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DIVISION 1

PROCEDURAL RULES

[ED. NOTE: The Department of Human Services will adhere to the Procedural Rules in this chapter unless otherwise specifically stated.]

407-001-0000
Model Rules of Procedure

The Department of Human Services (Department) adopts the Attorney General Model Rules applicable to rulemaking, effective on January 1, 2008, with the exception of 137-001-0080.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or the Department of Human Services.]
Stat. Auth.: ORS 183.341 & 409.050
Stat. Implemented: ORS 183.341 & 409.050
Hist.: DHSD 3-2006, f. 5-11-06, cert. ef. 6-1-06; DHSD 9-2008, f. & cert. ef. 12-5-08

407-001-0005
Notice of Proposed Rulemaking and Adoption of Temporary Rules

(1) Except as provided in ORS 183.335(7) or (12) or 183.341, before permanently adopting, amending, or repealing an administrative rule, the Department shall give notice of the intended action:

(a) To legislators specified in ORS 183.335(15) at least 49 days before the effective date of the rule;

(b) To persons on the interested parties lists described in section (2) of this rule for the pertinent OAR chapter or pertinent subtopics or programs within an OAR chapter at least 28 days before the effective date of the rule;

(c) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days before the effective date of the rule;

(d) To other persons, agencies, or organizations that the Department is required to provide an opportunity to comment pursuant to state statute or federal law or as a requirement of receiving federal funding, at least 28 days before the effective date of the rule;

(e) To the Associated Press and the Capitol Press Room at least 28 days before the effective date of the rule; and

(f) In addition to the above, the Department may send notice of intended action to other persons, agencies, or organizations that the Department, in its discretion, believes to have an interest in the subject matter of the proposed rule at least 28 days before the effective date of the rule.

(2) Pursuant to ORS 183.335(8), the Department shall maintain an interested parties list for each OAR chapter of rules for which the Department has administrative responsibility, and an interested parties list for subtopics or programs within those chapters. A person, group, or entity that desires to be placed on such a list to receive notices regarding proposed permanent adoption, amendment, or repeal of a rule must make such a request in writing or by electronic mail to the rules coordinator for the chapter. The request must include either a mailing address or an electronic mail address to which notices may be sent.

(3) Notices under this rule may be sent by use of hand delivery, state shuttle, postal mail, electronic mail, or facsimile. The Department recognizes state shuttle as "mail" and may use this means to notify other state agencies.

(a) An email notification under section (1) of this rule may consist of any of the following:

(A) An email that attaches the Notice of Proposed Rulemaking or Notice of Proposed Rulemaking Hearing and Statement of Need and Fiscal Impact.

(B) An email that includes a link within the body of the email, allowing direct access online to the Notice of Proposed Rulemaking or Notice of Proposed Rulemaking Hearing and Statement of Need and Fiscal Impact.

(C) An email with specific instructions within the body of the email, usually including an electronic Universal Resource Locator

(URL) address, to find the Notice of Proposed Rulemaking or Notice of Proposed Rulemaking Hearing and Statement of Need and Fiscal Impact.

(b) The Department may use facsimile as an added means of notification, if necessary. Notification by facsimile under section (1) of this rule shall include the Notice of Proposed Rulemaking or Notice of Proposed Rulemaking Hearing and Statement of Need and Fiscal Impact, or specific instructions to locate these documents online.

(c) The Department shall honor all written requests that notification be sent by postal mail instead of electronically if a mailing address is provided.

(4) If the Department adopts or suspends a temporary rule, the Department shall notify:

(a) Legislators specified in ORS 183.335(15);

(b) Persons on the interested parties list described in section (2) of this rule for the pertinent OAR chapter or pertinent subtopics or programs within an OAR chapter;

(c) Other persons, agencies, or organizations that the Department is required to notify pursuant to state statute or federal law or as a requirement of receiving federal funding; and

(d) The Associated Press and the Capitol Press Room; and

(e) In addition to the above, the Department may send notice to other persons, agencies, or organizations that the Department, in its discretion, believes to have an interest in the subject matter of the temporary rulemaking.

(5) In lieu of providing a copy of the rule or rules as proposed with the notice of intended action or notice concerning the adoption of a temporary rule, the Department may state how and where a copy may be obtained on paper, by electronic mail, or from a specified web site.

Stat. Auth: ORS 183.341 & 409.050
Stats. Implemented: ORS 183.330, 183.335, 183.341 & 409.050
Hist.: DHSD 3-2006, f. 5-11-06, cert. ef. 6-1-06; DHSD 9-2008, f. & cert. ef. 12-5-08

407-001-0010
Delegation of Rulemaking Authority

Any officer or employee of the Department of Human Services who is identified on a completed Delegation of Authority form signed by the Director or Deputy Director of the Department and filed with the Secretary of State, Administrative Rules Unit, is vested with the authority to adopt, amend, repeal, or suspend administrative rules as provided on that form until such delegation is revoked by the Director or Deputy Director of the Department, or the person leaves employment with the Department.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 183.325, 409.050, 409.120 & 409.130
Hist.: DHSD 3-2006, f. 5-11-06, cert. ef. 6-1-06; DHSD 9-2008, f. & cert. ef. 12-5-08

DIVISION 3

PUBLIC RECORD FEES

407-003-0000
Definitions

The following definitions apply to Oregon Administrative Rule 407-003-0010 unless otherwise indicated:

(1) "Department" refers to the Oregon Department of Human Services.

(2) "Designee" refers to any officer or employee of the Department, appointed by the Director to respond to requests for reduction or waiver of fees for public records of the Department.

(3) "Director" refers to the Director of the Department.

(4) "Person" includes any natural person, corporation, partnership, firm, or association.

(5) "Photocopy(ing)" includes a photograph, microphotograph and any other reproduction on paper or film in any scale, or the process of reproducing, in the form of a photocopy, a public record.

(6) "Public record" includes any writing that contains information relating to the conduct of the public's business that is prepared, owned, used or retained by the Department regardless of physical form or characteristics.

(7) "Requestor" refers to a person requesting inspection, copies, or other reproduction of a public record of the Department.

(8) "Writing" means handwriting, typewriting, printing, photographing and every means of recording, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, files, facsimiles or electronic recordings. It includes information stored on computer tape, microfiche, photographs, films, tape or videotape or that is maintained in a machine readable or electronic form.

Stat. Auth: ORS 192.430, 409.050
Stats. Implemented: ORS192.430, 192.440, 409.010
Hist.: DHSD 2-2007, f. & cert. ef. 2-15-07

407-003-0010
Fees for Inspection or Copies of Public Records and Department of Human Services Publications; Other Services

(1) The Department may charge a fee reasonably calculated to reimburse the Department for the cost of making public records available:

(a) Costs include but are not limited to:

(A) The services and supplies used in making the records available;

(B) The time spent locating the requested records, reviewing the records, and redacting, or separating material exempt from disclosure;

(C) Supervising a person's inspection of original documents;

(D) Copying records;

(E) Certifying copies of records;

(F) Summarizing, compiling, or organizing the public records to meet the person's request;

(G) Searching for and reviewing records even if the records subsequently are determined to be exempt from disclosure;

(H) Postal and freight charges for shipping the copies of the public records, sent first class or bulk rate based on weight;

(I) Indirect costs or third party charges associated with copying and preparing the public records; and

(J) Costs associated with electronic retrieval of records.

(b) When a Department of Justice review of the records is requested by the Department of Human Services, the Department may charge a fee equal to the Attorney General's charge for the time spent by the attorney reviewing the public records, redacting material from the records, and segregating the public records into exempt and nonexempt records. A fee will not be charged for the cost of time spent by an attorney in determining the application of the provisions of ORS 192.410 to 192.505;

(c) Staff time will be calculated based on the hourly rate of pay and fringe benefits for the position of the person performing the work;

(d) The cost for publications will be based on the actual costs of development, printing and distribution, as determined by the Department;

(e) The cost for a public records request requiring the Department to access the State's mainframe computer system, may include but not be limited to costs for computer usage time, data transfer costs, disk work space costs, programming, and fixed portion costs for printing and/or tape drive usage.

(2) The Department will establish a list of fees used to charge requestors for the costs of preparing and making available public records for the following:

(a) Photocopies;

(b) Facsimile copies. The Department may limit the transmission to thirty pages;

(c) Electronic copies, diskettes, DVDs, and other electronically generated materials. The Department will determine what electronic media for reproduction of computer records will be used and whether the electronic media is to be provided by the Department or the requestor;

(d) Audio or video cassettes;

(e) Publications.

(3) The Department will review the list of fees established in policy from time to time in order to assure that the fees reflect current Department costs.

(4) No additional fee will be charged for providing records or documents in an alternative format when required by the Americans with Disabilities Act.

(5) The Department will notify requestors of the estimated fees for making the public records available for inspection or for providing copies to the requestor. If the estimated fees exceed $25, the

Department will provide written notice and will not act further to respond to the request until the requestor notifies the Department, in writing, to proceed with making the records available:

(a) The Department may require that all or a portion of the estimated fees be paid before the Department will proceed with making the record available;

(b) The Department may require that actual costs of making the record available be paid before the record is made available for inspection or copies provided.

(6) The Director or designee may reduce or waive fees when a determination is made that the waiver or reduction of fees is in the public interest because making the records available primarily benefits the general public. Factors that may be taken into account in making such a determination include, but are not limited to:

(a) The overall costs to be incurred by the Department is negligible; or

(b) Supplying the requested records or documents is within the normal scope of Department activity; or

(c) Requiring payment would cause extreme or undue financial hardship upon the requestor; or

(d) Discovery requests made as part of pending administrative, judicial, or arbitration proceedings.

(7) If the Department denies an initial verbal request for waiver or reduction of fees, the requestor will submit a written request. If the Department subsequently denies the written request for a waiver or reduction of fees, the requestor may petition the Attorney General for a review of the denial pursuant to the provisions of ORS 192.440(6) and 192.450.

Statutory Authority: ORS 192.430, 409.050
Stats. Implemented: ORS 192.430, 192.440, 409.010
Hist.: DHSD 2-2007, f. & cert. ef. 2-15-07

DIVISION 5

CLIENT RIGHTS

Prohibiting Discrimination Against Individuals with Disabilities

407-005-0000
Purpose

These rules (407-005-0000 through 407-005-0030) establish a Department policy of non-discrimination on the basis of disability in accordance with the Americans with Disabilities Act of 1990 (ADA) and Section 504 of the Rehabilitation Act of 1973.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.050
Hist.: DHSD 1-2006, f. & cert. ef. 3-1-06

407-005-0005
Definitions

The following definitions apply to rules 407-005-0000 through 407-005-0030:

(1) "Alternate Format Communication" means printed material converted to a communication style that meets the accessibility needs of individuals with disabilities to achieve "effective communication." The types of alternate format that the Department offers include but are not limited to: large print, Braille, audiotape, electronic format (E-mail attachment, diskette, or CD-ROM) and oral presentation.

(2) "Americans with Disabilities Act" is a comprehensive federal law passed in 1990, which prohibits discrimination on the basis of disability in employment, programs and services provided by state and local governments; goods and services provided by private companies; commercial facilities; telecommunications and transportation. The ADA was crafted upon a body of existing legislation, particularly the Rehabilitation Act of 1973 (Section 504), which states that no recipient of federal financial assistance may discriminate against qualified individuals with disabilities solely because of a disability. (Public Law 101-336)

(3) "An Individual with a Disability" means an individual who:

(a) Has a physical or mental impairment that substantially limits one or more major life activities; or

(b) Has a record or history of such an impairment; or

(c) Is regarded as having such an impairment.

(4) "Auxiliary Aids or Services" mean devices or services that meet the accessibility needs of individuals with hearing, cognitive or speech impairments to achieve "effective communication." The types of auxiliary aids and services that DHS offers include but are not limited to: qualified sign language interpreters, text telephone (TTYs), oral presentation, notetakers and communication through computer keyboarding.

(5) Department means the "Department of Human Services."

(6) "Report of Discrimination" means a report filed with the Department by a client, client applicant or specific class of individuals or their representative(s) alleging an act of discrimination by the Department or a Department contractor, their agents or subcontractors, or a governmental entity under intergovernmental agreement with the Department, regarding delivery of Department services, programs or activities that are subject to Title II of the ADA or Section 504 of the Rehabilitation Act.

(7) "Federal Discrimination Complaint" means a complaint by a client, client applicant or specific class of individuals or their representative(s) filed with a federal agency alleging an act of discrimination by a public entity.

(8) "Qualified Individual with a Disability" means an individual who can meet the essential eligibility requirements for the program, service or activity with or without Reasonable Modification of rules, policies or procedures, or the provision of auxiliary aids and services.

(9) "Direct threat" means a significant risk to the health or safety of others that cannot be eliminated or reduced to an accepted level through the provision of auxiliary aids and services or through reasonably modifying policies, practices or procedures, that person is not considered a qualified individual with a disability and may be excluded from DHS programs services or activities. The determination of direct threat to the health and safety of others must be based on an individualized assessment relying on current medical evidence, or the best available objective evidence that shows:

(a) The nature, duration and severity of the risk;

(b) The probability that a potential injury will actually occur; and

(c) Whether reasonable modifications of policies, practices or procedures will lower or eliminate the risk.

(10) "Reasonable Modifications" means a modification of policies, practices or procedures made to a program or service that allows an individual with a disability to participate equally in the program or benefit from the service.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.050
Hist.: DHSD 1-2006, f. & cert. ef. 3-1-06

407-005-0010
Non-discrimination

(1) No qualified individual with a disability shall on the basis of disability, be discriminated against, be excluded from participation in, or be denied the benefits of the services, programs or activities of the Department. In providing any benefit or service, DHS may not, directly or through contractual or other arrangements, on the basis of a disability deny a qualified individual the opportunity to participate in a service, program or activity or to receive the benefit or services offered. DHS will not discriminate against a qualified individual with a disability, on the basis of disability in the granting of licenses and certificates.

(2) The Department will provide services, programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities within the context of the program being administered. For purposes of this section, "Integrated Setting" means a setting that enables individuals with disabilities to interact with non-disabled persons to the fullest extent possible.

(3) The Department will not require a qualified individual with a disability to participate in services, programs, or activities that are separate or different, despite the existence of permissibly separate or different programs or activities.

(4) The Department will not apply eligibility criteria or standards that screen out or tend to screen out an individual with a disability from fully and equally enjoying any goods or services, unless such criteria can be shown to be necessary for the provision of those goods and services or is determined by the Department to be a legitimate safety requirement.

(5) The Department will ensure each program, service or activity, including public meetings, hearings and events, when viewed in the entirety, is readily accessible to and usable by individuals with

disabilities. For purposes of this section, accessible means the ability to approach, enter, operate, participate in, and/or use safely and with dignity by a person with a disability.

(6) Nothing in these rules prohibits the Department from providing benefits or services to individuals with disabilities, or to a particular class of individuals with disabilities, beyond those required by law.

(7) Nothing in these rules requires an individual with a disability to accept a modification, service, opportunity, or benefit provided under these rules that the individual decides not to accept.

(8) The Department will provide auxiliary aids and services or alternate format communication to individuals with disabilities where necessary to ensure an equal opportunity to participate in, and enjoy the benefits of, a service, program or activity, unless it would result in a fundamental alteration of the program or an undue financial or administrative burden. Although the Department shall determine which aid or format, if any, can be provided without fundamental alteration or undue burden, primary consideration should be given to the choice of the requestor.

(9) Except as authorized under specific programs, the Department is not required to provide personal devices, individually prescribed devices, readers for personal use or study, or services of a personal nature.

(10) The Department will not assess a charge or fee to an individual with a disability or any group of individuals with disabilities to cover the costs of measures required to provide the individual with the non-discriminatory treatment required by this policy.

(11) The Department will not deny individuals the opportunity to participate on planning or advisory boards based on their disability.

(12) The Department will not discriminate against individuals that do not have disabilities themselves, but have a known relationship or association with one or more individuals who have disabilities.

(13) The Department's determination of direct threat to the health and safety of others must be based on an individualized assessment relying on current medical evidence, or the best available objective evidence that shows:

(a) The nature, duration and severity of the risk,

(b) The probability that a potential injury will actually occur; and

(c) Whether reasonable modifications of policies, practices or procedures will lower or eliminate the risk.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.050
Hist.: DHSD 1-2006, f. & cert. ef. 3-1-06

407-005-0015
Illegal Drug Use

(1) Except as provided in subsection (2) of this rule, OAR 407-005-0000 through 407-005-0030 does not prohibit discrimination against an individual based on that individual's current illegal use of drugs.

(2) The Department will not deny health services or services provided in connection with drug rehabilitation to an individual on the basis of that individual's current used of drugs, if the individual is otherwise entitled to such services. However, a drug rehabilitation or treatment program may deny participation to individuals who engage in illegal use of drugs while they are in the program.

(3) A program may adopt reasonable policies related to drug testing that are designed to ensure that an individual who formerly engaged in the illegal use of drugs is not now engaging in the current illegal use of drugs.

(4) A client with a psychoactive substance use disorder resulting from current illegal use of drugs is not considered to have a disability under OAR 407-005-0000 through 407-005-0030 unless the client has a disability due to another condition.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.050
Hist.: DHSD 1-2006, f. & cert. ef. 3-1-06

407-005-0020
Reasonable Modifications

(1) The Department will make Reasonable Modifications to policies, practices or procedures of a program, services or activity when the modifications are necessary to avoid discrimination based on disability unless the modification would fundamentally alter the nature of the program, service or activity or create an undue administrative or financial burden.

(2) When providing program access to a qualified individual with a disability would cause a fundamental alteration of the program, service or activity or undue financial or administrative burden, the Department will, to the extent the benefit of the program, service or activity can be achieved, provide program access to the point at which the program becomes fundamentally altered or experiences an undue burden.

(3) Alternate Format communication is considered to be within the scope of reasonable modifications.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.050
Hist.: DHSD 1-2006, f. & cert. ef. 3-1-06

407-005-0025
Requesting a Reasonable Modification

(1) To request a reasonable modification to a Department program, service or activity a client applicant, client or public member must submit to program staff a request for a reasonable modification to the applicable program. Requests may be made verbally or by completing the Request for Reasonable Modification form.

(2) Upon receipt of a request for modification the Department will:

(a) Determine whether additional documentation regarding the claimed disability is needed and request such documentation;

(b) Within fifteen (15) working days of the request or the receipt of additional medical documentation, whichever is later, provide to the requestor notification of approval, approval with alternative modifications or denial of the request for reasonable modification. All denials and approvals with alternative modifications that were not requested will be clearly labeled a "Preliminary Notification Subject to Review."

(c) Ensure that approved modifications occur within a reasonable time.

(3) A "Reasonable Modification Team" means a two person team appointed by program managers that meet to evaluate a Request for Reasonable Modification decision that either denied the request or approved the request but with modifications other than those requested.

(4) This process may include additional communication with the individual requesting the Reasonable Modifications.

(5) Preliminary Notifications will automatically be reviewed by a Reasonable Modification Team that will notify the requestor of the final result of the review within fifteen (15) working days of the preliminary notification or within fifteen working days following receipt of medical or other supporting documentation requested by the Team, whichever is later.

(6) An individual whose request for reasonable modification has been denied or approved with alternative modifications which the individual believes to be inadequate may file a Report of Discrimination with the Department within 60 days of the final result or file a complaint with the appropriate federal regulatory agency within 180 days of the final result.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.050
Hist.: DHSD 1-2006, f. & cert. ef. 3-1-06

407-005-0030
Report of Discrimination and Other Remedies Available for Alleged Discrimination

(1) A client or client applicant or specific class of individuals or their representative(s) may file with the Department a Report of Discrimination based on disability in the following circumstances:

(a) The final result under OAR 407-005-0025 for a Reasonable Modification Request was denied or was approved with an alternative to the requested modification which is believed to be inadequate;

(b) A request for auxiliary aids and services was denied or was approved with an alternative to the request which is believed to be inadequate;

(c) A request for an alternate format communication was denied or was approved with an alternative to the request which is believed to be inadequate;

(d) Inability to access facilities used for Department programs;

(e) Denial of participation in Department programs and services.

