	2-1-2017
410-131-0080	1-1-2017	Amend(T)	1-1-2017	411-305-0023	1-1-2017	Am. & Ren.	2-1-2017
410-131-0100	1-1-2017	Amend(T)	1-1-2017	411-305-0025	1-1-2017	Am. & Ren.	2-1-2017
410-131-0120	1-1-2017	Amend(T)	1-1-2017	411-305-0027	1-1-2017	Repeal	2-1-2017
410-138-0000	1-1-2017	Amend	2-1-2017	411-305-0030	1-1-2017	Am. & Ren.	2-1-2017
410-138-0000	1-13-2017	Amend(T)	2-1-2017	411-305-0050	1-1-2017	Repeal	2-1-2017
410-138-0005	1-1-2017	Amend	2-1-2017	411-305-0080	1-1-2017	Am. & Ren.	2-1-2017
410-138-0005	1-13-2017	Amend(T)	2-1-2017	411-305-0090	1-1-2017	Am. & Ren.	2-1-2017
410-138-0007	1-1-2017	Amend	2-1-2017	411-305-0105	1-1-2017	Repeal	2-1-2017
410-138-0007	1-13-2017	Amend(T)	2-1-2017	411-305-0110	1-1-2017	Repeal	2-1-2017
410-138-0009	1-1-2017	Amend	2-1-2017	411-305-0115	1-1-2017	Repeal	2-1-2017
410-138-0009	1-13-2017	Amend(T)	2-1-2017	411-305-0120	1-1-2017	Am. & Ren.	2-1-2017
410-138-0020	1-1-2017	Amend	2-1-2017	411-305-0140	1-1-2017	Am. & Ren.	2-1-2017
410-138-0020	1-13-2017	Amend(T)	2-1-2017	411-305-0160	1-1-2017	Repeal	2-1-2017
410-138-0040	1-1-2017	Amend	2-1-2017	411-305-0170	1-1-2017	Repeal	2-1-2017
410-138-0040	1-13-2017	Amend(T)	2-1-2017	411-305-0180	1-1-2017	Repeal	2-1-2017
410-138-0060	1-1-2017	Amend	2-1-2017	411-323-0050	12-16-2016	Amend(T)	2-1-2017
410-138-0060	1-13-2017	Amend(T)	2-1-2017	411-323-0050(T)	12-16-2016	Suspend	2-1-2017
410-138-0080	1-1-2017	Amend	2-1-2017	413-010-0000	12-1-2016	Amend	1-1-2017
410-138-0080	1-13-2017	Amend(T)	2-1-2017	413-010-0035	1-1-2017	Amend	2-1-2017
410-138-0390	1-1-2017	Amend	2-1-2017	413-010-0035(T)	1-1-2017	Repeal	2-1-2017
410-138-0390	1-13-2017	Amend(T)	2-1-2017	413-010-0500	12-1-2016	Amend	1-1-2017
410-138-0420	1-1-2017	Amend	2-1-2017	413-010-0501	12-1-2016	Repeal	1-1-2017
410-138-0420	1-13-2017	Amend(T)	2-1-2017	413-010-0502	12-1-2016	Amend	1-1-2017
410-141-0520	12-1-2016	Amend	1-1-2017	413-010-0505	12-1-2016	Amend	1-1-2017
410-141-0520	1-1-2017	Amend(T)	2-1-2017	413-010-0510	12-1-2016	Amend	1-1-2017
410-141-0520(T)	12-1-2016	Repeal	1-1-2017	413-010-0525	12-1-2016	Amend	1-1-2017
410-141-3015	1-1-2017	Amend	2-1-2017	413-010-0535	12-1-2016	Amend	1-1-2017
410-141-3015	1-13-2017	Amend	2-1-2017	413-015-0100	12-1-2016	Amend	1-1-2017
410-141-3015(T)	1-1-2017	Repeal	2-1-2017	413-015-0100(T)	12-1-2016	Repeal	1-1-2017
410-141-3015(T)	1-13-2017	Repeal	2-1-2017	413-015-0115	12-1-2016	Amend	1-1-2017
410-141-3070	1-1-2017	Amend	2-1-2017	413-015-0125	12-1-2016	Amend	1-1-2017
410-141-3145	1-1-2017	Amend	2-1-2017	413-015-0125(T)	12-1-2016	Repeal	1-1-2017
410-141-3145	1-13-2017	Amend	2-1-2017	413-015-0205	12-1-2016	Amend	1-1-2017

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413-015-0212	12-1-2016	Amend	1-1-2017	413-080-0070(T)	12-1-2016	Repeal	1-1-2017
413-015-0212(T)	12-1-2016	Repeal	1-1-2017	413-090-0000	12-1-2016	Amend	1-1-2017