(2) A Report of Discrimination must be filed within 60 calendar days of the date of the alleged discrimination unless otherwise set forth in these rules. In the Food Stamp program, a Report of Discrimination filed more than 60 but less than 180 days of the alleged discrimination will be referred to the Food and Nutrition Service for investigation and is not otherwise covered by this rule.

(3) A Report of Discrimination may be submitted verbally or on a Report of Discrimination Form available at any Department office or by calling any Department office.

(4) The claim of discrimination will be investigated and will include an interview with the complainant and upon conclusion of the investigation, a Letter of Determination shall be issued within (40) calendar days from the receipt of the Discrimination Report.

(5) An individual may appeal the Letter of Determination to the Civil Rights Review Board (CRRB) within thirty (30) calendar days of receiving the Letter of Determination. CRRB means a panel of Department employees appointed by the Director that reviews the decisions made by the Department ADA Coordinator or the Civil Rights Investigator on discrimination complaints filed with the Department.

(6) At the discretion of CRRB, this may include additional communication with the client.

(7) The remedies available under OAR 407-005-0000 through 407-005-0030 are available in addition to other remedies available under state or federal law or Oregon Administrative Rules, except that these remedies must be exhausted where exhaustion is a requirement of seeking remedies in another forum.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.050
Hist.: DHSD 1-2006, f. & cert. ef. 3-1-06

Customer Service Complaint Process

407-005-0100
Purpose and Scope

(1) These rules (OAR 407-005-0100 through 407-005-0120) describe the process for reporting, investigating, and resolving Department of Human Services' customer or client complaints about staff conduct, or customer service or lack of customer service received from Department personnel or Department contractors.

(2) OAR 407-005-0100 through 407-005-0120 applies to Department personnel and Department contractors:

(a) Department contractors shall have established processes for addressing customer service complaints received from Department customers or clients served by Department contractors that meet or exceed the requirements set forth in these rules (OAR 407-005-0100 through 407-005-0120);

(b) Department contractors must cooperate with the Department's customer service complaint process and investigation if complaints are filed against them with the Department;

(c) Department contractors shall provide a copy of their established process upon request of the Department.

(3) The customer service complaint process described in these rules does not apply to the following situations:

(a) The customer or client is entitled to, or is requesting an administrative or contested case hearing;

(b) The subject matter of the complaint should be or already has been decided by a judge;

(c) The subject matter of the complaint is dissatisfaction or disagreement with a decision subject to review under OAR 582-020-0005 through 582-020-0125 (Vocational Rehabilitation Service Program);

(d) The subject matter of the complaint is subject to review under OAR 413-010-0420 (Review of DHS Child Welfare Decisions):

(A) Adoption committee decision;

(B) Child Protective Services disposition;

(C) Juvenile court ruling.

(e) The subject matter of the complaint is a report of discrimination subject to review under OAR 407-005-0025 through 407-005-0030;

(f) The subject matter of the complaint is subject to review under OAR 410-141-0260 through 410-141-0266 (Oregon Health Plan Prepaid health plan grievance system: PHP complaint and appeal procedures);

(g) The subject matter of the complaint is subject to review under OAR 309-118-0000 through 0050 (Oregon State Hospital patient grievance process); or

(h) Complaints filed anonymously. Anonymous complaints will be reviewed by the Governor's Advocacy Office.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.010 and 411.977
Hist.: DHSD 7-2007, f. 8-31-07, cert. ef. 9-1-07

407-005-0105
Definitions

The following definitions apply to OAR 407-005-0100 through 407-005-0120:

(1) "Customers or Clients" means any individual or entity having contact with the Department seeking information, services, or reimbursement. This includes, but is not limited to: clients and their family members, informal client supports, advocates, Department staff, taxpayers, public officials, service providers, community based organizations, media, and other interested parties;

(2) "Customer Service Complaint" means a written complaint filed by a customer or client that expresses dissatisfaction with staff conduct, customer service or lack of customer service received from Department personnel or Department contractors;

(3) "Department" means the Department of Human Services.

(4) "Department Contractors" means employees, volunteers, trainees, and other individuals or entities who contract with the Department to provide services.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.010 and 411.977
Hist.: DHSD 7-2007, f. 8-31-07, cert. ef. 9-1-07

407-005-0110
Customer Service Complaint Procedure

(1) Customers or clients who are dissatisfied with staff conduct or some aspect of customer services received from Department personnel or Department contractors may file a customer service complaint with the Department. Customers or clients verbally expressing dissatisfaction with customer service will be informed by Department staff of the written customer service complaint process.

(2) A customer service complaint must be filed within 60 calendar days from the date of the event that caused the dissatisfaction. Untimely complaints will not be processed.

(3) Written customer service complaints may be filed by:

(a) Postal mail;

(b) In person at any Department office; or

(c) By contacting the Governor's Advocacy Office for assistance in filing a written customer service complaint.

(4) The Department will assist customers or clients in completing a customer service complaint in writing at the request of a customer or client or when Department staff identifies a need for assistance.

(5) Customer service complaints will be considered filed on the day the written complaint is received and date stamped by the Department.

(6) Within five business days of receipt of a written customer service complaint, filed in a Department office, a copy will be sent to the Governor's Advocacy Office.

(7) Within two business days of receipt of a written customer service complaint filed with the Governor's Advocacy Office, the complaint will be reviewed and sent to the appropriate Department office.

(8) The Department will develop a process for tracking filed written customer service complaints. The tracking process will be utilized to assure compliance with these rules.

(9) The Department shall post the customer service complaint process in an easily identifiable format in each local office of the Department.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.010, 411.977
Hist.: DHSD 7-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2007, f. 11-30-07, cert. ef. 12-1-07

407-005-0115
Resolution of Customer Service Complaints

(1) Customers, clients, or their representatives may resolve customer service complaints verbally, by contacting the involved individual or a manager, or by filing a written customer service complaint.

(2) Within two business days of receipt of a written customer service complaint, the Department will screen the complaint to determine whether the subject matter of the complaint is subject to review under the customer service complaint process. If the subject matter of the complaint is not subject to review under the customer service complaint process, the Department will immediately notify and redirect the customer or client to the alternative process for addressing the customer's or client's issue.

(3) There are four possible levels of written customer service complaint review. At the first level, the customer service complaint will be reviewed by a first level manager. If the complaint is not resolved at the first level, further review will be conducted by a second or third level manager. The Governor's Advocacy Office will facilitate the final level of review.

(4) For all levels of review and investigation the following processes and timelines apply:

(a) Within five business days of receipt of a written customer service complaint, the reviewing manager will review the customer service complaint. If the written customer service complaint generates no questions, the reviewing manager may begin investigating the matter before contacting the complainant. If there are questions regarding the customer service complaint, the reviewing manager will contact the complainant within five business days of receipt of the written complaint, to discuss the matter before taking any action. The reviewing manager must make the following efforts to contact the complainant:

(A) The reviewing manager must make at least two attempts to contact the complainant, using the complainant's preferred method of communication as indicated in the written complaint. If the complainant does not respond within ten business days from the date of the last contact attempt, the manager may consider the complaint closed;

(B) If the complainant does not specify a preferred method of communication or the reviewing manager cannot reach the complainant by telephone, the reviewing manager will communicate to the complainant, in writing, requesting that the complainant contact the manager.

(b) If contacting the complainant to gather additional information is required, the reviewing manager will begin an investigation regarding the issues of the customer service complaint within five business days from the date of contact with the complainant. If the outcome cannot be determined within ten business days from the date of contact with the complainant, the manager will notify the complainant of the estimated extension of time needed:

(A) A reviewing manager will notify the complainant of the outcome of the investigation in a manner that complies with all Department confidentiality and privacy rules;

(B) If the complainant indicates that the outcome is satisfactory, the reviewing manager will close the complaint;

(C) At levels one through three, the reviewing manager will inform the complainant that if the complainant is dissatisfied with the outcome, the complainant may request the next level of review within five days of the date of notification of the outcome. If the complainant requests the next level of review, the reviewing manager will immediately forward the customer service complaint to the next reviewing level manager or the Governor's Advocacy Office.

(c) At the fourth level, the Governor's Advocacy Office will facilitate and issue a final determination and the complainant will have no further review rights under the Department's customer service complaint process.

(5) All customer service complaints, both resolved and unresolved, will be sent to the Governor's Advocacy Office for review and follow-up. Follow-up may include contacting the complainant by telephone or in writing.

(6) These customer service complaint procedures shall be administered in such a manner as to protect the confidentiality of client and personnel records.

(7) The Department will maintain records of all customer service complaints received, including responses and supporting documentation, for five years from the date the customer service complaint is closed.

(8) The Department shall compile a monthly report summarizing each customer service complaint filed. The report will be available to the public upon request. Customer service complaints related to Children, Adults and Families Division, Self-Sufficiency program issues will be provided monthly to the Family Services Review Commission.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 411.977
Hist.: DHSD 7-2007, f. 8-31-07, cert. ef. 9-1-07

407-005-0120
Retaliation Prohibited

No individual filing a customer service complaint or otherwise participating in any of the actions authorized under OAR 407-005-0100 through 407-005-0120 shall be subject to reprimand or retaliatory action by any division or employee of the Department for having filed a customer service complaint.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.010 and 411.977
Hist.: DHSD 7-2007, f. 8-31-07, cert. ef. 9-1-07

DIVISION 7

CRIMINAL HISTORY CHECKS

DHS Employees, Volunteers, and Contractors

407-007-0000
Purpose and Scope

(1) The purpose of these rules, OAR 407-007-0000 to 407-007-0100, is to provide for the reasonable screening under ORS 181.534 and 181.537 of the Department of Human Services' employees, volunteers, and contractors to determine if they have a history of criminal behavior such that they should not be allowed to work, volunteer, be employed, or otherwise perform in positions covered by these rules.

(2) These rules apply to evaluating criminal records and potentially disqualifying conditions of a subject individual when conducting fitness determinations based upon such information. The fact that a subject individual is approved does not guarantee employment or placement. These rules do not apply to subject individuals covered under OAR 407-007-0200 to 407-007-0370.

(3) Although abuse checks may occur concurrently with criminal records checks performed under these rules and may share similar processes, the criminal records check process is separate and distinct from the abuse checks that may be performed under OAR 407-007-0400 to 407-007-0460.

Stat. Auth.: ORS 181.534, 181.537, 409.050
Stats. Implemented: ORS 181.534, 181.537, 409.010
Hist.: DHSD 2-2008(Temp), f. & cert. ef. 3-31-08 thru 9-26-08; DHSD 7-2008, f. 8-29-08, cert. ef. 9-1-08; DHSD 9-2009, f. 12-31-09, cert. ef. 1-1-10

407-007-0010
Definitions

As used in OAR 407-007-0000 to 407-007-0100, unless the context of the rule requires otherwise, the following definitions apply:

(1) "Approved" means that a subject individual, following a final fitness determination, is fit to work, volunteer, be employed, or otherwise perform in the position listed on the Background Check Request form.

(2) "Approved with restrictions" means an approval in which some restriction is made including but not limited to the subject individual, the subject individual's environment, the type or number of clients for whom the subject individual may provide care, or the information to which the subject individual has access.

(3) "Authorized designee (AD)" means an individual whom the Department of Human Services designates and authorizes to receive and process Background Check Request forms from subject individuals and criminal records information from the Department of Human Services.

(4) "Background Check Unit" means the Department of Human Services' Background Check Unit (BCU).

(5) "Client" means any individual who receives services, care, or funding for care through the Department of Human Services.

(6) "Closed case" means a criminal records check application that has been closed without a final fitness determination.

(7) "Criminal records check" means obtaining and reviewing criminal records as required by these rules and includes any or all of the following:

(a) An Oregon criminal records check where criminal offender information is obtained from Oregon State Police (OSP) using the Law

Enforcement Data System (LEDS). The Oregon criminal records check may also include a review of other criminal information.

(b) A national criminal records check where criminal records are obtained from the Federal Bureau of Investigation (FBI) through the use of fingerprint cards sent to OSP and other identifying information.

(c) A state-specific criminal records check where criminal records are obtained from law enforcement agencies, courts, or other criminal records information resources located in, or regarding, a state or jurisdiction outside Oregon.

(8) "Criminal offender information" means records, including fingerprints and photographs, received, compiled, and disseminated by OSP for purposes of identifying criminal offenders and alleged offenders and maintained as part of an individual's records of arrest, the nature and disposition of criminal charges, sentencing, confinement, but does not include the retention by OSP of records of transfer of inmates between penal institutions or other correctional facilities, and release. It also includes the OSP Computerized Criminal History System (see OAR 257-010-0015).

(9) "Denied" means that a subject individual, following a fitness determination including a weighing test, is not fit to work, volunteer, be employed, or otherwise perform in the position listed on the Background Check Request form.

(10) "Department" means the Department of Human Services.

(11) "Employee" means an individual working in the Department in any position including a new hire, promotion, demotion, direct appointment, re-employment, job rotation, developmental assignment, transfer, an individual impacted by the Department's lay-off process, or temporary hire.

(12) "Fitness determination" means the decision in a case that is not closed and includes:

(a) The decision regarding a Background Check Request form, an Oregon criminal records check, and preliminary review (a preliminary fitness determination); or

(b) The decision regarding a Background Check Request form, completed criminal records check including gathering of other information as necessary, and a final review by an AD (a final fitness determination).

(13) "Good cause" means a valid and sufficient reason for not complying with time frames set during the criminal records check process or contested case hearing process, including but not limited to an explanation of circumstances beyond a subject individual's reasonable control.

(14) "Hearing representative" means a Department employee representing the Department in a contested case hearing.

(15) "Hired on a preliminary basis" means a condition in which an subject individual may be allowed by the Department to work, volunteer, be trained, or reside in an environment following the submission of a completed Background Check Request form. Hired on a preliminary basis is applicable only during the time frame following a preliminary fitness determination and prior to a final fitness determination.

(16) "Office of Human Resources" means the Department's Office of Human Resources.

(17) "Other criminal records information" means information obtained and used in the criminal records check that is not criminal offender information from OSP. Other criminal records information includes but is not limited to police investigations and records, information from local or regional criminal records information systems, justice records, court records, information from the Oregon Judicial Information Network, sexual offender registration records, warrants, Oregon Department of Corrections records, Oregon Department of Transportation's Driver and Motor Vehicle Services Division information, information provided on the Background Check forms, disclosures by a subject individual, and any other information from any jurisdiction obtained by or provided to the Department for the purpose of conducting a fitness determination.

(18) "Position" means the position listed on the Background Check Request form for the subject individual which determines whether the individual is a subject individual under these rules. Covered positions include any type of employment, volunteer placement, or contract placement.

(19) "Subject individual (SI)" means an individual on whom the Department may conduct a criminal records check and from whom the Department may require fingerprints for the purpose of conducting a national criminal records check. An SI includes any of the following:

(a) A Department employee.

(b) An individual who has been offered employment by the Department.

(c) An individual secured by the Department through the services of a temporary employment agency, staffing agency, or personnel services agency who is providing any of the duties or having access as described in OAR 407-007-0060(3).

(d) A Department client who is placed in the Work Experience or JOBS Plus program at a Department site.

(e) An individual who provides or seeks to provide services to the Department at Department facilities, sites, or offices as a contractor, subcontractor, vendor, volunteer under Department direction and control, or student under Department direction and control who:

(A) May have contact with clients;

(B) Has access to personal information about employees of the Department, clients, or members of the public, including but not limited to Social Security numbers, dates of birth, driver license numbers, medical information, personal financial information, or criminal background information;

(C) Has access to information the disclosure of which is prohibited by state or federal laws, rules, or regulations or information that is defined as confidential under state or federal laws, rules, or regulations;

(D) Has access to property held in trust or to private property in the temporary custody of the state;

(E) Has payroll or fiscal functions or responsibility for:

(i) Receiving, receipting or depositing money or negotiable instruments;

(ii) Billing, collections, setting up financial accounts, or other financial transactions; or

(iii) Purchasing or selling property;

(F) Provides security, design or construction services for government buildings, grounds, or facilities;

(G) Has access to critical infrastructure or secure facilities information; or

(H) Is providing information technology services and has control over or access to information technology systems.

(f) Any individual applying for employment or a volunteer placement or any employee, volunteer, contractor, or employee of any contractor in any of the following:

(A) A State-operated or Department-contracted secure residential treatment facility;

(B) A State-operated group home within the Department's State-Operated Community Programs;

(C) Blue Mountain Recovery Center; or

(D) Oregon State Hospital.

(20) "Weighing test" means a process carried out by the Department in which available information is considered to make a fitness determination.

Stat. Auth.: ORS 181.534, 181.537, 409.050
Stats. Implemented: ORS 181.534, 181.537 & 409.010
Hist.: DHSD 2-2008(Temp), f. & cert. ef. 3-31-08 thru 9-26-08; DHSD 7-2008, f. 8-29-08, cert. ef. 9-1-08; DHSD 9-2009, f. 12-31-09, cert. ef. 1-1-10

407-007-0020
Criminal History Check Required

(1) The Department conducts criminal records checks on all SIs through LEDS maintained by OSP pursuant to ORS Chapter 181 and the rules adopted pursuant thereto (see OAR 257-015).

(2) If a national criminal records check of an SI is necessary, OSP shall provide the Department the results of criminal records checks conducted pursuant to ORS 181.534, including fingerprint identification, through the FBI.

(3) SIs must have a criminal records check in the following circumstances:

(a) If an individual becomes an SI on or after the effective date of these rules.

(b) Except as provided in section (3) of this rule, if the individual, whether previously considered an SI or not, changes positions, and the position requires a criminal records check. Change in a position may include but is not limited to promotion, transfer, demotion, re-employment, job rotation, developmental assignment, restoration, lay-off, or recall.

(c) If the Department has reason to believe that a criminal records check is justified. Examples include but are not limited to any indication of possible criminal behavior by an SI or quality assurance monitoring of a previously conducted criminal records check.

(4) The Office of Human Resources may determine that conducting a new criminal records check and fitness determination for a Department employee is not required.

(a) After the completion of the Background Check Request form, the Office of Human Resources may consider ending the criminal records check if:

(A) The SI who has been offered a new position has completed a previous criminal records check and fitness determination with an outcome of approved; and

(B) There has been no break in employment with the Department.

(b) The Office of Human Resources may cease the criminal records check without making a new fitness determination if there is no indication of new potentially disqualifying crimes or conditions, and at least one of the following is true:

(A) The previous criminal records check identified no potentially disqualifying crimes or conditions as defined at that time and the Office of Human Resources determines that the previous fitness determination is sufficient for the new position.

(B) The Office of Human Resources determines that the new position requires the same or less responsibility or access in the duties as described in OAR 407-007-0060(3).

(5) All SIs shall notify the Department's Office of Human Resources within five days of being arrested, charged, or convicted of any crime.

Stat. Auth.: ORS 181.534, 181.537, 409.050
Stats. Implemented: ORS 181.534, 181.537 & 409.010
Hist.: DHSD 2-2008(Temp), f. & cert. ef. 3-31-08 thru 9-26-08; DHSD 7-2008, f. 8-29-08, cert. ef. 9-1-08; DHSD 9-2009, f. 12-31-09, cert. ef. 1-1-10

407-007-0030
Criminal History Check Process

(1) Only Department employees, called ADs, may be authorized and approved pursuant to OAR 407-007-0230 to 407-007-0240 to receive and evaluate criminal offender information and other criminal records information. Only ADs may conduct fitness determinations.

(2) An SI shall use the Background Check Request form to request the criminal records check and shall include:

(a) Name and aliases;

(b) Date of birth;

(c) Address and recent residency information;

(d) Driver license information;

(e) Position for which the SI is submitting the Background Check Request form;

(f) Disclosure of criminal history;

(A) All arrests, charges, and convictions.