413-015-0300	12-1-2016	Amend	1-1-2017	413-090-0000(T)	12-1-2016	Repeal	1-1-2017
413-015-0300(T)	12-1-2016	Repeal	1-1-2017	413-090-0055	12-1-2016	Amend	1-1-2017
413-015-0409	12-1-2016	Amend	1-1-2017	413-090-0055(T)	12-1-2016	Repeal	1-1-2017
413-015-0409(T)	12-1-2016	Repeal	1-1-2017	413-090-0065	12-1-2016	Amend	1-1-2017
413-015-0420	12-1-2016	Amend	1-1-2017	413-090-0065(T)	12-1-2016	Repeal	1-1-2017
413-015-0420(T)	12-1-2016	Repeal	1-1-2017	413-090-0070	12-1-2016	Amend	1-1-2017
413-015-0440	12-1-2016	Amend	1-1-2017	413-090-0070(T)	12-1-2016	Repeal	1-1-2017
413-015-0440(T)	12-1-2016	Repeal	1-1-2017	413-090-0075	12-1-2016	Amend	1-1-2017
413-015-0445	12-1-2016	Amend	1-1-2017	413-090-0075(T)	12-1-2016	Repeal	1-1-2017
413-015-0445(T)	12-1-2016	Repeal	1-1-2017	413-090-0080	12-1-2016	Amend	1-1-2017
413-015-0450	12-1-2016	Amend	1-1-2017	413-090-0080(T)	12-1-2016	Repeal	1-1-2017
413-015-0450(T)	12-1-2016	Repeal	1-1-2017	413-090-0090	12-1-2016	Amend	1-1-2017
413-015-0620	12-1-2016	Adopt	1-1-2017	413-090-0090(T)	12-1-2016	Repeal	1-1-2017
413-015-0620(T)	12-1-2016	Repeal	1-1-2017	413-110-0280	1-1-2017	Repeal	2-1-2017
413-015-0625	12-1-2016	Adopt	1-1-2017	413-110-0282	1-1-2017	Repeal	2-1-2017
413-015-0625(T)	12-1-2016	Repeal	1-1-2017	413-110-0286	1-1-2017	Repeal	2-1-2017
413-015-0630	12-1-2016	Adopt	1-1-2017	413-110-0288	1-1-2017	Repeal	2-1-2017
413-015-0630(T)	12-1-2016	Repeal	1-1-2017	413-110-0290	1-1-2017	Repeal	2-1-2017
413-015-0640	12-1-2016	Adopt	1-1-2017	413-110-0291	1-1-2017	Repeal	2-1-2017
413-015-0640(T)	12-1-2016	Repeal	1-1-2017	413-110-0292	1-1-2017	Repeal	2-1-2017
413-015-1000	12-1-2016	Amend	1-1-2017	413-110-0293	1-1-2017	Repeal	2-1-2017
413-015-1000(T)	12-1-2016	Repeal	1-1-2017	413-110-0295	1-1-2017	Repeal	2-1-2017
413-015-9030	12-1-2016	Amend	1-1-2017	413-110-0297	1-1-2017	Repeal	2-1-2017
413-015-9030(T)	12-1-2016	Repeal	1-1-2017	413-110-0299	1-1-2017	Repeal	2-1-2017
413-015-9040	12-1-2016	Amend	1-1-2017	413-215-0000	12-1-2016	Adopt	1-1-2017
413-015-9040(T)	12-1-2016	Repeal	1-1-2017	413-215-0000(T)	12-1-2016	Repeal	1-1-2017
413-030-0300	1-1-2017	Repeal	2-1-2017	413-215-0001	12-1-2016	Amend	1-1-2017
413-030-0310	1-1-2017	Repeal	2-1-2017	413-215-0001(T)	12-1-2016	Repeal	1-1-2017
413-030-0320	1-1-2017	Repeal	2-1-2017	413-215-0006	12-1-2016	Repeal	1-1-2017
413-070-0516	1-1-2017	Amend	2-1-2017	413-215-0011	12-1-2016	Amend	1-1-2017
413-070-0518	1-1-2017	Amend	2-1-2017	413-215-0011(T)	12-1-2016	Repeal	1-1-2017
413-070-0670	1-1-2017	Amend	2-1-2017	413-215-0016	12-1-2016	Amend	1-1-2017
413-070-0900	1-1-2017	Amend	2-1-2017	413-215-0016(T)	12-1-2016	Repeal	1-1-2017
413-070-0900(T)	1-1-2017	Repeal	2-1-2017	413-215-0021	12-1-2016	Amend	1-1-2017
413-070-0917	1-1-2017	Amend	2-1-2017	413-215-0021(T)	12-1-2016	Repeal	1-1-2017