(B) The disclosed crimes and the dates must reasonably match the SI's criminal offender information and other criminal records information, as determined by the Department.

(g) Disclosure of other history required under OAR 407-007-0400 to 407-007-0460; and

(h) Disclosure of other information to be considered in the event of a weighing test if the SI discloses any criminal history or other history required under OAR 407-007-0400 to 407-007-0460.

(3) The Background Check Request form shall include the following notices:

(a) A notice regarding disclosure of Social Security number indicating:

(A) The SI's disclosure is voluntary; and

(B) The Department requests the Social Security number solely for the purpose of positively identifying the SI during the criminal records check process.

(b) A notice that the SI may be subject to fingerprinting and a criminal records check.

(4) The Department shall verify the identity of an SI using methods which include but are not limited to asking the SI for current and valid government-issued photo identification and confirming the information on the photo identification with the SI, the information written on the Background Check Request form, and the information written on the fingerprint card if a national criminal records check is conducted.

(5) The Department shall conduct an Oregon criminal records check after a completed Background Check Request form is received.

(a) Using information submitted on the Background Check Request form, the Department may obtain criminal offender information from the LEDS system and may request other criminal records information as needed.

(b) The Department shall handle criminal offender information obtained through LEDS in accordance with applicable OSP requirements in ORS chapter 181 and the rules adopted pursuant thereto (see OAR chapter 257, division 15).

(6) The Department may conduct a fingerprint-based national criminal records check after an Oregon criminal records check is completed.

(a) A fingerprint-based national criminal records check may be completed under any of the following circumstances:

(A) The SI has out of state residency evidenced by the SI's possession of an out of state driver license or being outside Oregon for 60 or more consecutive days during the previous five years.

(B) The LEDS check, SI disclosures, or any other criminal records information obtained by the Department indicates there may be criminal records outside of Oregon.

(C) The Department has reason to question the identity or history of the SI.

(D) The SI's position is at Oregon state institutions under OAR 407-007-0010(19)(g).

(E) The SI is assigned duties involving any aspect of a criminal records or abuse check process.

(F) A fingerprint-based criminal records check is required by federal or state laws or regulations, other rules adopted by the Department, or by contract with the Department.

(G) If the Department has reason to believe that fingerprints are needed to make a final fitness determination.

(b) The Department must receive consent from the parent or guardian to obtain fingerprints from an SI under 18 years of age.

(c) The SI shall complete and submit a fingerprint card when requested by the Department.

(A) The SI shall use a fingerprint card provided by the Department. The Department shall give the SI notice regarding the Social Security number as set forth in OAR 407-007-0030(3)(a).

(B) The SI shall submit the fingerprint card to the BCU within 21 calendar days of the request.

(i) The Department shall close the application, making it a closed case, if the fingerprint card is not received within 21 calendar days.

(ii) The Department may extend the time allowed for good cause.

(C) The Department may require new fingerprint cards if previous cards are rejected by OSP or the FBI.

(7) The Department may also conduct a state-specific criminal records check in lieu of or in addition to a national criminal records check. Reasons for a state-specific criminal records check include but are not limited to:

(a) When the Department has reason to believe that out-of-state criminal records may exist.

(b) When the Department has been unable to complete a national criminal records check due to illegible fingerprints.

(c) When the national criminal records check results show incomplete information about charges or criminal records without final disposition.

(d) When there is indication of residency or criminal records in a state that does not submit all criminal records to the FBI.

(e) When, based on available information, the Department has reason to believe that a state-specific criminal records check is necessary.

(8) In order to complete a criminal records check and fitness determination, the Department may require additional information from an SI.

(a) Additional information includes but is not limited to criminal, judicial, other background information, or proof of identity.

(b) If an SI who is a represented Department employee is required to provide additional information, the process for obtaining that information through investigatory interviews shall adhere to collective bargaining agreements on investigatory interviews.

(9) The Department may conduct a criminal records check in situations of imminent danger.

(a) If the Department determines there is indication of criminal behavior by an SI that could more likely than not pose an immediate risk to the Department, its clients, or vulnerable persons, the Department shall authorize a criminal records check without the completion of a Background Check Request form.

(b) If the Department determines that a fitness determination based on the criminal records check would be adverse to the SI, the Department shall provide the SI, if available, the opportunity to disclose criminal records, potentially disqualifying conditions, and other information as indicated in OAR 407-007-0060 before the completion of the fitness determination.

(10) Criminal records checks conducted under this rule shall be documented in writing.

Stat. Auth.: ORS 181.534, 181.537, 409.050
Stats. Implemented: ORS 181.534, 181.537 & 409.010
Hist.: DHSD 2-2008(Temp), f. & cert. ef. 3-31-08 thru 9-26-08; DHSD 7-2008, f. 8-29-08, cert. ef. 9-1-08; DHSD 9-2009, f. 12-31-09, cert. ef. 1-1-10

407-007-0040
Potentially Disqualifying Crimes

(1) A conviction of any of the following crimes is potentially disqualifying. Offenses or convictions that are classified as less than a misdemeanor, such as violations or infractions, are not potentially disqualifying (see ORS 161.505 to 161.565).

(a) Any federal crime.

(b) Any U.S. military crime.

(c) Any felony or misdemeanor in Oregon Revised Statutes or local codes in Oregon.

(d) Any felony or misdemeanor in a jurisdiction outside Oregon (including known crimes outside the United States) that is the substantial equivalent of any crime in Oregon Revised Statutes, or that is serious and demonstrates behavior that poses a threat or jeopardizes the safety of the Department, its clients, or vulnerable individuals as determined by the Department.

(e) Any crime that is no longer codified in Oregon or other jurisdiction but that is the substantial equivalent of any crime listed in this section as determined by the Department.

(2) Regardless of the conviction date, evaluations of crimes may be based on Oregon laws and laws in other jurisdictions in effect at the time of the fitness determination.

(3) Under no circumstances may an SI be denied under these rules because of a juvenile record that has been expunged or set aside pursuant to ORS 419A.260 to 419A.262.

(4) Under no circumstances may an SI be denied under these rules because of an adult record that has been set aside pursuant to ORS 137.225.

Stat. Auth.: ORS 181.534, 181.537, 409.050
Stats. Implemented: ORS 181.534, 181.537 & 409.010
Hist.: DHSD 2-2008(Temp), f. & cert. ef. 3-31-08 thru 9-26-08; DHSD 7-2008, f. 8-29-08, cert. ef. 9-1-08; DHSD 9-2009, f. 12-31-09, cert. ef. 1-1-10

407-007-0050
Other Potentially Disqualifying Conditions

The following are potentially disqualifying conditions:

(1) The SI makes a false statement to the Department, including the provision of materially false information, false information regarding criminal history, or failure to disclose information regarding criminal history. Nondisclosure of charges classified as less than a misdemeanor such as violations or infractions may not be considered as false statement.

(2) The SI is a registered sex offender in any jurisdiction. There is a rebuttable presumption that an SI is likely to engage in conduct that would pose a significant risk to the Department, its clients, or vulnerable individuals if the SI has been designated a predatory sex offender under ORS 181.585 or found to be a sexually violent dangerous offender under ORS 144.635 (or similar statutes in other jurisdictions).

(3) The SI has an outstanding warrant in any jurisdiction.

(4) The SI has a deferred sentence, conditional discharge, or is participating in a diversion program in any jurisdiction for any potentially disqualifying crime.

(5) The SI is currently on probation, parole, or post-prison supervision for any crime in any jurisdiction, regardless of the original conviction date or date of guilty or no contest plea if there is no conviction date.

(6) The SI is found in violation of post-prison supervision, parole, or probation for any crime in any jurisdiction regardless of the original conviction date or date of guilty or no contest plea if there is no conviction date, within five years or less from the date the Background Check Request form was signed or the date the Department conducted a criminal records check due to imminent danger.

(7) The SI has an unresolved arrest, charge, or a pending indictment for any crime in any jurisdiction.

(8) The SI has been arrested in any jurisdiction as a fugitive from another state or a fugitive from justice, regardless of the date of arrest.

(9) An adjudication in a juvenile court in any jurisdiction, finding that the SI was responsible for a potentially disqualifying crime that would result in a conviction if committed by an adult.

(10) A finding of "guilty except for insanity," "guilty except by reason of insanity," "not guilty by reason of insanity," "responsible except for insanity," "not responsible by reason of mental disease or defect," or similarly worded disposition in any jurisdiction regarding a potentially disqualifying crime, unless the local statutes indicate that such an outcome is considered an acquittal.

Stat. Auth.: ORS 181.534, 181.537, 409.050
Stats. Implemented: ORS 181.534, 181.537 & 409.010
Hist.: DHSD 2-2008(Temp), f. & cert. ef. 3-31-08 thru 9-26-08; DHSD 7-2008, f. 8-29-08, cert. ef. 9-1-08; DHSD 9-2009, f. 12-31-09, cert. ef. 1-1-10

407-007-0060
Weighing Test

If the SI has potentially disqualifying crimes or conditions, the Department shall consider any of the following factors disclosed by the SI or otherwise known when making the fitness determination:

(1) Circumstances regarding the nature of potentially disqualifying crimes and conditions including but not limited to:

(a) Age of the SI at time of the potentially disqualifying crime or condition.

(b) Details of incidents leading to the charges of potentially disqualifying crimes or resulting in potentially disqualifying conditions.

(c) Facts that support the conviction or other potentially disqualifying condition.

(d) Passage of time since commission of the crime or potentially disqualifying condition.

(e) Consideration of state or federal laws, regulations, or rules covering the position or the Department, regarding the potentially disqualifying crimes or conditions.

(2) Other factors when available including but not limited to:

(a) Other information related to criminal activity including charges, arrests, pending indictments, or convictions. Other behavior involving contact with law enforcement may also be reviewed if information is relevant to other criminal records or shows a pattern relevant to criminal history.

(b) Periods of incarceration.

(c) Status of and compliance with parole, post-prison supervision, or probation.

(d) Evidence of drug or alcohol issues directly related to criminal activity or potentially disqualifying conditions.

(e) Evidence of other treatment or rehabilitation related to criminal activity or potentially disqualifying conditions.

(f) Likelihood of repetition of criminal behavior or behaviors leading to potentially disqualifying conditions, including but not limited to patterns of criminal activity or behavior or whether the SI appears to accept responsibility for past actions, as determined by the Department.

(g) Changes in circumstances subsequent to the criminal activity or disqualifying conditions including but not limited to:

(A) History of high school, college, or other education related accomplishments.

(B) Work history (employee or volunteer).

(C) History regarding licensure, certification, or training for licensure or certification.

(D) Written recommendations from current or past employers.

(h) Indication of the SI's cooperation, honesty, or the making of a false statement during the criminal records check process, including acknowledgment and acceptance of responsibility of criminal activity and potentially disqualifying conditions.

(3) The relevancy of the SI's criminal history or potentially disqualifying conditions to the position or to the environment of the position, shall be considered. Consideration includes the relation between

the SI's potentially disqualifying crimes or conditions and the following tasks or duties in the position:

(a) Access to or direct contact with Department clients, client property, or client funds.

(b) Access to information technology services, or control over or access to information technology systems that would allow an individual holding the position to harm the information technology systems or the information contained in the systems.

(c) Access to information, the disclosure of which is prohibited by state or federal laws, rules, or regulations, or information that is defined as confidential under state or federal laws, rules, or regulations.

(d) Access to payroll functions.

(e) Responsibility for receiving, receipting, or depositing money or negotiable instruments.

(f) Responsibility for billing, collections, or other financial transactions.

(g) Access to mail received or sent to the Department, including interagency mail, or access to any mail facilities in the Department.

(h) Responsibility for auditing the Department or other governmental agencies.

(i) Responsibility for any personnel or human resources functions.

(j) Access to personal information about employees, clients, or members of the public including Social Security numbers, dates of birth, driver license numbers, residency information, medical information, personal financial information, criminal offender information, or other criminal records information.

(k) Access to medications, chemicals, or hazardous materials; access to facilities in which medications, chemicals, and hazardous materials are present; or access to information regarding the transportation of medications, chemicals, or hazardous materials.

(L) Access to property to which access is restricted in order to protect the health or safety of the public.

(m) Responsibility for security, design, or construction services. This includes government buildings, grounds, or facilities or buildings, owned, leased, or rented for government purposes.

(n) Access to critical infrastructure or security-sensitive facilities or information.

Stat. Auth.: ORS 181.534, 181.537, 409.050
Stats. Implemented: ORS 181.534, 181.537 & 409.010
Hist.: DHSD 2-2008(Temp), f. & cert. ef. 3-31-08 thru 9-26-08; DHSD 7-2008, f. 8-29-08, cert. ef. 9-1-08; DHSD 9-2009, f. 12-31-09, cert. ef. 1-1-10

407-007-0065
Hired on a Preliminary Basis

The Department shall make a preliminary fitness determination to determine if an SI may work, volunteer, be employed, or otherwise perform in the position listed on the Background Check Request form prior to a final fitness determination. The Department may not hire an SI on a preliminary basis prior to the completion of a preliminary fitness determination.

(1) The SI shall complete and submit a Background Check Request form.

(2) The Department shall complete a preliminary fitness determination and send notice to the hiring manager.

(3) After review of the Background Check Request form, the Department shall make one of the following determinations:

(a) An SI may be hired on a preliminary basis, only during the time period prior to a final fitness determination, into the position listed on the Background Check Request form and allowed to participate in training, orientation, and position activities under the one of the following circumstances:

(A) If there is no indication of potentially disqualifying crimes or conditions on the Background Check Request form and the Department has no reason to believe the SI has potentially disqualifying crimes or conditions.

(B) If an SI discloses potentially disqualifying crimes or conditions, the SI may be hired on a preliminary basis only after the Office of Human Resources completes a weighing test. The Department may hire an SI on a preliminary basis only if, based on information available at the time, the Office of Human Resources determines that more likely than not that the SI poses no potential threat to the Department, its clients, or vulnerable persons.

(b) The Department shall not hire an SI on a preliminary basis if the Office of Human Resources determines that:

(A) After a weighing test, the SI more likely than not poses a potential threat to the Department, its clients, or vulnerable persons;

(B) The SI's most recent criminal records check under these rules or other Department criminal records check rules resulted in a denial; or

(C) The SI is currently involved in contesting a criminal records check determination under these or other Department criminal records check or abuse check rules.

(4) An SI who is hired on a preliminary basis shall be actively supervised at all times by an individual who has been approved without restrictions pursuant to these rules or previous Department criminal records check rules. The individual providing active supervision shall do at all times the following:

(a) Be in the same building as the SI or, if outdoors of Department buildings or any location off Department property, be within line of sight and hearing of the SI;

(b) Know where the SI is and what the SI is doing; and

(c) Periodically observe the actions of the SI.

(5) An SI who was approved without restrictions within the previous 24 months through a documented criminal records check pursuant to these rules may work after being hired on a preliminary basis without active supervision. The 24 month time frame is calculated from the date of previous approval to the date starting the new position. This exemption is not allowed in any of the following situations:

(a) If the SI cannot provide documented proof that he or she worked continuously under the previous approval for at least one year.

(b) If there is evidence of criminal activity within the previous 24 months.

(c) If the Department determines the job duties in the new position are so substantially different from the previous position that the previous fitness determination is inadequate for the new position.

(6) The Department may immediately remove an SI hired on a preliminary basis from the position listed on the Background Check Request form. Removal is not subject to hearing or appeal. Reasons for removal include but are not limited to the following:

(a) There is any indication of falsification on the Background Check Request form.

(b) The SI fails to disclose convictions for any potentially disqualifying crimes, any arrests that did not result in convictions, or any out of state arrests or convictions.

(c) The Department determines that allowing the SI to be hired on a preliminary basis is not appropriate, based on the application, criminal records, position duties, or regulations regarding the position.

(7) Nothing in this rule is intended to require that an SI, who is eligible for being hired on a preliminary basis be allowed to work, volunteer, be employed, or otherwise perform in the position listed on the Background Check Request form prior to a final fitness determination.

Stat. Auth.: ORS 181.534, 181.537 & 409.050
Stats. Implemented: ORS 181.534, 181.537 & 409.010
Hist.: DHSD 9-2009, f. 12-31-09, cert. ef. 1-1-10

407-007-0070
Final Fitness Determinations

The Office of Human Resources shall make a final fitness determination after all necessary criminal records checks, and a weighing test if necessary, have been completed. The Office of Human Resources may obtain and consider additional information as necessary to complete the final fitness determination.

(1) The final fitness determination may result in one of the following outcomes:

(a) The Office of Human Resources may approve an SI if:

(A) The SI has no potentially disqualifying crimes or potentially disqualifying conditions; or

(B) The SI has potentially disqualifying crimes or potentially disqualifying conditions and, after a weighing test with available information, the Department determines that more likely than not the SI poses no risk to the Department, its clients, or vulnerable persons.

(b) The Office of Human Resources may approve an SI with restrictions if, after a weighing test with available information, it determines that more likely than not that the SI poses no risk to the Department, its clients, or vulnerable persons, if certain restrictions are placed on the SI, such as but not limited to restrictions to one or more specific clients, position duties, or environments. The Department shall complete a new background check and fitness determination on the SI

before removing a restriction. A fitness determination of approved with restrictions shall only be considered for the following SIs:

(A) An individual secured by the Department through the services of a temporary employment agency, staffing agency, or personnel services agency who is providing any of the duties or having access as described in OAR 407-007-0060(3).

(B) A volunteer or student under Department direction and control.

(C) A Department client who is placed in a Work Experience or JOBS Plus program at a Department site.

(D) Any individual who is required to complete a criminal records check pursuant to the statutory authority of ORS 181.534 and 181.537 or the authority of these rules pursuant to a contract with the Department.

(c) The Office of Human Resources shall deny an SI whom it determines, after a weighing test with available information, more likely than not poses a risk to the Department, its clients, or vulnerable individuals.

(2) The BCU may assist in or handle final fitness determinations as requested by the Office of Human Resources.

(3) Upon completion of a final fitness determination, the Office of Human Resources shall provide written notice to the SI. The notice shall:

(a) Be in a Department approved format;

(b) Include information regarding appeal rights for denied or approved with restrictions outcomes. The notice shall also include a statement that it becomes a final order by default in the event of a withdrawal or a failure to participate during the appeal or hearing; and

(c) Be mailed or hand-delivered to the SI no later than 14 calendar days after the decision. The effective date of action shall be recorded on the notice.

(d) The Office of Human Resources shall also provide employees with all formal disciplinary documents and letters up to and including a letter of dismissal.

(4) When an SI is denied, the Department shall not allow the SI to work, volunteer, be employed, or otherwise perform in the position listed on the Background Check Request form. A denial applies only to the position in question.

(a) The process for a Department employee's removal from service or dismissal shall adhere to Department-wide Support Services discharge policies, Department of Administrative Services' Human Resource Services Division dismissal polices, and collective bargaining agreements on discharge, as applicable.

(b) For all other SIs, a denial shall result in immediate dismissal.

(5) Final fitness determinations shall be documented in writing, including any other necessary details including but not limited to restrictions in a restricted approval or potentially disqualifying crimes or conditions in a denial.

(6) The Department shall make new fitness determinations for each application. The outcome of previous fitness determinations does not set a precedent for subsequent fitness determinations.

Stat. Auth.: ORS 181.534, 181.537, 409.050
Stats. Implemented: ORS 181.534, 181.537 & 409.010
Hist.: DHSD 2-2008(Temp), f. & cert. ef. 3-31-08 thru 9-26-08; DHSD 7-2008, f. 8-29-08, cert. ef. 9-1-08; DHSD 9-2009, f. 12-31-09, cert. ef. 1-1-10

407-007-0075
Closed Case

If an SI discontinues the application or fails to cooperate with the criminal records check or fitness determination process, the application is considered incomplete and shall be closed.

(1) Discontinuance or failure to cooperate includes but is not limited to the following circumstances:

(a) The SI refuses to be fingerprinted when required by these rules.

(b) The SI fails to respond within a stated time period to a request for corrections to the application, fingerprints, or provide any other information necessary to conduct a criminal records check and there is not enough information available to make a fitness determination.

(c) The SI withdraws the application, leaves the position prior to completion of the criminal records check, or the Department cannot locate or contact the SI.

(d) The SI is determined to be ineligible for the position for reasons other than the criminal records check.

(2) When the application is closed without a final fitness determination, there is no right to contest the closure.

(3) When a case is closed, the SI shall not be allowed to work, volunteer, be employed, or otherwise perform in the position listed on the Background Check Request form. A closed case applies only to the position in question.

(a) The process for a Department employee's removal from service or dismissal shall adhere to Department-wide Support Services discharge policies, Department of Administrative Services' Human Resource Services Division dismissal polices, and collective bargaining agreements on discharge, as applicable.

(b) For all other SIs, a closed case shall result in immediate dismissal.

(4) The Office of Human Resources or the BCU shall document in writing the reasons for a closed case, and shall provide that information to the SI.

Stat. Auth.: ORS 181.534, 181.537 & 409.050
Stats. Implemented: ORS 181.534, 181.537 & 409.010
Hist.: DHSD 9-2009, f. 12-31-09, cert. ef. 1-1-10

407-007-0080
Contesting a Final Fitness Determination

(1) A final fitness determination of denied or approved with restrictions is considered an adverse outcome. An SI with an adverse outcome may contest that outcome.

(2) If an SI is denied, then the SI may not work, volunteer, be employed, or otherwise perform in positions covered by these rules. An SI appealing a restricted approval may only work under the terms of the restriction during the appeal.

(3) If an adverse outcome is changed at any time during the appeal process, the change does not guarantee employment or placement.

(4) If an SI wishes to challenge the accuracy or completeness of criminal offender information provided by OSP, the FBI, or other criminal records information from other agencies reporting information to the Department, the SI may appeal to the entity providing the information. These challenges are not subject to the Department's appeal process.

(5) The SI has the right to represent himself or herself or have legal representation during the appeal process. The SI may not be represented by a lay person. In this rule, the term "SI" shall be considered to include the SI's legal representative.

(6) An SI who is already employed by the Department at the time of the final fitness determination may appeal through applicable personnel rules, policies, and collective bargaining provisions. The SI's decision to do so is an election of remedies as to the rights of the SI with respect to the fitness determination and constitutes a waiver of the contested case process described in this rule.

(7) An SI who wishes to challenge an adverse fitness determination may appeal the determination by requesting a contested case hearing. The appeal process is conducted pursuant to ORS 183.411 to 183.497 and the Attorney General's Uniform and Model Rules of Procedure for the Office of Administrative Hearings (OAH), OAR 137-003-0501 to 137-003-0700.

(a) To request a contested case hearing the SI shall complete and sign the Hearing Request form.

(b) The completed and signed form must be received by the Department within the following time lines:

(A) For Department employees and SIs offered employment by the Department, no later than 15 calendar days after the effective date of action listed on the notice of the fitness determination.

(B) For all other SIs, no later than 45 calendar days after the effective date of action listed on the notice of the fitness determination.

(c) If a request for hearing is not timely, the Department shall determine, based on a written statement from the SI and available information, if there is good cause to proceed with the appeal.

(d) The Department may refer an untimely request to OAH for a hearing on the issue of timeliness.

(8) When an SI requests a contested case hearing, the Department may conduct an administrative review before referring the appeal to OAH.

(a) The SI must participate in the administrative review. Participation may include but is not limited to providing additional infor-

mation or additional documents requested by the Department within a specified amount of time.

(b) The administrative review is not open to the public.

(9) The Department may conduct additional criminal records checks during the appeal process to update or verify the SI's criminal records. If needed, the Department shall amend the notice of fitness determination during the appeal process while still maintaining the original hearing rights and deadlines.

(10) A hearing representative shall represent the Department in contested case hearings, or may use representation through the Department of Justice's Office of the Attorney General.

(a) The Department shall provide the administrative law judge and the SI a complete copy of available information used during the criminal records checks and fitness determinations. The notice of contested case and prehearing summary and all other documents shall be mailed by regular first class mail.

(b) The contested case hearing is not open to the public.

(c) The administrative law judge shall make a new fitness determination based on the evidence and the contested case hearing record.

(d) The only remedy that may be awarded is a fitness determination that the SI is approved or denied. Under no circumstances shall the Department be required to place an SI in any position, nor shall the Department be required to accept services or enter into a contractual agreement with an SI.

(11) The result of an appeal is a final order.

(a) In the following situations, the notice of fitness determination becomes the final order as if the SI never requested a hearing:

(A) Failure to request a hearing in the time allotted in this rule. No other document shall be issued after the notice of fitness determination.

(B) Withdrawal of the request for hearing at any time during the appeal process.

(b) The Department may make an informal disposition based on the administrative review. The Department shall issue a final order and new notice of fitness determination. If the resulting fitness determination is an adverse outcome, the appeal shall proceed to contested case hearing.

(c) The Department shall issue a dismissal order in the following circumstances:

(A) The SI may withdraw a hearing request verbally or in writing at any time before the issuance of a final order. A dismissal order due to a withdrawal is effective the date the withdrawal is received by the Department or OAH. The SI may cancel the withdrawal in writing within 14 calendar days after the date of withdrawal.

(B) The Department shall dismiss a hearing request when the SI fails to participate in the administrative review. Failure to participate in the administrative review shall result in termination of hearing rights. The order is effective on the due date for participation in the administrative review. The Department shall review a good cause request to reinstate hearing rights if received in writing by the Department within 14 calendar days.

(C) The Department shall dismiss a hearing request when the SI fails to appear at the time and place specified for the contested case hearing. The order is effective on the date scheduled for the hearing. The Department shall review a good cause request to reinstate hearing rights if received in writing by the Department within 14 calendar days.

(d) After a hearing, the administrative law judge shall issue a proposed and final order.

(A) If no written exceptions are received by the Department within 14 calendar days after the service of the proposed and final order, the proposed and final order shall become the final order.

(B) If timely written exceptions to the proposed and final order are received by the Department, the Department's Director or designee shall consider the exceptions and serve a final order, or request a written response or a revised proposed and final order from the administrative law judge.

(12) Final orders, including dismissal and default orders, are subject to reconsideration or rehearing petitions within 60 calendar days after the final order is served, pursuant to OAR 137-003-0675.

Stat. Auth.: ORS 181.534, 181.537, 409.050
Stats. Implemented: ORS 181.534, 181.537, 183.341 & 409.010
Hist.: DHSD 2-2008(Temp), f. & cert. ef. 3-31-08 thru 9-26-08; DHSD 7-2008, f. 8-29-08, cert. ef. 9-1-08; DHSD 9-2009, f. 12-31-09, cert. ef. 1-1-10

407-007-0090
Record Keeping, Confidentiality

(1) All LEDS reports are confidential and the Department shall maintain the reports in accordance with applicable OSP requirements in ORS chapter 181 and the rules adopted pursuant thereto (see OAR chapter 257, division 15).

(a) LEDS reports may only be shared with approved Department authorized designees if there is a need to know consistent with these rules.

(b) The LEDS report and any photocopies may not be shown or given to the SI.

(2) The results of a national criminal records check provided by the FBI or through OSP are confidential and may not be disseminated by the Department except:

(a) If a fingerprint-based criminal records check was conducted on the SI, the SI shall be provided a copy of the results upon request.

(b) During the contested case hearing, the Department shall provide state and national criminal offender information as exhibits.

(3) All completed Background Check Request forms, other criminal records information, and other records collected or developed during the criminal records check process shall be kept confidential and disseminated only on a need-to-know basis.

(4) The Department shall retain and destroy all criminal records check documents pursuant to federal law and records retention schedules published by Oregon State Archives.

Stat. Auth.: ORS 181.534, 181.537, 409.050
Stats. Implemented: ORS 181.534, 181.537 & 409.010
Hist.: DHSD 2-2008(Temp), f. & cert. ef. 3-31-08 thru 9-26-08; DHSD 7-2008, f. 8-29-08, cert. ef. 9-1-08; DHSD 9-2009, f. 12-31-09, cert. ef. 1-1-10

407-007-0100
Variances

(1) The outcome of a fitness determination made pursuant to these rules is not subject to variance. Challenges to fitness determinations may only be made through contested case hearing rights set forth in these rules or alternative options available to Department employees.

(2) The Department may grant a variance based upon a demonstration by the Department program area or work unit that the variance would not pose a significant risk to the Department, its clients, or vulnerable individuals.

(3) The program office or work unit requesting a variance shall submit, in writing, an application to the BCU that 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) An explanation on how the safety and well-being of the Department or affected individuals will be ensured during the time the variance period is in effect.

(4) The Assistant Director or designee for the Department's Administrative Services Division shall approve or deny the request for a variance.

(5) The Department shall notify the program office or work unit of the decision. This notice shall be sent within 30 calendar days of the receipt of the request by the Department with a copy to other relevant divisions of the Department.

(6) Appeal of the denial of a variance request shall be made in writing to the Department's Director or designee, whose decision shall be final.

(7) The duration of the variance shall be determined by the Department's Director or designee.

(8) The Department program office or work unit may implement a variance only after receipt of written approval from the Department.

(9) Granting a variance does not set a precedent for subsequent requests for variances.

Stat. Auth.: ORS 181.537 & 409.050
Stats. Implemented: ORS 181.537 & 409.010
Hist.: DHSD 3-2008(Temp). f. & cert. ef. 5-22-08 thru 11-17-08; DHSD 7-2008, f. 8-29-08, cert. ef. 9-1-08; DHSD 9-2009, f. 12-31-09, cert. ef. 1-1-10

Providers

407-007-0200
Purpose

(1) The purpose of these rules, OAR 407-007-0200 to 407-007-0370, is to provide for the reasonable screening under ORS 181.534 and 181.537 of subject individuals to determine if they have a history of criminal behavior such that they should not be allowed to work, volunteer, be employed, reside, or otherwise perform in positions covered by these rules.

(2) These rules apply to evaluating criminal records and potentially disqualifying conditions of a subject individual when conducting fitness determinations based upon such information. The fact that a subject individual is approved does not guarantee employment or placement. These rules do not apply to individuals subject to OAR 407-007-0000 to 407-007-0100.

Stat. Auth.: ORS 181.534, 181.537, 409.050, 410.020, 411.060, 411.122, 418.016, 418.640, 441.055, 443.730, 443.735 & 678.153
Stats. Implemented: ORS 181.534, 181.537, 409.010, 411.060 & 411.122
Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; Renumbered from 410-007-0200, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09; DHSD 10-2009, f. 12-31-09, cert. ef. 1-1-10; DHSD 10-2010, f. 10-29-10, cert. ef. 10-31-10

407-007-0210
Definitions

As used in OAR 407-007-0200 to 407-007-0370, unless the context of the rule requires otherwise, the following definitions apply:

(1) "Appointing authority" means the individual designated by the qualified entity responsible for appointing authorized designees and contact persons. Examples include but are not limited to human resources staff with the authority to offer and terminate employment, business owners, a member of the board of directors, a director, or a program administrator.

(2) "Approved" means, with regard to a fitness determination, that a subject individual, following a final fitness determination, is fit to work, volunteer, be employed, or otherwise perform in the position listed on the Background Check Request form.

(3) "Approved with restrictions" means an approval in which some restriction is made including but not limited to the subject individual, the subject individual's environment, the type or number of clients for whom the subject individual may provide care, or the information to which the subject individual has access.

(4) "Authorized designee (AD)" means an individual designated by the Department of Human Services, or an approved qualified entity authorized by the Department of Human Services to receive and process criminal records check request forms from subject individuals and criminal records information from the Department of Human Services.

(5) "Background Check Unit (BCU)" means the Department of Human Services' Background Check Unit.

(6) "Care" means the provision of care, treatment, education, training, instruction, supervision, placement services, recreation, or support to children, the elderly, or individuals with disabilities (see ORS 181.537).

(7) "Client" means any individual who receives services, care, or funding for care through the Department of Human Services.

(8) "Closed case" means a criminal records check application that has been closed without a final fitness determination.

(9) "Contact person (CP)" means an individual who is designated by the Department of Human Services or an approved qualified entity to receive and process criminal records check request forms from subject individuals, but who is not authorized to receive criminal records information from the Department of Human Services.

(10) "Criminal records check" means obtaining and reviewing criminal records as required by these rules and includes any or all of the following:

(a) An Oregon criminal records check where criminal offender information is obtained from the Oregon State Police (OSP) using the Law Enforcement Data System (LEDS). The Oregon criminal records check may also include a review of other criminal records information.

(b) A national criminal records check where records are obtained from the Federal Bureau of Investigation (FBI) through the use of fingerprint cards sent to OSP and other identifying information. The national criminal records check may also include a review of other criminal records information.

(c) A state-specific criminal records check where records are obtained from law enforcement agencies, courts, or other criminal records information resources located in, or regarding, a state or jurisdiction outside Oregon.

(11) "Criminal offender information" means records, including fingerprints and photographs, received, compiled, and disseminated by OSP for purposes of identifying criminal offenders and alleged offenders and maintained as part of an individual's records of arrest, the nature and disposition of criminal charges, sentencing, confinement, and release, but does not include the retention by OSP of records of transfer of inmates between penal institutions or other correctional facilities.. It also includes the OSP Computerized Criminal History System (see OAR 257-010-0015).

(12) "Denied" means, with regard to a fitness determination, that a subject individual

(a) Following a fitness determination including a weighing test, is not fit to work, volunteer, be employed, reside, or otherwise hold the position listed on the Background Check Request form.

(b) If determined to be a subject individual under OAR 407-007-0275, is not eligible to hold the position at or through the qualified entity listed on the Background Check Request form due to a conviction for one or more crimes listed in OAR 407-007-0275.

(13) "Department" means the Department of Human Services, the Oregon Health Authority, or both.

(14) "Fitness determination" means the decision in a case that is not closed, and includes:

(a) The decision regarding a Background Check Request form and preliminary review (a preliminary fitness determination); or

(b) The decision regarding a Background Check Request form, completed criminal records check, including gathering other information as necessary, and a final review by an AD (a final fitness determination).

(15) "Good cause" means a valid and sufficient reason for not complying with time frames set during the criminal records check process or contested case hearing process that includes but is not limited to an explanation of circumstances beyond a subject individual's reasonable control.

(16) "Hearing representative" means a Department employee representing the Department in a contested case hearing.

(17) "Hired on a preliminary basis" means a condition in which a qualified entity allows a subject individual to work, volunteer, be trained, or reside in an environment following the submission of a completed Background Check Request form. Hired on a preliminary basis may also be called probationary status.

(18) "Other criminal records information" means information obtained and used in the criminal records check process that is not criminal offender information from OSP. Other criminal records information includes but is not limited to police investigations and records, information from local or regional criminal records information systems, justice records, court records, information from the Oregon Judicial Information Network, sexual offender registration records, warrants, Oregon Department of Corrections records, Oregon Department of Transportation's Driver and Motor Vehicle Services Division information, information provided on the Background Check Request forms, disclosures by a subject individual, and any other information from any jurisdiction obtained by or provided to the Department for the purpose of conducting a fitness determination.

(19) "Position" means the position listed on the Background Check Request form which determines whether the individual is a subject individual under these or Department program rules.

(20) "Qualified entity (QE)" means a community mental health or developmental disability program, local health department, or an individual, business, or organization, whether public, private, for-profit, nonprofit, or voluntary, that provides care, including a business or organization that licenses, certifies, or registers others to provide care (see ORS 181.537).

(21) "Subject individual (SI)" means an individual on whom the Department may conduct a criminal records check and from whom the Department may require fingerprints for the purpose of conducting a national criminal records check.

(a) An SI includes any of the following:

(A) An individual who is licensed, certified, registered, or otherwise regulated or authorized for payment by the Department and who provides care.

(B) An employee, contractor, temporary worker, or volunteer who provides care, or has access to clients, client information, or client funds, within any entity or agency licensed, certified, registered, or otherwise regulated by the Department.

(C) Any individual who is paid directly or indirectly with public funds who has or will have contact with recipients of:

(i) Services within an adult foster home (defined in ORS 443.705);

(ii) Services within a residential facility (defined in ORS 443.400);

(iii) Services through in-home care agencies (defined on ORS 443.305); or

(iv) Services through home health agencies (defined in ORS 443.005).

(D) Any direct care staff secured by any residential care facility, assisted living facility, or nursing facility through the services of a personnel services or staffing agency who works in the facility.

(E) Except as excluded in section (21)(b)(C) and (D) of this rule, an individual who lives in a facility that is licensed, certified, registered, or otherwise regulated by the Department to provide care. The position of this SI includes but is not limited to resident manager, household member, or boarder.

(F) An individual working or volunteering for a private licensed child caring agency or system of care contractor providing child welfare services pursuant to ORS chapter 418.

(G) A homecare worker, personal care services provider, or an independent provider employed by a Department client who provides care to the client if the Department helps pay for the services.

(H) A child care provider and their employees reimbursed through the Department's child care program and other individuals in child care facilities that are exempt from certification or registration by the Child Care Division of the Oregon Employment Department (OED). This includes all individuals who reside in or who are frequent visitors to the residence or facility where the child care services are provided and who may have unsupervised access to the children (see OAR 461-165-0180).

(I) An AD or CP in any entity or agency licensed, certified, registered, otherwise regulated by the Department, or subject to these rules.

(J) An individual providing on the job certified nursing assistant classes to staff within a long term care facility.

(K) A student at a long term care facility enrolled in a certified nursing assistant class for employment at the facility.

(L) Any individual serving as an owner, operator, or manager of a room and board facility pursuant to OAR chapter 411, division 68.

(M) Any individual who is required to complete a criminal records check pursuant to other Department program rules or a contract with the Department or if the requirement is within Department's statutory authority. Specific statutory authority or reference to these rules and the positions under the contract subject to a criminal records check must be specified in the contract. This inclusion as a subject individual would not be negated by section (21)(b) of this rule.

(b) An SI does not include:

(A) Any individual under 16 years of age.

(B) An individual receiving training in a Department-licensed or Department-certified facility as part of the required curriculum through any college, university, or other training program and who is not an employee in the facility in which training is provided. The individual may not be considered a volunteer under these rules. Facilities must ensure that all students or interns have passed a substantially equivalent background check process through the training program or are:

(i) Actively supervised at all times as defined in OAR 407-007-0315; and

(ii) Not allowed to have unsupervised access to vulnerable individuals.

(C) Department clients or QE clients, unless specific written permission to conduct a criminal records check is received from the Department. The only circumstance in which the Department shall allow a check to be performed on a client pursuant to this paragraph is if the client falls within the definition of "subject individual" as listed in sections (21)(a)(A)-(D) and 21(a)(F)-(M) of this rule.

(D) Individuals working in child care facilities certified or registered by the OED.

(E) Individuals employed by a private business that provides services to clients and the general public and is not regulated by the Department.

(F) Individuals employed by a business that provides appliance or structural repair for clients and the general public, and who are temporarily providing these services in an environment regulated by the Department. The QE shall ensure active supervision of these individuals while on QE property and the QE may not allow unsupervised contact with QE clients or residents. This exclusion does not apply to a business that receives funds from the Department for care provided by an employee of the business.

(G) Individuals employed by a private business in which a client of the Department is working as part of a Department-sponsored employment service program. This exclusion does not apply to an employee of a business that receives funds from the Department for care provided by the employee.

(H) Employees and volunteers working in hospitals, ambulatory surgical centers, special inpatient care facilities, outpatient renal dialysis facilities, and freestanding birthing centers as defined in ORS 442.015.

(I) Volunteers, who are not under the direction and control of any entity licensed, certified, registered, or otherwise regulated by the Department.

(J) Individuals employed or volunteering in a Medicare-certified health care business which is not subject to licensure or certification by the State of Oregon.