413-070-0917(T)	1-1-2017	Repeal	2-1-2017	413-215-0026	12-1-2016	Amend	1-1-2017
413-070-0959	1-1-2017	Amend	2-1-2017	413-215-0026(T)	12-1-2016	Repeal	1-1-2017
413-070-0959(T)	1-1-2017	Repeal	2-1-2017	413-215-0031	12-1-2016	Amend	1-1-2017
413-070-1020	1-1-2017	Amend	2-1-2017	413-215-0031(T)	12-1-2016	Repeal	1-1-2017
413-080-0050	12-1-2016	Amend	1-1-2017	413-215-0036	12-1-2016	Amend	1-1-2017
413-080-0050(T)	12-1-2016	Repeal	1-1-2017	413-215-0036(T)	12-1-2016	Repeal	1-1-2017
413-080-0051	12-1-2016	Adopt	1-1-2017	413-215-0041	12-1-2016	Amend	1-1-2017
413-080-0051(T)	12-1-2016	Repeal	1-1-2017	413-215-0041(T)	12-1-2016	Repeal	1-1-2017
413-080-0052	12-1-2016	Amend	1-1-2017	413-215-0046	12-1-2016	Amend	1-1-2017
413-080-0052(T)	12-1-2016	Repeal	1-1-2017	413-215-0046(T)	12-1-2016	Repeal	1-1-2017
413-080-0053	1-1-2017	Amend	2-1-2017	413-215-0051	12-1-2016	Amend	1-1-2017
413-080-0053(T)	1-1-2017	Repeal	2-1-2017	413-215-0051(T)	12-1-2016	Repeal	1-1-2017
413-080-0054	12-1-2016	Amend	1-1-2017	413-215-0056	12-1-2016	Amend	1-1-2017
413-080-0054(T)	12-1-2016	Repeal	1-1-2017	413-215-0056(T)	12-1-2016	Repeal	1-1-2017
413-080-0059	12-1-2016	Amend	1-1-2017	413-215-0061	12-1-2016	Amend	1-1-2017
413-080-0059(T)	12-1-2016	Repeal	1-1-2017	413-215-0061(T)	12-1-2016	Repeal	1-1-2017
413-080-0062	1-1-2017	Amend	2-1-2017	413-215-0066	12-1-2016	Amend	1-1-2017
413-080-0062(T)	1-1-2017	Repeal	2-1-2017	413-215-0066(T)	12-1-2016	Repeal	1-1-2017

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413-215-0756(T)	12-1-2016	Repeal	1-1-2017	413-215-0971(T)	12-1-2016	Repeal	1-1-2017
413-215-0761	12-1-2016	Amend	1-1-2017	413-215-0976	12-1-2016	Amend	1-1-2017
413-215-0761(T)	12-1-2016	Repeal	1-1-2017	413-215-0976(T)	12-1-2016	Repeal	1-1-2017
413-215-0766	12-1-2016	Amend	1-1-2017	413-215-0981	12-1-2016	Amend	1-1-2017
413-215-0766(T)	12-1-2016	Repeal	1-1-2017	413-215-0981(T)	12-1-2016	Repeal	1-1-2017
413-215-0801	12-1-2016	Amend	1-1-2017	413-215-0986	12-1-2016	Amend	1-1-2017
413-215-0801(T)	12-1-2016	Repeal	1-1-2017	413-215-0986(T)	12-1-2016	Repeal	1-1-2017
413-215-0806	12-1-2016	Repeal	1-1-2017	413-215-0991	12-1-2016	Amend	1-1-2017
413-215-0811	12-1-2016	Amend	1-1-2017	413-215-0991(T)	12-1-2016	Repeal	1-1-2017
413-215-0811(T)	12-1-2016	Repeal	1-1-2017	413-215-0992	12-1-2016	Amend	1-1-2017
413-215-0816	12-1-2016	Amend	1-1-2017	413-215-0992(T)	12-1-2016	Repeal	1-1-2017
413-215-0816(T)	12-1-2016	Repeal	1-1-2017	413-215-0996	12-1-2016	Amend	1-1-2017
413-215-0821	12-1-2016	Amend	1-1-2017	413-215-0996(T)	12-1-2016	Repeal	1-1-2017
413-215-0821(T)	12-1-2016	Repeal	1-1-2017	413-215-1001	12-1-2016	Amend	1-1-2017
413-215-0826	12-1-2016	Amend	1-1-2017	413-215-1001(T)	12-1-2016	Repeal	1-1-2017
413-215-0826(T)	12-1-2016	Repeal	1-1-2017	413-215-1006	12-1-2016	Amend	1-1-2017