(K) Individuals working in restaurants or at public swimming pools.

(L) Hemodialysis technicians.

(M) Employees, contractors, temporary workers, or volunteers who provide care, or have access to clients, client information, or client funds of an alcohol and drug program that is certified, licensed, or approved by the Department's Addictions and Mental Health Division to provide prevention, evaluation, or treatment services. This exclusion does not apply to programs specifically required by other Department rules to conduct criminal records checks in accordance with these rules.

(N) Individuals working for a transit service provider which conducts background checks pursuant to ORS 267.237.

(O) Individuals being certified by the Department as interpreters pursuant to ORS 409.623. This exclusion does not apply to Department-certified interpreters when being considered for a specific position.

(P) Provider group categories that were authorized for payment by the Department for care if the provider group categories were not covered by a Department criminal record check process prior to 2004.

(Q) Emergency medical technicians and first responders certified by the Department's Emergency Medical Services and Trauma Systems program.

(R) Employees, contractors, temporary workers, or volunteers of continuing care retirement communities registered under OAR chapter 411, division 067.

(22) "Weighing test" means a process in which one or more ADs consider available information to make a fitness determination when an SI has potentially disqualifying convictions or conditions.

Stat. Auth.: ORS 181.537 & 409.050
Stats. Implemented: ORS 181.534, 181.537, 409.010 & 443.004
Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 77-2004(Temp), f. & cert. ef. 10-1-04 thru 3-29-05; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0210, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; Hist.: DHSD 2-2008(Temp), f. & cert. ef. 3-31-08 thru 9-26-08; DHSD 7-2008, f. 8-29-08, cert. ef. 9-1-08; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09; DHSD 10-2009, f. 12-31-09, cert. ef. 1-1-10; DHSD 8-2010(Temp), f. & cert. ef. 8-12-10 thru 2-7-11; DHSD 10-2010, f. 10-29-10, cert. ef. 10-31-10

407-007-0220
Criminal History Check Required

(1) The Department or a Department authorized QE shall conduct criminal records checks on all SIs through LEDS maintained by OSP in accordance with ORS chapter 181 and the rules adopted thereto (see OAR chapter 257, division 15).

(2) If a national criminal records check of an SI is necessary, OSP shall provide the Department the results of criminal records checks

conducted pursuant to ORS 181.534, including fingerprint identification, through the FBI.

(3) An SI is required to have a check in the following circumstances:

(a) An individual who becomes an SI on or after the effective date of these rules.

(b) The SI changes employers to a different QE.

(c) Except as provided in section (4) of this rule, the individual, whether previously considered an SI or not, changes positions under the same QE, and the new position requires a criminal records check.

(d) The individual, whether previously considered an SI or not, changes Department-issued licenses, certifications, or registrations, and the license, certification, or registration requires a criminal records check under these rules.

(e) A criminal records check is required by federal or state laws or regulations, other Department administrative rules, or by contract with the Department.

(f) When the Department or the AD has reason to believe that a criminal records check is justified. Examples include but are not limited to any indication of possible criminal behavior by an SI or quality assurance monitoring of a previously conducted criminal records check.

(4) A criminal records check is not required under the following circumstances:

(a) A personal care services provider, Lifespan Respite care provider, or an independent provider paid with Department funds who changes or adds clients, and the prior, documented criminal records check conducted within the previous 24 months through the Department has been approved without restrictions.

(b) The SI is a child care provider as described in OAR 461-165-0180 who has been approved without restrictions and who changes or adds clients.

(c) The SI remains with a QE in the same position while the QE merges with another QE, is sold to another QE, or changes names. The changes may be noted in documentation attached to the notice of fitness determination but do not warrant a new criminal records check.

(5) An AD must document in writing the reason why a new criminal records check was not completed.

(6) Criminal records checks are completed on SIs who otherwise meet the qualifications of the position in question. A criminal records check may not be used to screen applicants for a position.

Stat. Auth.: ORS 181.537 & 409.050
Stats. Implemented: ORS 181.534, 181.537 & 409.010
Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 77-2004(Temp), f. & cert. ef. 10-1-04 thru 3-29-05; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0220, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09; DHSD 10-2009, f. 12-31-09, cert. ef. 1-1-10; DHSD 10-2010, f. 10-29-10, cert. ef. 10-31-10

407-007-0230
Qualified Entity

(1) A QE and its appointing authorities must be approved in writing by the Department pursuant to these rules in order to appoint an AD or CP. Unless specifically indicated otherwise in these rules, all QEs and appointing authorities discussed in these rules are considered approved.

(2) Except as provided in section (3) of this rule, all QEs shall ensure the completion of criminal records checks for SIs who are the QE's employees, volunteers, or other SIs under the direction or control of the QE.

(a) The QE's appointing authority shall appoint ADs or CPs within 30 calendar days following Department approval, or within time frames required by Department program offices.

(b) Unless specifically allowed by the Department, an appointing authority may not appoint themselves as an AD.

(c) Appointing authorities in all QEs shall appoint one or more ADs, or have a written agreement with another QE to handle AD responsibilities.

(d) Appointing authorities in all QEs may also appoint one or more CPs, or may have a written agreement with another QE to perform CP responsibilities.

(3) The Department's appointing authorities shall appoint ADs and CPs within the Department. Department-employed ADs shall make fitness determinations for the following QEs:

(a) Private QEs with fewer than 10 employed SIs are not eligible to appoint ADs. These QEs shall do one of the following:

(A) Use another QE to perform AD responsibilities instead of using the Department. If another QE is used, the two QEs must have a written agreement. The QE must provide the Department with a copy of the agreement.

(B) Appoint one or more CPs, or have a written agreement with another QE to perform CP responsibilities. The QE must provide the Department with a copy of the agreement.

(b) QEs with SIs not under the direction and control of the QE but who provide care under programs administered by the QE may have the Department ADs make fitness determinations.

(A) The QE shall appoint one or more CPs, or use an AD or CP appointed under section (2) of this rule to perform CP responsibilities.

(B) The QE may appoint an AD for SIs not under the direction and control of the QE if the QE chooses to do so or is required to do so under other Department program rules or contract with the Department. The QE shall notify the Department in writing which programs are affected and which AD shall perform the responsibilities for each program.

(c) QEs may have specific direction by administrative rule or Department program about AD or CP appointments.

(A) Administrative rules governing certain QEs may prohibit AD appointment or CP appointment, such as private licensed child caring agencies.

(B) Department program offices may determine that:

(i) Certain QEs may not have their own ADs or CPs, but must use ADs or CPs at a local Department branch or a local QE. Examples include but are not limited to adult foster homes and child foster homes.

(ii) Specific QEs may have specific AD or CP requirements resulting from licensing actions, sanctions, or from quality assurance monitoring.

(d) The Department may require certain QEs to use Department-employed ADs to make fitness determinations. Examples include but are not limited to initial opening of a new QE, newly adopted administrative rules creating a new type of QE, or Department investigation or review of the QE.

(4) The Department may revoke approval of the QE to appoint or maintain ADs if the Department is investigating a compliance issue or determines that the QE, or an AD or CP appointed by the QE, has failed to comply with these rules. The BCU and the appropriate entity or program office within the Department may develop a plan of action to resolve the compliance issues.

(5) The QE's appointing authorities shall appoint ADs and CPs as needed to remain in compliance with these rules. If a QE no longer has an AD or CP for any reason, the appointing authorities shall ensure that new ADs or CPs are appointed within 30 calendar days from the date of no longer having ADs or CPs, and shall communicate any changes to the BCU.

(6) The Department shall provide QEs with periodic training and on-going technical assistance.

(7) Any decisions made by the Department in regard to these rules are final and may not be overturned by any QE, its ADs or CPs.

Stat. Auth.: ORS 181.537 & 409.050
Stats. Implemented: ORS 181.534, 181.537 & 409.010
Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 77-2004(Temp), f. & cert. ef. 10-1-04 thru 3-29-05; OMAP 85-2004(Temp), f. & cert. ef. 11-4-04 thru 3-29-05; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0230, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09; DHSD 10-2009, f. 12-31-09, cert. ef. 1-1-10; DHSD 10-2010, f. 10-29-10, cert. ef. 10-31-10

407-007-0240
Authorized Designees and Contact Persons

(1) All requirements in this section must be completed within 90 calendar days. To receive Department approval, all ADs and CPs must meet the following requirements:

(a) ADs and CPs for the Department must be employed by the Department. For QEs, the ADs and CPs must be one of the following:

(A) Employed by the agency for which they will handle criminal records check information.

(B) Contracted with the QE to perform as an AD or CP.

(C) Employed by another similar QE or a parent QE (e.g., assisted living facility AD helping another assisted living facility).

(b) ADs and CPs shall complete a certification program and successfully pass any testing as required by the Department.

(c) An appointing authority shall appoint an AD or CP in writing on a form provided by the Department. The applicant AD or CP shall complete and submit the form to the Department for processing and registration.

(d) The Department shall conduct an Oregon criminal records check, a national criminal records check, and if necessary, a state-specific criminal records check. The AD or CP must have:

(A) No conviction for a potentially disqualifying permanent review crime;

(B) No convictions for any other crime in the past 15 years;

(C) No potentially disqualifying conditions; and

(D) If an AD, Criminal Justice Information Systems (CJIS) clearance and approval to view criminal records in accordance with OSP rules.

(e) The Department shall conduct an abuse check if Department program rules require an abuse check on SIs and the BCU has the authority to conduct the abuse check. The AD or CP may not have been found responsible for abuse of a vulnerable person.

(2) The Department shall deny the individual's status as an AD or CP if the individual does not meet the AD or CP requirements. Once denied, the individual may no longer perform the duties of an AD or CP. There are no exceptions for individuals who do not meet the AD or CP requirements.

(3) Approved ADs and CPs shall have the following responsibilities:

(a) Demonstrate understanding of and adherence to these rules in all actions pertaining to the criminal records check process.

(b) Act as the Department's designee in any action pursuant to these rules and the criminal records check process. The AD or CP may not advocate for an SI during any part of the criminal records check process, including contesting a fitness determination.

(c) Ensure that adequate measures are taken to protect the confidentiality of the records and documents required by these rules. Only an AD may view criminal offender information. A CP may not view criminal offender information.

(d) Verify the identity of an SI. The AD or CP shall verify identity or ensure that the same verification requirements are understood by each individual responsible for verifying identity.

(A) If conducting a criminal records check on the SI for the first time or at rehire of the SI, the AD or CP shall verify identity by using methods which include but are not limited to asking the SI for current and valid government-issued photo identification and confirming the information on the photo identification with the SI, the information written on the Background Check Request form, and the information written on the fingerprint card if a national criminal records check is conducted.

(B) If an AD or CP is verifying the identity of an SI who is being rechecked, review of government-issued photo identification may not be necessary, but the AD or CP shall verify the SI's name, current address, and any aliases or previous names.

(e) Ensure that an SI is not permitted to work, volunteer, reside, or otherwise hold any position covered by these rules before the completion of a preliminary fitness determination and submission of the Background Check Request form to the Department along with a fingerprint card if the SI discloses out of state criminal records or residency.

(f) Ensure that when an SI is hired on a preliminary basis, the need for active supervision is understood by each individual responsible for providing active supervision.

(g) Ensure that if an SI is removed from working on a preliminary basis, the SI is immediately removed from the position and remains removed until the completion of a final fitness determination or unless the BCU reinstates hired on a preliminary basis.

(h) Notify the Department of any changes regarding an SI who still has a criminal records check being processed, including but not limited to address or employment status changes.

(i) Monitor the status of criminal records check applications and investigate any delays in processing.

(j) Ensure that documentation required by these rules is processed and maintained in accordance with these rules.

(k) Notify the BCU immediately if arrested, charged, or convicted of any crime.

(4) A CP may not conduct final fitness determinations or review criminal offender information. A CP has the following limitations when making preliminary fitness determinations:

(a) The CP may review the SIs completed Background Check Request form to ensure completeness of the form, verify identity, and to determine if the SI has any potentially disqualifying convictions or conditions.

(b) The CP may allow the SI to be hired on a preliminary basis only after the CP has reviewed the Background Check Request form and determined there is no indication that the SI has any potentially disqualifying convictions under OAR 407-007-0280 or conditions under OAR 407-007-0290.

(c) The CP shall not allow an SI who discloses any potentially disqualifying convictions or conditions to work on a preliminary basis.

(d) If the SI discloses potentially disqualifying convictions or conditions, the CP shall forward the Background Check Request form to an AD for preliminary fitness determination, or to the BCU for processing if there is no local AD available.

(5) In addition to the responsibilities listed in section (3) of this rule, the AD shall:

(a) Review the completed Background Check Request form (if not already done so by a CP) and conduct a preliminary fitness determination to determine eligibility for probationary status before forwarding the Background Check Request form to the BCU.

(b) Make a final fitness determination on all SIs when the Department returns their Background Check Request form to the AD for final review. The decision of an AD may not be overruled by an employee, owner, or board member of a QE who is not an AD.

(c) Participate in the appeal process if requested by the Department.

(d) Ensure the confidentiality and integrity of criminal records check documents. After the completion of a criminal records check, ADs not involved with original fitness determinations may not review criminal records check documents to gain information on an SI's criminal history. If a review is necessary, the AD must have written approval from the Department prior to reviewing any documents.

(6) An AD may not have access to criminal offender information, other criminal information (except the Background Check Request form), or make a fitness determination if there is a conflict of interest between the AD and the SI.

(a) A conflict of interest includes but is not limited to the following situations:

(A) If the AD is related to the SI. In this context, "related" means spouse, domestic partner, natural parent, child, sibling, adopted child, adopted parent, stepparent, stepchild, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, grandchild, aunt, uncle, niece, nephew, or cousin.

(B) If the AD has a close personal or financial relationship, other than an employee-employer relationship, with the SI.

(b) When there is a conflict of interest and the QE has no other ADs available to conduct the fitness determination, the Department shall complete the fitness determination.

(7) The Department may change AD or CP status in the following circumstances which include but are not limited to:

(a) The Department shall inactivate AD or CP status when the AD or CP position with the QE ends or when the QE terminates the appointment. The QE shall notify the Department immediately upon the end of the position or termination of the appointment.

(b) The Department or QE shall suspend or revoke the appointment if an AD or CP fails to comply with responsibilities or fails to continue to meet the requirements for AD or CP, as applicable. After suspending or revoking the appointment, the QE must immediately notify the BCU in writing. If the Department takes the action, it must immediately notify the QE in writing.

(c) The Department shall revoke AD or CP status if an AD or CP fails to recertify.

(8) Any changes to AD or CP status are not subject to appeal rights unless the denial or termination results in immediate loss of employment or position. ADs or CPs losing employment or position have the same hearing rights as other SIs under these rules. (9) If an AD or CP leaves employment with the QE for any reason, the Department shall inactivate AD or CP status. If the individual finds employ-

ment with another QE, a new appointment, application, and registration must be completed.

(10) The Department shall review and recertify appointments of ADs and CPs, up to and including a new application, criminal records check, abuse check if required, and additional training, to under the following circumstances:

(a) Every three years; or

(b) Any time the Department has reason to believe the individual no longer meets the AD or CP requirements including but not limited to indication of criminal behavior or indication of noncompliance with these rules.

Stat. Auth.: ORS 181.537 & 409.050
Stats. Implemented: ORS 181.534, 181.537 & 409.010
Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0240, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09; DHSD 10-2009, f. 12-31-09, cert. ef. 1-1-10; DHSD 10-2010, f. 10-29-10, cert. ef. 10-31-10

407-007-0250
Oregon Criminal History Check Process

(1) A QE and SI shall use the Background Check Request form to request a criminal records check that must include the following information:

(a) Name and aliases;

(b) Date of birth;

(c) Address and recent residency information;

(d) Driver license or identification card information;

(e) Position the SI is completing the Background Check Request form;

(f) Disclosure of all criminal history;

(A) The SI must disclose all arrests, charges, and convictions regardless of outcome or when the arrests, charges, or convictions occurred.

(B) The disclosed crimes and the dates must reasonably match the SI's criminal offender information and other criminal records information, as determined by the Department.

(g) Disclosure of other information to be considered in the event of a weighing test.

(2) The Background Check Request form shall include the following notices:

(a) A notice regarding disclosure of Social Security number indicating that:

(A) The SI's disclosure is voluntary; and

(B) The Department requests the Social Security number solely for the purpose of positively identifying the SI during the criminal records check process.

(b) A notice that the SI may be subject to fingerprinting as part of a criminal records check.

(3) The BCU shall review each Background Check Request form received for completeness and timeliness. If the BCU rejects the form, the QE's AD or CP shall immediately remove the SI from the position. If the QE still plans to hire the SI, the QE shall resolve the reasons for rejection and re-submit the form.

(4) The Department or an approved QE under contract with OSP for LEDS access shall conduct an Oregon criminal records check after a completed Background Check Request form is received. Using information submitted on the Background Check Request form, the Department or QE may obtain criminal offender information from LEDS and may request other criminal records information as needed.

(5) The Department and all QEs receiving LEDS information shall handle criminal offender information in accordance with applicable OSP requirements in ORS chapter 181 and the rules adopted pursuant thereto (see OAR chapter 257, division 15).

(6) The Department may conduct a fingerprint-based national criminal records check after an Oregon criminal records check has been completed.

(a) A fingerprint-based national criminal records check may be completed under any of the following circumstances:

(A) The SI has been outside Oregon:

(i) For 60 or more consecutive days during the previous 18 months and the SI is a child care provider or other individual included in OAR 461-165-0180.

(ii) For 60 or more consecutive days during the previous five years for all other SIs.

(B) The LEDS check, SI disclosures, or any other criminal records information obtained by the Department indicate there may be criminal records outside of Oregon.

(C) The SI has an out-of-state driver license.

(D) The Department has reason to question the identity or criminal record of the SI.

(E) A fingerprint-based criminal records check is required by federal or state laws or regulations, other Department rules, or by contract with the Department.

(F) The SI is an AD or CP.

(G) The Department has reason to believe that fingerprints are needed to make a final fitness determination.

(b) The Department must receive consent from the parent or guardian to obtain fingerprints from an SI under 18 years of age.

(c) The SI shall complete and submit a fingerprint card when requested by the Department. The Department shall send the request to the QE and the AD or CP shall notify the SI.

(A) The SI shall use a fingerprint card provided by the Department. The Department shall give the SI notice regarding the Social Security number as set forth in OAR 407-007-0250(2)(a).

(B) The SI shall submit the fingerprint card to the BCU within 21 calendar days of the request.

(i) The Department shall close the application, making it a closed case, if the fingerprint card is not received within 21 calendar days. When a case is closed, the SI may not be allowed to work, volunteer, be employed, or otherwise perform in positions covered by these rules, and shall be immediately terminated and removed from the position.

(ii) The Department may extend the time allowed for good cause provided by the SI or QE.

(C) The Department may require new fingerprint cards if previous cards are rejected by OSP or the FBI.

(7) The Department may also conduct a state-specific criminal records check instead of or in addition to a national criminal records check. Reasons for a state-specific criminal records check include but are not limited to:

(a) When the Department has reason to believe that out-of-state criminal records may exist and a national criminal records check may not be accomplished.

(b) When the Department has been unable to complete a national criminal records check due to illegible fingerprints.

(c) When the national criminal records check results show incomplete information about charges or criminal records without final disposition.

(d) When there is indication of residency or criminal records in a state that does not submit all criminal records to the FBI.

(e) When, based on available information, the Department has reason to believe that a state-specific criminal records check is necessary.

(8) In order to complete a criminal records check and fitness determination, the Department may require additional information from the SI including but not limited to additional criminal, judicial, other background information, or proof of identity.

(9) The Department may conduct a criminal records check in situations of imminent danger.

(a) If the Department determines there is indication of criminal behavior that could more likely than not pose an immediate risk to vulnerable individuals, the Department shall conduct a new criminal records check on an SI without the completion of a new Background Check Request form.

(b) If the Department determines that a fitness determination based on the new criminal records check would be adverse to the SI, the Department shall provide the SI, if available, the opportunity to disclose criminal records, potentially disqualifying conditions, and other information as indicated in OAR 407-007-0300 before the completion of the fitness determination.

(10) All criminal records checks conducted under this rule shall be documented in writing.

Stat. Auth.: ORS 181.537 & 409.050
Stats. Implemented: ORS 181.534, 181.537 & 409.010
Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0250, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09; DHSD 10-2009, f. 12-31-09, cert. ef. 1-1-10; DHSD 10-2010, f. 10-29-10, cert. ef. 10-31-10

407-007-0275
Disqualifying Crimes Under ORS 443.004

(1) The crimes listed in section (3) of this rule are disqualifying crimes for those employees and individuals subject to ORS 443.004, and as specified in the relevant program administrative rules. For the purpose of this rule, a subject individual does not include a peer support specialist who:

(a) Is providing peer support services as defined by OAR 309-032-1505;

(b) Is under the supervision of a qualified clinical supervisor;

(c) Has completed training required by the Department; and

(d) Is currently receiving or has formerly received mental health services, or is in recovery from a substance use disorder and meets the abstinence requirements for staff providing services in alcohol or other drug treatment programs.

(2) Individuals who are employees and hired prior to July 28, 2009 are exempt from section (3) of this rule provided that the employee remains in the same position working for the same employer after July 28, 2009. This exemption is not applicable to licensees.

(3) Public funds may not be used to support, in whole or in part, the employment of an individual in any capacity identified in section (1) of this rule who has been convicted:

(a) In the last 10 years of a crime involving the delivery or manufacture of a controlled substance; or

(b) Of any of the following crimes:

(A) ORS 163.095, Aggravated murder

(B) ORS 163.115, Murder

(C) ORS 163.118, Manslaughter I

(D) ORS 163.125, Manslaughter II

(E) ORS 163.145, Criminally negligent homicide

(F) ORS 163.149, Aggravated vehicular homicide

(G) ORS 163.165, Assault III

(H) ORS 163.175, Assault II

(I) ORS 163.185, Assault I

(J) ORS 163.187, Strangulation

(K) ORS 163.200, Criminal mistreatment II

(L) ORS 163.205, Criminal mistreatment I

(M) ORS 163.225, Kidnapping II

(N) ORS 163.235, Kidnapping I

(O) ORS 163.263, Subjecting another person to involuntary servitude II

(P) ORS 163.264, Subjecting another person to involuntary servitude I

(Q) ORS 163.266, Trafficking in persons

(R) ORS 163.275, Coercion

(S) ORS 163.355, Rape III

(T) ORS 163.365, Rape II

(U) ORS 163.375, Rape I

(V) ORS 163.385, Sodomy III

(W) ORS 163.395, Sodomy II

(X) ORS 163.405, Sodomy I

(Y) ORS 163.408, Unlawful sexual penetration II

(Z) ORS 163.411, Unlawful sexual penetration I

(AA) ORS 163.415, Sexual abuse III

(BB) ORS 163.425, Sexual abuse II

(CC) ORS 163.427, Sexual abuse I

(DD) ORS 163.432, Online sexual corruption of a child II, if the offender reasonably believed the child to be more than five years younger than the offender

(EE) ORS 163.433, Online sexual corruption of a child I, if the offender reasonably believed the child to be more than five years younger than the offender

(FF) ORS 163.435, Contributing to the sexual delinquency of a minor

(GG) ORS 163.445, Sexual misconduct, if the offender is at least 18 years of age

(HH) ORS 163.465, Public indecency

(II) ORS 163.467, Private indecency

(JJ) ORS 163.525, Incest with a child victim

(KK) ORS 163.535, Abandonment of a child

(LL) ORS 163.537, Buying or selling a person under 18 years of age

(MM) ORS 163.670, Using a child in display of sexually explicit conduct

(NN) ORS 163.680, Paying for viewing a child's sexually explicit conduct

(OO) ORS 163.684, Encouraging child sexual abuse I

(PP) ORS 163.686, Encouraging child sexual abuse II

(QQ) ORS 163.687, Encouraging child sexual abuse III

(RR) ORS 163.688, Possession of materials depicting sexually explicit conduct of a child I

(SS) ORS 163.689, Possession of materials depicting sexually explicit conduct of a child II

(TT) ORS 163.700, Invasion of personal privacy

(UU) ORS 164.055, Theft I

(VV) ORS 164.057, Aggravated theft I

(WW) ORS 164.098, Organized retail theft

(XX) ORS 164.125, Theft of services, if charged as a felony

(YY) ORS 164.215, Burglary II

(ZZ) ORS 164.225, Burglary I

(AAA) ORS 164.325, Arson I

(BBB) ORS 164.377, Computer crime, if charged with a felony

(CCC) ORS 164.405, Robbery II

(DDD) ORS 164.415, Robbery I

(EEE) ORS 165.022, Criminal possession of a forged instrument I

(FFF) ORS 165.032, Criminal possession of a forgery device

(GGG) ORS 165.800, Identity theft

(HHH) ORS 165.803, Aggravated identity theft

(III) ORS 167.012, Promoting prostitution

(JJJ) ORS 167.017, Compelling prostitution

(KKK) ORS 167.054, Furnishing sexually explicit material to a child

(LLL) ORS 167.057, Luring a minor

(MMM) ORS 181.594, Sex crimes, including transporting child pornography into the state

(c) Of an attempt, conspiracy, or solicitation to commit a crime described in section (2)(b) of this rule; or

(d) Of a crime in another jurisdiction that is substantially equivalent to a crime described in section (2)(b) of this rule.

(4) The Department may conduct a weighing test under ORS 181.534 on employees and individuals convicted of any crime in section (3) of this rule. However, the preclusive effect of ORS 443.004 shall outweigh all other factors described in OAR 407-007-0300.

Stat. Auth.: ORS 181.534 & 409.050
Stats. Implemented: ORS 181.534 & 443.004
Hist.: DHSD 3-2010(Temp), f. & cert. ef. 5-5-10 thru 10-31-10; DHSD 10-2010, f. 10-29-10, cert. ef. 10-31-10

407-007-0280
Potentially Disqualifying Crimes

A conviction of any of the following crimes is potentially disqualifying. Offenses or convictions that are classified as less than a misdemeanor, such as violations or infractions, are not potentially disqualifying (see ORS 161.505 to 161.565).

(1) The crimes listed in this section are permanent review crimes which require that a fitness determination be completed regardless of date of conviction.

(a) ORS 162.155, Escape II

(b) ORS 162.165, Escape I

(c) ORS 162.285, Tampering with a witness

(d) ORS 162.325, Hindering prosecution

(e) ORS 163.005, Criminal homicide

(f) ORS 163.095, Aggravated murder

(g) ORS 163.115, Murder

(h) ORS 163.118, Manslaughter I

(i) ORS 163.125, Manslaughter II

(j) ORS 163.145, Criminally negligent homicide

(k) ORS 163.149, Aggravated vehicular homicide

(L) ORS 163.160, Assault IV

(m) ORS 163.165, Assault III

(n) ORS 163.175, Assault II

(o) ORS 163.185, Assault I

(p) ORS 163.187, Strangulation

(q) ORS 163.190, Menacing

(r) ORS 163.200, Criminal mistreatment II

(s) ORS 163.205, Criminal mistreatment I

(t) ORS 163.207, Female genital mutilation

(u) ORS 163.208, Assault of public safety officer

(v) ORS 163.213, Unlawful use of an electrical stun gun, tear gas, or mace I
(w) ORS 163.225, Kidnapping II
(x) ORS 163.235, Kidnapping I
(y) ORS 163.245, Custodial interference II
(z) ORS 163.257, Custodial interference I
(aa) ORS 163.263, Subjecting another person to involuntary servitude in the second degree
(bb) ORS 163.264, Subjecting another person to involuntary servitude in the first degree
(cc) ORS 163.266, Trafficking in persons
(dd) ORS 163.275, Coercion
(ee) ORS 163.355, Rape III
(ff) ORS 163.365, Rape II
(gg) ORS 163.375, Rape I
(hh) ORS 163.385, Sodomy III
(ii) ORS 163.395, Sodomy II
(jj) ORS 163.405, Sodomy I
(kk) ORS 163.408, Unlawful sexual penetration II
(LL) ORS 163.411, Unlawful sexual penetration I
(mm) ORS 163.415, Sexual abuse III
(nn) ORS 163.425, Sexual abuse II
(oo) ORS 163.427, Sexual abuse I
(pp) ORS 163.432, Online sexual corruption of a child in the second degree
(qq) ORS 163.433, Online sexual corruption of a child in the first degree
(rr) ORS 163.435, Contributing to the sexual delinquency of a minor
(ss) ORS 163.445, Sexual misconduct
(tt) ORS 163.452, Custodial sexual misconduct I
(uu) ORS 163.454, Custodial sexual misconduct II
(vv) ORS 163.465, Public indecency
(ww) ORS 163.467, Private indecency
(xx) ORS 163.476, Unlawfully being in a location where children regularly congregate
(yy) ORS163.479, Unlawful contact with a child
(zz) ORS 163.515, Bigamy
(aaa) ORS 163.525, Incest
(bbb) ORS 163.535, Abandonment of a child
(ccc) ORS 163.537, Buying or selling a person under 18 years of age
(ddd) ORS 163.545, Child neglect II
(eee) ORS 163.547, Child neglect I
(fff) ORS 163.555, Criminal nonsupport
(ggg) ORS 163.575, Endangering the welfare of a minor
(hhh) ORS 163.670, Using child in display of sexually explicit conduct
(iii) ORS 163.680, Paying for viewing a child's sexually explicit conduct
(jjj) ORS 163.684, Encouraging child sexual abuse I
(kkk) ORS 163.686, Encouraging child sexual abuse II
(LLL) ORS 163.687, Encouraging child sexual abuse III
(mmm) ORS 163.688, Possession of materials depicting sexually explicit conduct of a child I
(nnn) ORS 163.689, Possession of materials depicting sexually explicit conduct of a child II
(ooo) ORS 163.693, Failure to report child pornography
(ppp) ORS 163.700, Invasion of personal privacy
(qqq) ORS 163.732, Stalking
(rrr) ORS 163.750, Violating court's stalking protective order
(sss) ORS 164.055, Theft I
(ttt) ORS 164.057, Aggravated theft I
(uuu) ORS 164.075, Theft by extortion
(vvv) ORS 164.085, Theft by deception
(www) ORS 164.098, Organized retail theft
(xxx) ORS 164.125, Theft of services
(yyy) ORS 164.135, Unauthorized use of a vehicle
(zzz) ORS 164.170, Laundering a monetary instrument
(aaaa) ORS 164.215, Burglary II
(bbbb) ORS 164.225, Burglary I
(cccc) ORS 164.315, Arson II
(dddd) ORS 164.325, Arson I
(eeee) ORS 164.365, Criminal mischief I
(ffff) ORS 164.377, Computer crime
(gggg) ORS 164.395, Robbery III
(hhhh) ORS 164.405, Robbery II
(iiii) ORS 164.415, Robbery I
(jjjj) ORS 165.013, Forgery I
(kkkk) ORS 165.022, Criminal possession of a forged instrument I
(LLLL) ORS 165.032, Criminal possession of a forgery device
(mmmm) ORS 165.055, Fraudulent use of a credit card
(nnnn) ORS 165.065, Negotiating a bad check
(oooo) ORS 165.581, Cellular counterfeiting I
(pppp) ORS 165.800, Identity theft
(qqqq) ORS 165.803, Aggravated identity theft
(rrrr) ORS 165.810, Unlawful possession of a personal identification device
(ssss) ORS 166.005, Treason
(tttt) ORS 166.070 Aggravated harassment
(uuuu) ORS 166.085, Abuse of corpse II
(vvvv) ORS 166.087, Abuse of corpse I
(wwww) ORS 166.155, Intimidation II
(xxxx) ORS 166.165, Intimidation I
(yyyy) ORS 166.220, Unlawful use of weapon
(zzzz) ORS 166.270, Possession of weapons by certain felons
(aaaaa) ORS 166.272, Unlawful possession of machine guns, certain short-barreled firearms and firearm silencers
(bbbbb) ORS 166.275, Possession of weapons by inmates of institutions
(ccccc) ORS 166.370, Possession of firearm or dangerous weapon in public building or court facility; exceptions; discharging firearm at school
(ddddd) ORS 166.382, Possession of destructive device prohibited
(eeeee) ORS 166.384, Unlawful manufacture of destructive device
(fffff) ORS 166.429, Firearms used in felony
(ggggg) ORS 166.450 Obliteration or change of identification number on firearms
(hhhhh) ORS 166.720, Racketeering activity unlawful
(iiiii) ORS 167.012, Promoting prostitution
(jjjjj) ORS 167.017, Compelling prostitution
(kkkkk) ORS 167.054, Furnishing sexually explicit material to a child
(LLLLL) ORS 167.057, Luring a minor
(mmmmm) ORS 167.062, Sadomasochistic abuse or sexual conduct in live show
(nnnnn) ORS 167.075, Exhibiting an obscene performance to a minor
(ooooo) ORS 167.080, Displaying obscene materials to minors
(ppppp) ORS 167.212, Tampering with drug records
(qqqqq) ORS 167.262, Adult using minor in commission of controlled substance offense
(rrrrr) ORS 167.315, Animal abuse II
(sssss) ORS 167.320, Animal abuse I
(ttttt) ORS 167.322, Aggravated animal abuse I
(uuuuu) ORS 167.333, Sexual assault of animal
(vvvvv) ORS 167.339, Assaulting law enforcement animal
(wwwww) ORS 181.594, Sex crimes including transporting child pornography into the state
(xxxxx) ORS 181.599, Failure to report as sex offender
(yyyyy) ORS 433.010, Spreading disease (willfully) prohibited
(zzzzz) ORS 475.525, Sale of drug paraphernalia prohibited
(aaaaaa) ORS 475.805, Providing hypodermic device to minor prohibited
(bbbbbb) ORS 475.840, Prohibited acts generally (regarding drug crimes formerly ORS 475.992)
(cccccc) ORS 475.846, Unlawful manufacture of heroin
(dddddd) ORS 475.848, Unlawful manufacture of heroin within 1,000 feet of school
(eeeeee) ORS 475.850, Unlawful delivery of heroin
(ffffff) ORS 475.852, Unlawful delivery of heroin within 1,000 feet of school
(gggggg) ORS 475.854, Unlawful possession of heroin
(hhhhhh) ORS 475.856, Unlawful manufacture of marijuana

(iiiiii) ORS 475.858, Unlawful manufacture of marijuana within 1,000 feet of school

(jjjjjj) ORS 475.860, Unlawful delivery of marijuana

(kkkkkk) ORS 475.862, Unlawful delivery of marijuana within 1,000 feet of school

(LLLLLL) ORS 475.864, Unlawful possession of marijuana

(mmmmmm) ORS 475.866, Unlawful manufacture of 3,4-methylenedioxymethamphetamine

(nnnnnn) ORS 475.868, Unlawful manufacture of 3,4-methylenedioxymethamphetamine within 1,000 feet of school

(oooooo) ORS 475.870, Unlawful delivery of 3,4-methylenedioxymethamphetamine

(pppppp) ORS 475.872, Unlawful delivery of 3,4-methylenedioxymethamphetamine within 1,000 feet of school

(qqqqqq) ORS 475.874, Unlawful possession of 3,4-methylenedioxymethamphetamine

(rrrrrr) ORS 475.876, Unlawful manufacture of cocaine

(ssssss) ORS 475.878, Unlawful manufacture of cocaine within 1,000 feet of school

(tttttt) ORS 475.880, Unlawful delivery of cocaine

(uuuuuu) ORS 475.882, Unlawful delivery of cocaine within 1,000 feet of school

(vvvvvv) ORS 475.884, Unlawful possession of cocaine

(wwwwww) ORS 475.886, Unlawful manufacture of methamphetamine

(xxxxxx) ORS 475.888, Unlawful manufacture of methamphetamine within 1,000 feet of school

(yyyyyy) ORS 475.890, Unlawful delivery of methamphetamine

(zzzzzz) ORS 475.892, Unlawful delivery of methamphetamine within 1,000 feet of school

(aaaaaaa) ORS 475.894, Unlawful possession of methamphetamine

(bbbbbbb) ORS 475.904, Unlawful delivery of controlled substance within 1,000 feet of school

(ccccccc) ORS 475.906, Penalties for distribution to minors

(ddddddd) ORS 475.908, Causing another person to ingest a controlled substance

(eeeeeee) ORS 475.910, Application of controlled substance to the body of another person

(fffffff) ORS 475.914, Prohibited acts for registrants (with the Oregon State Board of Pharmacy)

(ggggggg) ORS 475.967, Possession of precursor substance with intent to manufacture controlled substance

(hhhhhhh) ORS 475.990, Commercial drug offense

(iiiiiii) ORS 475.992 Prohibited acts generally (regarding drug crimes; renumbered to ORS 475.840 in 2005)

(jjjjjjj) 677.080, Prohibited acts (regarding the practice of medicine)

(kkkkkkk) ORS 685.990, Penalties (pertaining to naturopathic medicine)

(LLLLLLL) ORS 689.527 Prohibited practices; rules (pertaining to pharmacy technicians and practitioners)

(mmmmmmm) Any federal crime

(nnnnnnn) Any U.S. military crime

(ooooooo) Any unclassified felony defined in Oregon Revised Statutes not listed in this rule

(ppppppp) Any other felony in Oregon Revised Statutes not listed in this rule that is serious and indicates behavior that poses a threat or jeopardizes the safety of vulnerable persons, as determined by the AD

(qqqqqqq) Any felony in a jurisdiction outside Oregon that is not the substantial equivalent of any of the Oregon crimes listed in this section but that is serious and indicates behavior that poses a threat or jeopardizes the safety of vulnerable persons, as determined by the AD

(rrrrrrr) Any crime of attempt, solicitation, or conspiracy to commit a crime listed in this section pursuant to ORS 161.405, 161.435, or 161.450, including any crime based on criminal liability for conduct of another pursuant to ORS 161.155

(sssssss) Any crime in any other jurisdiction that is the substantial equivalent of any of the Oregon crimes listed in section (1) of this rule, as determined by the AD

(ttttttt) Any crime that is no longer codified in Oregon or other jurisdiction but that is the substantial equivalent of any of the crimes listed in section (1) of this rule, as determined by the AD

(2) The crimes listed in this section are ten-year review crimes which require that a fitness determination be completed if the date of conviction is within ten years of the date the Background Check Request form was signed or the date the Department conducted a criminal records check due to imminent risk.