413-215-0831	12-1-2016	Amend	1-1-2017	413-215-1006(T)	12-1-2016	Repeal	1-1-2017
413-215-0831(T)	12-1-2016	Repeal	1-1-2017	413-215-1011	12-1-2016	Amend	1-1-2017
413-215-0836	12-1-2016	Amend	1-1-2017	413-215-1011(T)	12-1-2016	Repeal	1-1-2017
413-215-0836(T)	12-1-2016	Repeal	1-1-2017	413-215-1016	12-1-2016	Amend	1-1-2017
413-215-0841	12-1-2016	Amend	1-1-2017	413-215-1016(T)	12-1-2016	Repeal	1-1-2017
413-215-0841(T)	12-1-2016	Repeal	1-1-2017	413-215-1021	12-1-2016	Amend	1-1-2017
413-215-0846	12-1-2016	Amend	1-1-2017	413-215-1021(T)	12-1-2016	Repeal	1-1-2017
413-215-0846(T)	12-1-2016	Repeal	1-1-2017	413-215-1026	12-1-2016	Amend	1-1-2017
413-215-0851	12-1-2016	Amend	1-1-2017	413-215-1026(T)	12-1-2016	Repeal	1-1-2017
413-215-0851(T)	12-1-2016	Repeal	1-1-2017	413-215-1031	12-1-2016	Amend	1-1-2017
413-215-0856	12-1-2016	Amend	1-1-2017	413-215-1031(T)	12-1-2016	Repeal	1-1-2017
413-215-0856(T)	12-1-2016	Repeal	1-1-2017	414-061-0020	12-19-2016	Amend	2-1-2017
413-215-0901	12-1-2016	Amend	1-1-2017	414-061-0040	12-19-2016	Amend	2-1-2017
413-215-0901(T)	12-1-2016	Repeal	1-1-2017	414-061-0050	12-19-2016	Amend	2-1-2017
413-215-0906	12-1-2016	Repeal	1-1-2017	414-061-0100	12-19-2016	Amend	2-1-2017
413-215-0911	12-1-2016	Repeal	1-1-2017	414-061-0110	12-19-2016	Amend	2-1-2017
413-215-0916	12-1-2016	Amend	1-1-2017	414-061-0120	12-19-2016	Amend	2-1-2017
413-215-0916(T)	12-1-2016	Repeal	1-1-2017	415-012-0000	12-14-2016	Amend	1-1-2017
413-215-0918	12-1-2016	Amend	1-1-2017	415-012-0010	12-14-2016	Amend	1-1-2017
413-215-0921	12-1-2016	Amend	1-1-2017	415-012-0020	12-14-2016	Amend	1-1-2017
413-215-0921(T)	12-1-2016	Repeal	1-1-2017	415-012-0030	12-14-2016	Amend	1-1-2017
413-215-0926	12-1-2016	Amend	1-1-2017	415-012-0035	12-14-2016	Amend	1-1-2017
413-215-0926(T)	12-1-2016	Repeal	1-1-2017	415-012-0040	12-14-2016	Amend	1-1-2017
413-215-0931	12-1-2016	Amend	1-1-2017	415-012-0050	12-14-2016	Amend	1-1-2017
413-215-0931(T)	12-1-2016	Repeal	1-1-2017	415-012-0055	12-14-2016	Amend	1-1-2017
413-215-0936	12-1-2016	Amend	1-1-2017	415-012-0060	12-14-2016	Amend	1-1-2017
413-215-0936(T)	12-1-2016	Repeal	1-1-2017	415-012-0065	12-14-2016	Amend	1-1-2017
413-215-0941	12-1-2016	Amend	1-1-2017	415-012-0067	12-14-2016	Amend	1-1-2017
413-215-0941(T)	12-1-2016	Repeal	1-1-2017	415-012-0090	12-14-2016	Amend	1-1-2017
413-215-0946	12-1-2016	Amend	1-1-2017	415-020-0000	12-14-2016	Amend	1-1-2017
413-215-0946(T)	12-1-2016	Repeal	1-1-2017	415-020-0005	12-14-2016	Amend	1-1-2017
413-215-0951	12-1-2016	Amend	1-1-2017	415-020-0010	12-14-2016	Amend	1-1-2017
413-215-0951(T)	12-1-2016	Repeal	1-1-2017	415-020-0090	12-14-2016	Amend	1-1-2017
413-215-0956	12-1-2016	Amend	1-1-2017	415-055-0000	12-5-2016	Amend	1-1-2017
413-215-0956(T)	12-1-2016	Repeal	1-1-2017	415-055-0010	12-5-2016	Amend	1-1-2017
413-215-0961	12-1-2016	Amend	1-1-2017	415-055-0035	12-5-2016	Amend	1-1-2017
413-215-0961(T)	12-1-2016	Repeal	1-1-2017	415-060-0010	12-14-2016	Repeal	1-1-2017
413-215-0966	12-1-2016	Amend	1-1-2017	415-060-0020	12-14-2016	Repeal	1-1-2017
413-215-0966(T)	12-1-2016	Repeal	1-1-2017	415-060-0030	12-14-2016	Repeal	1-1-2017

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415-060-0050	12-14-2016	Repeal	1-1-2017	436-060-0009	1-1-2017	Amend	1-1-2017
416-335-0090	12-8-2016	Amend	1-1-2017	436-060-0010	1-1-2017	Amend	1-1-2017
436-009-0004	1-1-2017	Amend(T)	2-1-2017	436-060-0011	1-1-2017	Adopt	1-1-2017
436-009-0010	1-1-2017	Amend(T)	2-1-2017	436-060-0015	1-1-2017	Amend	1-1-2017
436-009-0040	1-1-2017	Amend(T)	2-1-2017	436-060-0017	1-1-2017	Amend	1-1-2017
436-050-0001	1-1-2017	Repeal	1-1-2017	436-060-0018	1-1-2017	Amend	1-1-2017
436-050-0002	1-1-2017	Repeal	1-1-2017	436-060-0019	1-1-2017	Amend	1-1-2017
436-050-0003	1-1-2017	Amend	1-1-2017	436-060-0020	1-1-2017	Amend	1-1-2017
436-050-0005	1-1-2017	Amend	1-1-2017	436-060-0025	1-1-2017	Amend	1-1-2017
436-050-0006	1-1-2017	Repeal	1-1-2017	436-060-0030	1-1-2017	Amend	1-1-2017
436-050-0008	1-1-2017	Amend	1-1-2017	436-060-0035	1-1-2017	Amend	1-1-2017
436-050-0015	1-1-2017	Amend	1-1-2017	436-060-0040	1-1-2017	Amend	1-1-2017
436-050-0025	1-1-2017	Amend	1-1-2017	436-060-0045	1-1-2017	Amend	1-1-2017
436-050-0040	1-1-2017	Amend	1-1-2017	436-060-0055	1-1-2017	Amend	1-1-2017
436-050-0045	1-1-2017	Amend	1-1-2017	436-060-0060	1-1-2017	Amend	1-1-2017
436-050-0050	1-1-2017	Amend	1-1-2017	436-060-0095	1-1-2017	Amend	1-1-2017
436-050-0055	1-1-2017	Amend	1-1-2017	436-060-0105	1-1-2017	Amend	1-1-2017
436-050-0060	1-1-2017	Repeal	1-1-2017	436-060-0135	1-1-2017	Amend	1-1-2017
436-050-0110	1-1-2017	Amend	1-1-2017	436-060-0137	1-1-2017	Amend	1-1-2017
436-050-0120	1-1-2017	Amend	1-1-2017	436-060-0140	1-1-2017	Amend	1-1-2017
436-050-0150	1-1-2017	Amend	1-1-2017	436-060-0147	1-1-2017	Amend	1-1-2017
436-050-0160	1-1-2017	Amend	1-1-2017	436-060-0150	1-1-2017	Amend	1-1-2017
436-050-0165	1-1-2017	Amend	1-1-2017	436-060-0153	1-1-2017	Amend	1-1-2017
436-050-0170	1-1-2017	Amend	1-1-2017	436-060-0155	1-1-2017	Amend	1-1-2017
436-050-0175	1-1-2017	Amend	1-1-2017	436-060-0160	1-1-2017	Amend	1-1-2017
436-050-0180	1-1-2017	Amend	1-1-2017	436-060-0170	1-1-2017	Amend	1-1-2017
436-050-0180	1-1-2017	Amend	2-1-2017	436-060-0180	1-1-2017	Amend	1-1-2017
436-050-0185	1-1-2017	Amend	1-1-2017	436-060-0190	1-1-2017	Amend	1-1-2017
436-050-0190	1-1-2017	Amend	1-1-2017	436-060-0195	1-1-2017	Amend	1-1-2017
436-050-0195	1-1-2017	Amend	1-1-2017	436-060-0200	1-1-2017	Amend	1-1-2017
436-050-0200	1-1-2017	Amend	1-1-2017	436-060-0400	1-1-2017	Amend	1-1-2017
436-050-0205	1-1-2017	Amend	1-1-2017	436-060-0500	1-1-2017	Amend	1-1-2017
436-050-0210	1-1-2017	Amend	1-1-2017	436-060-0510	1-1-2017	Amend	1-1-2017