(a) ORS 033.045, Contempt of court

(b) ORS 109.311, Prohibited fees-adoption

(c) ORS 133.076, Failure to appear on criminal citation

(d) ORS 133.310(3), Violation of restraining order

(e) ORS 135.290, Punishment by contempt of court (violation of release agreement)

(f) ORS 162.015, Bribe giving

(g) ORS 162.025, Bribe receiving

(h) ORS 162.065, Perjury

(i) ORS 162.075, False swearing

(j) ORS 162.117, Public investment fraud

(k) ORS 162.145, Escape III

(L) ORS 162.175, Unauthorized departure

(m) ORS 162.185, Supplying contraband

(n) ORS 162.195, Failure to appear II

(o) ORS 162.205, Failure to appear I

(p) ORS 162.247, Interfering with a peace officer

(q) ORS 162.257, Interfering with a firefighter or emergency medical technician

(r) ORS 162.265, Bribing a witness

(s) ORS 162.275, Bribe receiving by a witness

(t) ORS 162.295, Tampering with physical evidence

(u) ORS 162.305, Tampering with public records

(v) ORS 162.315, Resisting arrest

(w) ORS 162.335, Compounding

(x) ORS 162.355, Simulating legal process

(y) ORS 162.365, Criminal impersonation

(z) ORS 162.367, Criminal impersonation of peace officer

(aa) ORS 162.369, Possession of false law enforcement identification card

(bb) ORS 162.375, Initiating a false report

(cc) ORS 162.385, Giving false information to police officer for a citation

(dd) ORS 162.405, Official misconduct II

(ee) ORS 162.415, Official misconduct I

(ff) ORS 162.425, Misuse of confidential information

(gg) ORS 163.195, Recklessly endangering another person

(hh) ORS 163.196, Aggravated driving while suspended or revoked

(ii) ORS 163.212, Unlawful use of an electrical stun gun, tear gas, or mace II

(jj) ORS 164.043, Theft III

(kk) ORS 164.045, Theft II

(LL) ORS 164.095, Theft by receiving

(mm) ORS 164.138, Criminal possession of a rented or leased motor vehicle

(nn) ORS 164.140, Criminal possession of rented or leased personal property

(oo) ORS 164.162, Mail theft or receipt of stolen mail

(pp) ORS 164.235, Possession of a burglary tool or theft device

(qq) ORS 164.255, Criminal trespass I

(rr) ORS 164.265, Criminal trespass while in possession of firearm

(ss) ORS 164.272, Unlawful entry into motor vehicle

(tt) ORS 164.354, Criminal mischief II

(uu) ORS 165.007, Forgery II

(vv) ORS 165.017, Criminal possession of a forged instrument II

(ww) ORS 165.037, Criminal simulation

(xx) ORS 165.042, Fraudulently obtaining a signature

(yy) ORS 165.070, Possessing fraudulent communications device

(zz) ORS 165.074, Unlawful factoring of credit card transaction

(aaa) ORS 165.080, Falsifying business records

(bbb) ORS 165.085, Sports bribery

(ccc) ORS 165.090, Sports bribe receiving

(ddd) ORS 165.095, Misapplication of entrusted property

(eee) ORS 165.100, Issuing a false financial statement

(fff) ORS 165.102, Obtaining execution of documents by deception

(ggg) ORS 165.540, Obtaining contents of communication
(hhh) ORS 165.543, Interception of communications
(iii) ORS 165.570, Improper use of 9-1-1 emergency reporting system
(jjj) ORS 165.572, Interference with making a report
(kkk) ORS 165.577, Cellular counterfeiting III
(LLL) ORS 165.579, Cellular counterfeiting II
(mmm) ORS 165.692, Making false claim for health care payment
(nnn) ORS 166.015, Riot
(ooo) ORS 166.023, Disorderly conduct I
(ppp) ORS 166.025, Disorderly conduct II
(qqq) ORS 166.065, Harassment
(rrr) ORS 166.076, Abuse of a memorial to the dead
(sss) ORS 166.090, Telephonic harassment
(ttt) ORS 166.116, Interfering with public transportation
(uuu) ORS 166.180, Negligently wounding another
(vvv) ORS 166.190, Pointing firearm at another
(www) ORS 166.240, Carrying of concealed weapon
(xxx) ORS 166.250, Unlawful possession of firearms
(yyy) ORS 166.470, Limitations and conditions for sales of firearms
(zzz) ORS 166.480, Sale or gift of explosives to children
(aaaa) ORS 166.649, Throwing an object off an overpass II
(bbbb) ORS 166.651, Throwing an object off an overpass I
(cccc) ORS 166.660, Unlawful paramilitary activity
(dddd) ORS 167.007, Prostitution
(eeee) ORS 167.090, Publicly displaying nudity or sex for advertising purposes
(ffff) ORS 167.122, Unlawful gambling in the second degree
(gggg) ORS 167.127, Unlawful gambling in the first degree
(hhhh) ORS 167.167, Cheating
(iiii) ORS 167.222, Frequenting a place where controlled substances are used
(jjjj) ORS 167.325, Animal neglect II
(kkkk) ORS 167.330, Animal neglect I
(LLLL) ORS 167.337, Interfering with law enforcement animal
(mmmm) ORS 167.340, Animal abandonment
(nnnn) ORS 167.352, Interfering with assistance, search and rescue or therapy animal
(oooo) ORS 167.355, Involvement in animal fighting
(pppp) ORS 167.365, Dogfighting
(qqqq) ORS 167.370, Participation in dogfighting
(rrrr) ORS 167.428, Cockfighting
(ssss) ORS 167.431, Participation in cockfighting
(tttt) ORS 167.820, Concealing the birth of an infant
(uuuu) ORS 192.865, Criminal penalty (pertaining to Address Confidentiality Program)
(vvvv) ORS 314.075, Evading requirements of law prohibited (tax evasion)
(wwww) ORS 411.630, Unlawfully obtaining public assistance
(xxxx) ORS 411.640, Unlawfully receiving public assistance
(yyyy) ORS 411.675, Submitting wrongful claim or payment (e.g., public assistance)
(zzzz) ORS 411.840, Unlawfully obtaining or disposing of food stamp benefits
(aaaaa) ORS 412.074, Unauthorized use and custody of records of temporary assistance for needy families program
(bbbbb) ORS 412.099, Sharing assistance prohibited
(ccccc) ORS 417.990, Penalty for placement of children in violation of compact
(ddddd) ORS 471.410, Providing liquor to persons under 21 or to intoxicated persons; allowing consumption by minor on property
(eeeee) ORS 475.912, Unlawful delivery of imitation controlled substance
(fffff) ORS 475.916, Prohibited acts involving records and fraud
(ggggg) ORS 475.918, Falsifying drug test results
(hhhhh) ORS 475.950, Failure to report precursor substances transaction
(iiiii) ORS 475.955, Failure to report missing precursor substances
(jjjjj) ORS 475.960, Illegally selling drug equipment
(kkkkk) ORS 475.965, Providing false information on precursor substances report
(LLLLL) ORS 803.230, Forging, altering or unlawfully producing or using title or registration
(mmmmm) ORS 807.620, Giving false information to police officer
(nnnnn) ORS 811.060, Vehicular assault of bicyclist or pedestrian
(ooooo) ORS 811.140, Reckless driving
(ppppp) ORS 811.540, Fleeing or attempting to elude police officer
(qqqqq) ORS 811.700, Failure to perform duties of driver when property is damaged
(rrrrr) ORS 811.705, Failure to perform duties of driver to injured persons
(sssss) ORS 819.300, Possession of a stolen vehicle
(ttttt) ORS 830.475, Failure to perform the duties of an operator (boat)
(uuuuu) Any unclassified misdemeanor defined in Oregon Revised Statutes not listed elsewhere in this rule
(vvvvv) Any other misdemeanor in Oregon Revised Statutes not listed in this rule that is serious and indicates behavior that poses a threat or jeopardizes the safety of vulnerable persons, as determined by the AD
(wwwww) Any misdemeanor in a jurisdiction outside Oregon that is not the substantial equivalent of any of the Oregon crimes listed in section (2) of this rule but that is serious and indicates behavior that poses a threat or jeopardizes the safety of vulnerable persons, as determined by the AD. If a misdemeanor in a jurisdiction outside Oregon is similar to a violation in Oregon, then it may not be considered potentially disqualifying under this section.
(xxxxx) Any crime of attempt, solicitation or conspiracy to commit a crime listed in this section pursuant to ORS 161.405 or 161.435, including any conviction based on criminal liability for conduct of another pursuant to ORS 161.155
(yyyyy) Any crime in any other jurisdiction which is the substantial equivalent of any of the Oregon crimes listed in section (2) of this rule, as determined by the AD
(zzzzz) Any crime which is no longer codified in Oregon, but which is the substantial equivalent of any of the crimes listed in section (2) of this rule, as determined by the AD

(3) The crimes listed in this section are five-year review crimes which require that a fitness determination be completed if the date of conviction is within five years of the date the Background Check Request form was signed or the date the Department conducted a criminal records check due to imminent risk.
(a) ORS 162.085, Unsworn falsification
(b) ORS 162.235, Obstructing governmental or judicial administration
(c) ORS 164.245, Criminal trespass II
(d) ORS 164.335, Reckless burning
(e) ORS 164.345, Criminal mischief III
(f) ORS 165.555, Unlawful telephone solicitation of contributions for charitable purposes
(g) ORS 165.813, Unlawful possession of fictitious identification
(h) ORS 166.075, Abuse of venerated objects
(i) ORS 166.095, Misconduct with emergency telephone calls
(j) ORS 811.182, Criminal driving while suspended or revoked
(k) ORS 813.010, Driving under the influence of intoxicants (DUII)
(L) ORS 830.315, Reckless operation of a boat
(m) ORS 830.325, Operating boat while under influence of intoxicating liquor or controlled substance
(n) ORS 830.730, False information to peace officer or Oregon State Marine Board
(o) Any conviction for attempt, solicitation or conspiracy to commit a crime listed in this section pursuant to ORS 161.405 or 161.435, including any conviction based on criminal liability for conduct of another pursuant to ORS 161.155
(p) Any crime in any other jurisdiction which is the substantial equivalent of any of the Oregon crimes listed in section (3) of this rule, as determined by the AD
(q) Any crime which is no longer codified in Oregon, but which is the substantial equivalent of any of the crimes listed in section (3) of this rule, as determined by the AD

(4) Evaluations of crimes may be based on Oregon laws and laws in other jurisdictions in effect at the time of the fitness determination, regardless of the jurisdiction in which the conviction occurred.

(5) An SI may not be denied under these rules due to the existence or contents of a juvenile record that has been expunged pursuant to ORS 419A.260 to 419A.262.

(6) An SI may not be denied under these rules due to the existence or contents of an adult record that has been set aside pursuant to ORS 137.225.

Stat. Auth.: ORS 181.537 & 409.050
Stats. Implemented: ORS 181.534, 181.537 & 409.010
Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0280, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09; DHSD 10-2009, f. 12-31-09, cert. ef. 1-1-10; DHSD 10-2010, f. 10-29-10, cert. ef. 10-31-10

407-007-0290
Other Potentially Disqualifying Conditions

The following are potentially disqualifying conditions:

(1) The SI makes a false statement to the QE, AD, or Department, including the provision of materially false information, false information regarding criminal records, or failure to disclose information regarding criminal records. Nondisclosure of violation or infraction charges may not be considered a false statement.

(2) The SI is a registered sex offender in any jurisdiction. There is a rebuttable presumption that an SI is likely to engage in conduct that would pose a significant risk to vulnerable individuals if the SI has been designated a predatory sex offender in any jurisdiction under ORS 181.585 or found to be a sexually violent dangerous offender under ORS 144.635 (or similar statutes in other jurisdictions).

(3) The SI has an outstanding warrant for any crime in any jurisdiction.

(4) The SI has a deferred sentence, conditional discharge, or is participating in a diversion program in any jurisdiction for any potentially disqualifying crime.

(5) The SI is currently on probation, parole, or post-prison supervision for any crime in any jurisdiction, regardless of the original conviction date (or date of guilty or no contest plea if there is no conviction date).

(6) The SI has been found in violation of post-prison supervision, parole, or probation for any crime in any jurisdiction, regardless of the original conviction date (or date of guilty or no contest plea if there is no conviction date), within five years from the date the Background Check Request form was signed or the date the Department conducted a criminal records check due to imminent danger.

(7) The SI has an unresolved arrest, charge, or a pending indictment for any crime in any jurisdiction.

(8) The SI has been arrested in any jurisdiction as a fugitive from another state or a fugitive from justice, regardless of the date of arrest.

(9) The SI has an adjudication in a juvenile court in any jurisdiction, finding that the SI was responsible for a potentially disqualifying crime that would result in a conviction if committed by an adult. Subsequent adverse rulings from a juvenile court, such as probation violations, shall also be considered potentially disqualifying if within five years from the date the Background Check Request form was signed or the date the Department conducted a criminal records check due to imminent danger.

(10) The SI has a finding of "guilty except for insanity," "guilty except by reason of insanity," "not guilty by reason of insanity," "responsible except for insanity," "not responsible by reason of mental disease or defect," or similarly worded disposition in any jurisdiction regarding a potentially disqualifying crime, unless the local statutes indicate that such an outcome is considered an acquittal.

(11) Child protective services reports that have a outcome of founded, substantiated, or valid in which the SI is determined to have been responsible for the abuse. This potentially disqualifying condition only applies when:

(a) The Department administrative rules specifically require a protective services background check as part of the application process including but not limited to child foster homes, adoptive families, licensed private child caring agencies, or child care providers; and

(b) The BCU has the authority to conduct an abuse check.

Stat. Auth.: ORS 181.537 & 409.050
Stats. Implemented: ORS 181.534, 181.537 & 409.010
Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0290, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09; DHSD 10-2009, f. 12-31-09, cert. ef. 1-1-10; DHSD 10-2010, f. 10-29-10, cert. ef. 10-31-10

407-007-0300
Weighing Test

When making a fitness determination, the AD shall consider any of the following factors if an SI has potentially disqualifying convictions or conditions as disclosed by the SI or which is otherwise known:

(1) Circumstances regarding the nature of potentially disqualifying convictions and conditions including but not limited to:

(a) The details of incidents leading to the charges of potentially disqualifying convictions or resulting in potentially disqualifying conditions.

(b) Age of the SI at time of the potentially disqualifying convictions or conditions.

(c) Facts that support the convictions or potentially disqualifying conditions.

(d) Passage of time since commission of the potentially disqualifying convictions or conditions.

(e) Consideration of state or federal laws, regulations, or rules covering the position, facility, employer, or QE regarding the potentially disqualifying convictions or conditions.

(2) Other factors when available including but not limited to:

(a) Other information related to criminal activity including charges, arrests, pending indictments, and convictions. Other behavior involving contact with law enforcement may also be reviewed if information is relevant to other criminal records or shows a pattern relevant to criminal history.

(b) Periods of incarceration.

(c) Status of and compliance with parole, post-prison supervision, or probation.

(d) Evidence of alcohol or drug issues directly related to criminal activity or potentially disqualifying conditions.

(e) Evidence of other treatment or rehabilitation related to criminal activity or potentially disqualifying conditions.

(f) Likelihood of repetition of criminal behavior or behaviors leading to potentially disqualifying conditions, including but not limited to patterns of criminal activity or behavior.

(g) Information from the Department's protective services, abuse or other investigations in which the investigator documented behavior or conduct by the subject individual that would pose a risk to or jeopardize the safety of vulnerable individuals.

(h) Changes in circumstances subsequent to the criminal activity or disqualifying conditions including but not limited to:

(A) History of high school, college, or other education related accomplishments.

(B) Work history (employee or volunteer).

(C) History regarding licensure, certification, or training for licensure or certification.

(D) Written recommendations from current or past employers, including Department client employers.

(i) Indication of the SI's cooperation, honesty, or the making of a false statement during the criminal records check process, including acknowledgment and acceptance of responsibility of criminal activity and potentially disqualifying conditions.

(3) The AD shall consider the relevancy of the SI's criminal activity or potentially disqualifying conditions to the paid or volunteer position, or to the environment in which the SI will reside, work, or visit.

Stat. Auth.: ORS 181.537 & 409.050
Stats. Implemented: ORS 181.534, 181.537 & 409.010
Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0300, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09; DHSD 10-2009, f. 12-31-09, cert. ef. 1-1-10; DHSD 10-2010, f. 10-29-10, cert. ef. 10-31-10

407-007-0315
Hired on a Preliminary Basis

A preliminary fitness determination is required to determine if an SI may work, volunteer, be employed, or otherwise perform in the position listed on the Background Check Request form prior to a final fitness determination. The SI may not be hired on a preliminary basis prior to the completion of a preliminary fitness determination.

(1) The SI must complete required information on a Background Check Request form and the AD or CP must review the form.

(2) The AD or CP shall review the Background Check Request form, complete a preliminary fitness determination and shall then make one of the following determinations

(a) An SI may be hired on a preliminary basis, only during the period of time prior to a final fitness determination, into the position listed on the Background Check Request form and be allowed to participate in training, orientation, and position activities under the one of the following circumstances:

(A) If there is no indication of a potentially disqualifying conviction or condition on the Background Check Request form and the AD or CP have no reason to believe the SI has potentially disqualifying history. This is the only situation in which a CP may hire an SI on a preliminary basis.

(B) If the SI discloses any potentially disqualifying convictions or conditions, the SI may be hired on a preliminary basis only after the completion of a weighing test by an AD. The SI may be hired on a preliminary basis only if, based on information available at the time, the AD determines that more likely than not that the SI poses no potential threat to vulnerable individuals.

(b) The QE may not hire a SI on a preliminary basis under any of the following circumstances:

(A) Being hired on a preliminary basis or probationary status is not allowed by program rules.

(B) The SI has disclosed potentially disqualifying convictions or conditions and the QE does not have an AD to make a preliminary fitness determination.

(C) The AD or Department determine that:

(i) More likely than not, the SI poses a potential threat to vulnerable individuals, based on a preliminary fitness determination and weighing test;

(ii) The SI's most recent criminal records check under these rules or other Department criminal records check rules resulted in a denial; or

(iii) The SI is currently involved in contesting a criminal records check under these or other Department criminal records check rules.

(D) An outcome of no hiring on a preliminary basis may only be overturned by the Department.

(3) The QE shall forward the Background Check Request form to the Department immediately upon completion of the preliminary fitness determination or, if the QE cannot make a preliminary fitness determination, immediately after the SI's completion of the form and verification of the SIs identity.

(4) The Department shall review the preliminary fitness determination made by the QE.

(a) The Department may change the outcome of the preliminary fitness determination based on available information.

(b) A QE without access to an AD may request the Department make a preliminary fitness determination if the SI discloses potentially disqualifying convictions or conditions.

(5) An SI hired on a preliminary basis shall be actively supervised at all times.

(a) The individual providing active supervision at all times shall do the following:

(A) Be in the same building as the SI or, if outdoors of QE buildings or any location off the QE property, be within line-of-sight and hearing, except as provided in section (6)(b)(B) of this rule;

(B) Know where the SI is and what the SI is doing; and

(C) Periodically observe the actions of the SI.

(b) The individual providing the active supervision may be either:

(A) A subject individual who has been approved without restrictions pursuant to these rules or previous Department criminal records check rules; or

(B) The adult client, an adult client's adult relation, the client's legal representative, or a child's parent or guardian. Active supervision by these individuals is appropriate in situations where care is given directly to clients usually in a home such as but not limited to in-home care, home health, or care by home care workers, personal care assistants, or child care providers.

(i) The adult client may actively supervise a homecare worker, personal care services provider, independent provider, or a employee of an in home care agency or home health agency if the client makes an informed decision to employ the provider. Someone related to the client may also provide active supervision if the relative has been approved by the Department, the AD, or the private-pay client receiving services through an in-home care or home health agency.

(ii) A child client's parent or guardian shall be responsible for providing active supervision in the case of child care providers. The supervision is not required to be performed by someone in the same building as the child.

(6) An SI approved without restrictions within the previous 24 months through a documented criminal records check pursuant to these rules or prior Department criminal records check rules may be hired on a preliminary basis without active supervision. Twenty-four months is calculated from date of previous approval to the date of hire in the new position. This exemption from active supervision is not allowed in any of the following situations:

(a) If the SI cannot provide documented proof that he or she worked continuously under the previous approval for at least one year.

(b) If there is evidence of criminal activity within the previous 24 months.

(c) If, as determined by the AD or the Department, the job duties in the new position are so substantially different from the previous position that the previous fitness determination is inadequate for the current position.

(7) Revocation of hired on a preliminary basis is not subject to hearing or appeal. The QE or the Department may immediately revoke hired on a preliminary basis for any of the following reasons:

(a) There is any indication of falsification of application.

(b) The QE or Department determines that allowing the SI to be hired on a preliminary basis is not appropriate, based on the application, criminal record, position duties, or Department program rules.

(8) Nothing in this rule is intended to require that an SI who is eligible to be hired on a preliminary basis be allowed to work, volunteer, be employed, or otherwise perform in the position listed on the Background Check Request form prior to a final fitness determination.