436-050-0220	1-1-2017	Amend	1-1-2017	436-105-0001	1-1-2017	Repeal	1-1-2017
436-050-0230	1-1-2017	Amend	1-1-2017	436-105-0002	1-1-2017	Repeal	1-1-2017
436-050-0260	1-1-2017	Amend	1-1-2017	436-105-0003	1-1-2017	Amend	1-1-2017
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

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436-110-0310	1-1-2017	Amend	1-1-2017	436-120-0830	1-1-2017	Repeal	1-1-2017
436-110-0320	1-1-2017	Amend	1-1-2017	436-120-0840	1-1-2017	Amend	1-1-2017
436-110-0325	1-1-2017	Amend	1-1-2017	436-120-0900	1-1-2017	Amend	1-1-2017
436-110-0330	1-1-2017	Amend	1-1-2017	436-120-0915	1-1-2017	Amend	1-1-2017
436-110-0335	1-1-2017	Amend	1-1-2017	440-007-0200	1-6-2017	Repeal	2-1-2017
436-110-0336	1-1-2017	Amend	1-1-2017	440-007-0210	1-6-2017	Repeal	2-1-2017
436-110-0337	1-1-2017	Amend	1-1-2017	440-007-0230	1-6-2017	Repeal	2-1-2017
436-110-0345	1-1-2017	Amend	1-1-2017	440-007-0240	1-6-2017	Repeal	2-1-2017
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436-110-0347	1-1-2017	Amend	1-1-2017	440-007-0260	1-6-2017	Repeal	2-1-2017
436-110-0350	1-1-2017	Amend	1-1-2017	440-007-0270	1-6-2017	Repeal	2-1-2017
436-110-0351	1-1-2017	Amend	1-1-2017	440-007-0272	1-6-2017	Repeal	2-1-2017
436-110-0352	1-1-2017	Amend	1-1-2017	440-007-0275	1-6-2017	Repeal	2-1-2017
436-110-0850	1-1-2017	Amend	1-1-2017	440-007-0280	1-6-2017	Repeal	2-1-2017
436-110-0900	1-1-2017	Amend	1-1-2017	440-007-0285	1-6-2017	Repeal	2-1-2017
436-120-0001	1-1-2017	Repeal	1-1-2017	440-007-0290	1-6-2017	Repeal	2-1-2017
436-120-0002	1-1-2017	Repeal	1-1-2017	440-007-0300	1-6-2017	Repeal	2-1-2017
436-120-0003	1-1-2017	Amend	1-1-2017	441-880-0310	1-1-2017	Amend	2-1-2017
436-120-0005	1-1-2017	Amend	1-1-2017	459-017-0060	1-1-2017	Amend	1-1-2017
436-120-0006	1-1-2017	Repeal	1-1-2017	461-025-0310	1-1-2017	Amend	2-1-2017
436-120-0007	1-1-2017	Am. & Ren.	1-1-2017	461-110-0370	1-1-2017	Amend	2-1-2017
436-120-0008	1-1-2017	Amend	1-1-2017	461-115-0020	1-1-2017	Amend	2-1-2017
436-120-0012	1-1-2017	Amend	1-1-2017	461-115-0020(T)	1-1-2017	Repeal	2-1-2017
436-120-0014	1-1-2017	Repeal	1-1-2017	461-120-0345	1-1-2017	Amend	1-1-2017
436-120-0016	1-1-2017	Repeal	1-1-2017	461-130-0305	1-1-2017	Amend	2-1-2017
436-120-0017	1-1-2017	Repeal	1-1-2017	461-130-0305(T)	1-1-2017	Repeal	2-1-2017
436-120-0018	1-1-2017	Repeal	1-1-2017	461-130-0310	1-1-2017	Amend	2-1-2017
436-120-0115	1-1-2017	Amend	1-1-2017	461-130-0310(T)	1-1-2017	Repeal	2-1-2017
436-120-0125	1-1-2017	Repeal	1-1-2017	461-130-0315	1-1-2017	Amend	2-1-2017
436-120-0135	1-1-2017	Repeal	1-1-2017	461-130-0315(T)	1-1-2017	Repeal	2-1-2017
436-120-0145	1-1-2017	Amend	1-1-2017	461-130-0330	1-1-2017	Amend	2-1-2017
436-120-0155	1-1-2017	Am. & Ren.	1-1-2017	461-130-0330(T)	1-1-2017	Repeal	2-1-2017
436-120-0165	1-1-2017	Amend	1-1-2017	461-135-0520	1-1-2017	Amend	2-1-2017
436-120-0175	1-1-2017	Amend	1-1-2017	461-135-0520(T)	1-1-2017	Repeal	2-1-2017
436-120-0185	1-1-2017	Amend	1-1-2017	461-135-0730	1-1-2017	Amend	1-1-2017
436-120-0340	1-1-2017	Am. & Ren.	1-1-2017	461-135-0780	1-1-2017	Amend	1-1-2017
436-120-0400	1-1-2017	Am. & Ren.	1-1-2017	461-135-0820	1-1-2017	Amend	1-1-2017
436-120-0410	1-1-2017	Amend	1-1-2017	461-140-0296	1-1-2017	Amend	1-1-2017
436-120-0430	1-1-2017	Am. & Ren.	1-1-2017	461-140-0296(T)	1-1-2017	Repeal	1-1-2017
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436-120-0449	1-1-2017	Repeal	1-1-2017	461-145-0140	1-1-2017	Amend	1-1-2017
436-120-0451	1-1-2017	Am. & Ren.	1-1-2017	461-145-0184	1-1-2017	Repeal	1-1-2017
436-120-0455	1-1-2017	Am. & Ren.	1-1-2017	461-145-0220	1-1-2017	Amend	1-1-2017
436-120-0500	1-1-2017	Amend	1-1-2017	461-145-0417	1-1-2017	Adopt	1-1-2017
436-120-0510	1-1-2017	Amend	1-1-2017	461-145-0540	1-1-2017	Amend	2-1-2017
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436-120-0700	1-1-2017	Amend	1-1-2017	461-145-0930	1-1-2017	Amend	1-1-2017
436-120-0710	1-1-2017	Amend	1-1-2017	461-150-0050	1-1-2017	Amend	1-1-2017
436-120-0720	1-1-2017	Amend	1-1-2017	461-155-0150	1-1-2017	Amend	2-1-2017
436-120-0755	1-1-2017	Amend	1-1-2017	461-155-0250	1-1-2017	Amend	1-1-2017
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461-160-0620	1-1-2017	Amend	1-1-2017	635-023-0090	1-1-2017	Amend	2-1-2017
461-165-0010	1-1-2017	Amend	2-1-2017	635-023-0095	1-1-2017	Amend	2-1-2017
461-165-0180	1-1-2017	Amend	2-1-2017	635-023-0125	1-1-2017	Amend	2-1-2017
461-165-0180(T)	1-1-2017	Repeal	2-1-2017	635-023-0128	1-1-2017	Amend	2-1-2017
461-180-0050	1-1-2017	Amend	1-1-2017	635-023-0130	1-1-2017	Amend	2-1-2017
461-190-0360	1-1-2017	Amend	2-1-2017	635-023-0134	1-1-2017	Amend	2-1-2017
461-190-0500	1-1-2017	Amend	2-1-2017	635-023-0140	1-1-2017	Amend	2-1-2017
461-195-0501	1-1-2017	Amend	2-1-2017	635-039-0080	1-1-2017	Amend	2-1-2017
573-050-0015	12-6-2016	Amend	1-1-2017	635-039-0090	1-1-2017	Amend	1-1-2017
573-050-0016	12-6-2016	Amend	1-1-2017	635-039-0090	1-1-2017	Amend	2-1-2017
573-050-0025	12-6-2016	Amend	1-1-2017	635-500-6715	12-15-2016	Amend	1-1-2017
573-050-0040	12-6-2016	Amend	1-1-2017	635-500-6720	12-15-2016	Amend	1-1-2017
573-050-0045	12-6-2016	Amend	1-1-2017	635-500-6725	12-15-2016	Amend	1-1-2017
581-020-0600	12-20-2016	Amend	2-1-2017	635-500-6730	12-15-2016	Amend	1-1-2017
581-020-0603	12-20-2016	Amend	2-1-2017	635-500-6735	12-15-2016	Amend	1-1-2017
581-020-0606	12-20-2016	Amend	2-1-2017	635-500-6740	12-15-2016	Amend	1-1-2017
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581-020-0615	12-20-2016	Amend	2-1-2017	661-010-0005	1-1-2017	Amend	2-1-2017
581-020-0621	12-20-2016	Adopt	2-1-2017	661-010-0015	1-1-2017	Amend	2-1-2017
581-020-0624	12-20-2016	Adopt	2-1-2017	661-010-0021	1-1-2017	Amend	2-1-2017
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635-004-0330	1-1-2017	Amend	1-1-2017	661-010-0035	1-1-2017	Amend	2-1-2017
635-004-0350	1-1-2017	Amend	1-1-2017	661-010-0050	1-1-2017	Amend	2-1-2017
635-004-0355	1-1-2017	Amend	1-1-2017	661-010-0068	1-1-2017	Amend	2-1-2017
635-005-0240	1-1-2017	Amend	1-1-2017	661-010-0075	1-1-2017	Amend	2-1-2017
635-005-0263	1-1-2017	Adopt	1-1-2017	715-045-0001	1-1-2017	Amend	2-1-2017
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635-005-0465	11-23-2016	Amend(T)	1-1-2017	715-045-0033	1-1-2017	Amend	2-1-2017
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635-005-0465	12-22-2016	Amend(T)	2-1-2017	734-010-0285	11-28-2016	Adopt	1-1-2017
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635-005-0505	11-21-2016	Amend(T)	1-1-2017	734-010-0320	11-28-2016	Amend	1-1-2017
635-005-0915	1-1-2017	Amend	1-1-2017	734-010-0330	11-28-2016	Amend	1-1-2017
635-006-0210	1-1-2017	Amend	1-1-2017	734-010-0340	11-28-2016	Amend	1-1-2017
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735-024-0025	11-22-2016	Amend	1-1-2017	819-030-0000	1-3-2017	Adopt	2-1-2017
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801-010-0080	1-4-2017	Amend	2-1-2017	824-030-0010	1-1-2017	Amend	1-1-2017
801-010-0110	1-4-2017	Amend	2-1-2017	824-030-0040	1-1-2017	Amend	1-1-2017
801-010-0115	1-4-2017	Amend	2-1-2017	824-035-0005	1-1-2017	Repeal	1-1-2017
801-010-0120	1-4-2017	Amend	2-1-2017	824-036-0001	1-1-2017	Adopt	1-1-2017
801-010-0130	1-4-2017	Amend	2-1-2017	824-040-0010	1-1-2017	Amend	1-1-2017
801-010-0340	1-4-2017	Amend	2-1-2017	824-050-0010	1-1-2017	Amend	1-1-2017
801-010-0345	1-4-2017	Amend	2-1-2017	824-060-0010	1-1-2017	Amend	1-1-2017
801-020-0690	1-4-2017	Amend	2-1-2017	824-070-0005	1-1-2017	Adopt	1-1-2017
801-020-0700	1-4-2017	Amend	2-1-2017	824-070-0010	1-1-2017	Adopt	1-1-2017
801-030-0005	1-4-2017	Amend	2-1-2017	830-011-0065	1-12-2017	Amend	2-1-2017
801-030-0020	1-4-2017	Amend	2-1-2017	833-040-0041	12-12-2016	Amend(T)	1-1-2017
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801-040-0030	1-4-2017	Amend	2-1-2017	834-050-0010	1-9-2017	Amend	2-1-2017
801-040-0050	1-4-2017	Amend	2-1-2017	836-005-0405	1-10-2017	Adopt	2-1-2017
801-040-0090	1-4-2017	Repeal	2-1-2017	836-010-0135	1-9-2017	Amend	2-1-2017
801-050-0020	1-4-2017	Amend	2-1-2017	836-010-0140	1-9-2017	Amend	2-1-2017
801-050-0040	1-4-2017	Amend	2-1-2017	836-011-0030	12-21-2016	Adopt	2-1-2017
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811-010-0015	1-6-2017	Amend	2-1-2017	845-006-0500	12-1-2016	Amend	1-1-2017
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811-010-0066	1-6-2017	Amend	2-1-2017	845-025-1045	12-27-2016	Amend	2-1-2017
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