(9) Preliminary fitness determinations must be documented in writing, including any details regarding a weighing test, if required.

Stat. Auth.: ORS 181.537 & 409.050
Stats. Implemented: ORS 181.537 & 409.010
Hist.: DHSD 10-2009, f. 12-31-09, cert. ef. 1-1-10; DHSD 10-2010, f. 10-29-10, cert. ef. 10-31-10

407-007-0320
Final Fitness Determinations

The AD shall make a final fitness determination after all necessary criminal records checks have been received and a weighing test, if necessary, has been completed. The AD may obtain and consider additional information as necessary to complete the final fitness determination.

(1) The final fitness determination results in one of the following outcomes:

(a) The AD may approve an SI if:

(A) The SI has no potentially disqualifying convictions or potentially disqualifying conditions; or

(B) The SI has potentially disqualifying convictions or potentially disqualifying conditions and, after a weighing test, the AD determines that more likely than not that the SI poses no risk to the physical, emotional, or financial well-being of vulnerable individuals.

(b) The AD may approve an SI with restrictions if the AD determines that more likely than not that the SI poses no risk to the physical, emotional, or financial well-being of vulnerable individuals, if certain restrictions are placed on the SI. Restrictions may include but are not limited to restrictions to one or more specific clients, job duties, or environments. A new criminal records check and fitness determination shall be completed on the SI before removing a restriction.

(c) The AD shall deny an SI whom the AD determines, after a weighing test, more likely than not poses a risk to the physical, emotional, or financial well-being of vulnerable individuals.

(2) The Department shall make a final fitness determination in the following situations:

(a) A national or state-specific criminal records check has been completed on the SI;

(b) If Oregon laws or program administrative rules governing the QE or the position require that the Department makes the final fitness determination;

(c) The SI has the following history regarding criminal records checks:

(A) The SI's most recent criminal records check under these rules or other Department criminal records check rules resulted in a denial; or

(B) The SI's most recent criminal records check under these or other Department criminal records check rules required a weighing test which was completed by the Department.

(d) If, after conducting a criminal records check, the Department determines that, based on the presence of a potentially disqualifying crime or condition, there is a potential for imminent danger to vulnerable individuals;

(e) If the QE requests the Department to make the final fitness determination because the QE is temporarily unable to provide an AD to conduct a fitness determination;

(f) Upon request of an AD, the Department may provide technical assistance or make the final fitness determination;

(g) If the Department has reason to believe a final fitness determination has not been conducted in compliance with these rules, the Department may repeat the criminal records check and make a final fitness determination; or

(h) If the QE or AD is under investigation regarding compliance with these rules and the status of all ADs have been suspended during the investigation.

(3) The Department may review final fitness determinations made by local ADs and make a new final fitness determination at its discretion.

(4) Upon completion of a final fitness determination, the Department or AD making the decision shall provide written notice to the SI.

(a) The notice shall be in a Department-approved format.

(b) If approved, the Background Check Request form shall indicate the final fitness determination and the completed Background Check Request form shall be the notice of fitness determination.

(A) If the final fitness determination is completed by the Department, the QE shall ensure that the SI receives a copy of the Background Check Request form after the Department returns the Background Check Request form to the QE.

(B) If the final fitness determination is completed by the local AD, the local AD shall ensure that the SI receives a copy of the Background Check Request form after the AD completes the Background Check Request form.

(c) If denied or approved with restrictions, the notice of fitness determination shall include the potentially disqualifying convictions or conditions that the outcome was based upon, information regarding appeal rights and the notice becoming a final order in the event of a withdrawal or failure to appear at the hearing.

(A) If the final fitness determination is completed by the Department, the Department shall ensure that the SI receives a copy of the notice of fitness determination and the Background Check Request form. The Department shall provide the QE with a copy of the Background Check Request form to the QE with indication of the final fitness determination being either denied or approved with restrictions.

(B) If the final fitness determination is completed by the local AD, the local AD shall ensure that the SI receives a copy of the notice of fitness determination and the Background Check Request form after the AD completes the Background Check Request form.

(d) The notice shall be mailed or hand-delivered to the SI within 14 calendar days after the final fitness determination has been completed. The effective date of action shall be recorded on the notice.

(5) When an SI is denied, the SI shall not be allowed to work, volunteer, be employed, or otherwise perform in the position listed on the Background Check Request form. A denial applies only to the position and application in question. A denial shall result in immediate termination, dismissal, or removal of the SI.

(6) When an SI is approved with restrictions, the SI shall only be allowed to work, volunteer, be employed, or otherwise perform in the position listed on the Background Check Request form and only under the stated restrictions. A restricted approval applies only to the position and application in question. A restricted approval shall result in immediate implementation of the restrictions.

(7) Final fitness determinations must be documented in writing, including any details including but not limited to the potentially disqualifying convictions or conditions, the factors considered during weighing test, and restrictions in a restricted approval. The authorized designee shall also maintain any documents obtained during the fitness determination, such as written statements and certificates from the subject individual, police reports, or court records.

(8) The Department or AD shall make new fitness determinations for each application. The outcome of previous fitness determinations does not set a precedent for subsequent fitness determinations.

Stat. Auth.: ORS 181.537 & 409.050
Stats. Implemented: ORS 181.537 & 409.010
Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0320, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09; DHSD 10-2009, f. 12-31-09, cert. ef. 1-1-10; DHSD 10-2010, f. 10-29-10, cert. ef. 10-31-10

407-007-0325
Closed Case

If the SI discontinues the application or fails to cooperate with the criminal records check or fitness determination process, the application is considered incomplete and may be closed.

(1) Discontinuance or failure to cooperate includes but is not limited to the following circumstances:

(a) The SI fails to disclose all criminal history on the Background Check Request form.

(b) The SI refuses to be fingerprinted when required by these rules.

(c) The SI fails to respond within a stated time period to a request for corrections to the application, fingerprints, or any other information necessary to conduct a criminal records check and there is not enough information available to make a fitness determination.

(d) The SI withdraws the application, leaves the position prior to completion of the criminal records check, or the Department cannot locate or contact the subject individual.

(e) The SI is determined to be ineligible for the position for reasons other than the criminal records check.

(2) When the application is closed without a final fitness determination, the SI does not have a right to contest the closure.

(3) When a case is closed, the SI shall not be allowed to work, volunteer, be employed, or otherwise perform in the position listed on the Background Check Request form. A closed case applies only to the position in question. A closed case shall result in immediate termination, dismissal, or removal of the SI.

(4) The AD or CP shall document in writing the reasons for a closed case, and shall provide that information to the SI.

Stat. Auth.: ORS 181.534, 181.537 & 409.050
Stats. Implemented: ORS 181.534, 181.537 & 409.010
Hist.: DHSD 10-2009, f. 12-31-09, cert. ef. 1-1-10

407-007-0330
Contesting a Fitness Determination

(1) A final fitness determination of denied or restricted approval is considered an adverse outcome. An SI with an adverse outcome may contest that fitness determination.

(2) If an SI is denied, the SI may not hold the position, provide services or be employed, licensed, certified, or registered, or otherwise perform in positions covered by these rules. An SI appealing a restricted approval may only work under the terms of the restriction during the appeal.

(3) If an adverse outcome is changed at any time during the appeal process, the change does not guarantee employment or placement.

(4) An SI may challenge the accuracy or completeness of information provided by the OSP, the FBI, or other agencies reporting information to the Department, by appealing to the entity providing the information. These challenges are not subject to the Department's appeal process.

(5) An SI has the right to represent him or herself or have legal representation during the appeal process. The SI may not be represented by a lay person. For the purpose of this rule, the term "SI" shall be considered to include the SI's legal representative.

(6) An SI may contest an adverse fitness determination by requesting a contested case hearing. The contested case hearing process is conducted in accordance with ORS 183.411 to 183.497 and the Attorney General's Uniform and Model Rules of Procedure for the Office of Administrative Hearings (OAH), OAR 137-003-0501 to 137-003-0700.

(a) To request a contested case hearing, the SI shall complete and sign the Hearing Request form.

(b) The completed and signed form must be received by the Department within 45 calendar days after the effective date of action listed on the notice of the fitness determination.

(c) In the event an appeal is not timely, the Department shall determine, based on a written statement from the SI and available information, if there is good cause to proceed with the appeal.

(d) The Department may refer an untimely request to the OAH for a hearing on the issue of timeliness.

(7) The Department may conduct an administrative review before referring the appeal to OAH.

(a) The SI must participate in the administrative review. Participation may include but is not limited to providing additional information or additional documents requested by the BCU within a specified amount of time.

(b) The administrative review is not open to the public.

(8) The Department may conduct additional criminal records checks during the contested case hearing process to update or verify the SI's criminal records. If needed, the Department shall amend the notice of fitness determination while still maintaining the original hearing rights and deadlines.

(9) The Department shall be represented by a hearing representative in contested case hearings. The Department may also be represented by Department of Justice's Office of the Attorney General.

(a) The Department shall provide the administrative law judge and the SI a complete copy of available information used during the criminal records checks and fitness determinations. The notice of contested case and prehearing summary and other documents may be mailed by regular first class mail.

(b) SIs may not have access to confidential information contained in abuse investigation reports or other records collected or developed during the abuse check process without a protective order limiting further disclosure of the information.

(A) A protective order issued pursuant to this section must be issued by an administrative law judge as provided for in OAR 137-003-0570(8) or by a court of law.

(B) In conjunction with a protective order issued pursuant to this section, individually identifying information relating to clients, witnesses, and other persons identified in abuse investigation reports or other records collected or developed during the abuse check process shall be redacted prior to disclosure, except for the information identifying the SI.

(c) The contested case hearing is not open to the public.

(d) The administrative law judge shall make a new fitness determination based on evidence and the contested case hearing record.

(e) The only remedy an administrative law judge may grant is a fitness determination that the subject individual is approved, approved with restrictions, or denied. Under no circumstances shall the Department or the QE be required to place an SI in any position, nor shall the Department or the QE be required to accept services or enter into a contractual agreement with an SI.

(f) A hearing pursuant to these rules may be conducted in conjunction with a licensure or certification hearing for the SI.

(10) The notice of fitness determination issued is final as if the SI never requested a hearing in the following situations:

(a) The SI failed to request a hearing in the time allotted in this rule. No other document will be issued after the notice of fitness determination.

(b) The SI withdraws the request for hearing at any time during the appeal process.

(11) The Department may make an informal disposition based on the administrative review. The Department shall issue a final order and new notice of fitness determination. If the resulting fitness determination is an adverse outcome, the appeal shall proceed to contested case hearing.

(12) The Department shall issue a dismissal order in the following situations:

(a) The SI may withdraw a hearing request verbally or in writing at any time before the issuance of a final order. A dismissal order due to the withdrawal is effective the date the withdrawal is received by the Department or the OAH. The SI may cancel the withdrawal in writing within 14 calendar days after the date of withdrawal.

(b) The Department shall dismiss a hearing request when the SI fails to participate in the administrative review. Failure to participate in the administrative review shall result in termination of hearing rights. The order is effective on the due date for participation in the administrative review. The Department shall review a good cause request to reinstate hearing rights if received in writing by the Department within 14 calendar days.

(c) The Department shall dismiss a hearing request when the SI fails to appear at the time and place specified for the contested case hearing. The order is effective on the date scheduled for the hearing. The Department shall review a good cause request to reinstate hearing rights if received in writing by the Department within 14 calendar days of the order.

(13) After a hearing, the administrative law judge shall issue a proposed and final order.

(a) If no written exceptions are received by the Department within 14 calendar days after the service of the proposed and final order, the proposed and final order becomes the final order.

(b) If timely written exceptions to the proposed and final order are received by the Department, the Department's Director or designee shall consider the exceptions and serve a final order, or request a written response or a revised proposed and final order from the administrative law judge.

(14) Final orders, including dismissal and default orders, are subject to reconsideration or rehearing petitions within 60 calendar days after the order is served, pursuant to OAR 137-003-0675.

(15) The Department may provide the QE's AD with the results of the appeal.

Stat. Auth.: ORS 181.537 & 409.050
Stats. Implemented: ORS 181.534, 181.537, 183.341 & 409.010
Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0330, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 2-2008(Temp), f. & cert. ef. 3-31-08 thru 9-26-08; DHSD 7-2008, f. 8-29-08, cert. ef. 9-1-08; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09; DHSD 10-2009, f. 12-31-09, cert. ef. 1-1-10; DHSD 10-2010, f. 10-29-10, cert. ef. 10-31-10

407-007-0340
Record Keeping, Confidentiality

(1) All LEDS reports are confidential and the AD shall maintain the reports in accordance with applicable OSP requirements in ORS chapter 181 and the rules adopted pursuant thereto (see OAR chapter 257, division 15).

(a) LEDS reports are confidential and may only be shared with another AD if there is a need to know consistent with these rules.

(b) The LEDS report and any photocopies may not be shown or given to the SI.

(2) The results of a national criminal records check provided by the FBI or the OSP are confidential and may not be disseminated by the Department unless:

(a) If a fingerprint-based criminal records check was conducted on the SI, the SI shall be provided a copy of the results if requested.

(b) The state and national criminal offender information shall be provided as exhibits during the contested case hearing.

(3) All completed Background Check Request forms, other criminal records information, and other records collected or developed during the criminal records check or contested case process shall be kept confidential and disseminated only on a need-to-know basis.

(4) The Department shall retain and destroy all criminal records check documents pursuant to federal law and records retention schedules published by Oregon State Archives.

(5) Documents may be requested and reviewed by the Department and the OSP for the purposes of determining and ensuring compliance with these rules.

(6) Neither local ADs nor the Department may re-create past notices of fitness determinations. If an error is discovered on a notice of fitness determination, the local AD or the Department may correct it by issuing an amended notice of fitness determination.

Stat. Auth.: ORS 181.537 & 409.050
Stats. Implemented: ORS 181.534, 181.537 & 409.010
Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0340, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09; DHSD 10-2009, f. 12-31-09, cert. ef. 1-1-10; DHSD 10-2010, f. 10-29-10, cert. ef. 10-31-10

407-007-0350
Immunity from Liability

(1) The Department, QE, AD, or CP, acting within the course and scope of employment, have immunity from any civil liability that

might otherwise be incurred or imposed for determining, in accordance with ORS 181.537, that an SI is fit or not fit to hold a position, provide services, or be employed, licensed, certified, or registered.

(2) The Department, QE, AD, or CP, acting within the course and scope of employment, and an employer or employer's agent are not liable for the failure to hire a prospective employee or the decision to discharge an employee on the basis of the QE's decision if they in good faith comply with:

(a) ORS 181.537; and

(b) The decision of the QE or employee of the QE acting within the course and scope of employment.

(3) No employee of the state, a business, or an organization, acting within the course or scope of employment, is liable for defamation, invasion of privacy, negligence, or any other civil claim in connection with the lawful dissemination of information lawfully obtained under ORS 181.537.

Stat. Auth.: ORS 181.537 & 409.050
Stats. Implemented: ORS 181.534, 181.537 & 409.010
Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0350, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09; DHSD 10-2009, f. 12-31-09, cert. ef. 1-1-10

407-007-0370
Variances

(1) The Department may consider variance requests regarding these rules.

(a) The outcomes of a fitness determination made pursuant to these rules is not subject to variance. Challenges to fitness determinations may only be made by SIs through contested case hearing rights set forth in these rules.

(b) The Department may not grant variances to ORS 181.534 and 181.537.

(2) The Department may grant a variance to any section of these rules based upon a demonstration by the QE that the variance would not pose a significant risk to physical, emotional, or financial well-being of vulnerable individuals.

(3) The QE requesting a variance must submit, in writing, an application to the BCU that contains:

(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) An explanation on how the welfare, health, or safety of individuals receiving care will be ensured during the time the variance is in effect.

(4) The Assistant Director or designee for the Department's Administrative Services Division shall approve or deny the request for a variance.

(5) The Department shall notify the QE of the decision within 60 calendar days of the receipt of the request and shall provide a copy to other relevant Department program offices.

(6) Appeal of the denial of a variance request must be made in writing to the Department's Director, whose decision is final.

(7) The Department shall determine the duration of the variance.

(8) The QE may implement a variance only after receipt of written approval from the Department.

(9) Granting a variance does not set a precedent that must be followed by the Department when evaluating subsequent variance requests.

Stat. Auth.: ORS 181.537 & 409.050
Stats. Implemented: ORS 181.534, 181.537 & 409.010
Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0370, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09; DHSD 10-2009, f. 12-31-09, cert. ef. 1-1-10

Abuse Check Rules for Department Employees and Volunteers

407-007-0400
Purpose

(1) The purpose of these rules, OAR 407-007-0400 to 407-007-0460, is to provide for the abuse check of Department of Human Services (Department) employees, volunteers, or individuals offered employment or placement by the Department to determine if they are fit to provide care.

(2) Although criminal records checks may occur concurrently with abuse checks performed under these rules and may share similar processes, the abuse check process is separate from the criminal records checks that may be performed under OAR 407-007-0000 to 407-007-0100.

Stat. Auth.: ORS 409.027 & 409.050
Stats. Implemented: ORS 409.025, 409.027 & 409.050
Hist.: DHSD 8-2009(Temp), f. & cert. ef. 10-1-09 thru 3-29-10; DHSD 2-2010, f. & cert. ef. 3-29-10

407-007-0410
Purpose

As used in OAR 407-007-400 to 407-007-0460, unless the context of the rule requires otherwise, the following definitions apply:

(1) "Abuse" has the meaning given in the Department's administrative rules corresponding to the setting in which the abuse was alleged or investigated.

(2) "Abuse check" means obtaining and reviewing abuse allegations, abuse investigation reports, and associated exhibits and documents for the purpose of screening subject individuals as allowed by ORS 409.027.

(3) "Abuse investigation report" means a written report completed after an investigation into suspected abuse and retained by the Department pursuant to ORS 124.085, 419B.030, or 430.757, or a similar report filed in another state.

(4) "Approved" means that a subject individual, following a fitness determination, is fit to work, volunteer, be employed, or otherwise perform in a position where the subject individual may provide care.

(5) "Care" means the treatment, education, training, instruction, placement services, recreational opportunities, case management, supervision of these services for clients of the Department, or Department administration and support services for Department clients.

(6) "Closed case" means an abuse check that has been closed without a fitness determination.

(7) "Denied" means that a subject individual, following a fitness determination including a weighing test, is not fit to work, volunteer, be employed, or otherwise perform services in positions covered by these rules.

(8) "Department" means the Department of Human Services.

(9) "Director" means the Department's Director or designee.

(10) "Fitness determination" means the outcome of an abuse check and, if necessary, a weighing test.

(11) "Founded or substantiated" has the meanings given in the Department's administrative rules corresponding to the setting in which the abuse was alleged or investigated.

(12) "Office of Human Resources" means the Department's Office of Human Resources.

(13) "Potentially disqualifying abuse" means:

(a) The finding of an abuse investigation report is founded or substantiated; and

(b) The subject individual is determined to have been responsible for the abuse.

(14) "Subject individual," means an individual who is:

(a) An employee, which includes:

(A) An individual who seeks to be employed by the Department to provide care or a Department Jobs Plus client who seeks placement at a Department site; or

(B) An individual who is currently employed by the Department to provide care or a current Department Jobs Plus client who is placed at a Department site.

(b) A volunteer, which includes:

(A) An individual or student, who seeks to be a volunteer to provide care on behalf of the Department;

(B) A Department Work Experience client who seeks placement as a volunteer at a Department site;

(C) An individual or student currently volunteering to provide care on behalf of the Department, over whom the Department has direction and control; or

(D) A Department Work Experience client who is placed at a Department site.

(15) "Weighing test" means a process carried out by the Department in which available information is considered in making a fitness determination.

Stat. Auth.: ORS 409.027 & 409.050
Stats. Implemented: ORS 409.027 & 409.050
Hist.: DHSD 8-2009(Temp), f. & cert. ef. 10-1-09 thru 3-29-10; DHSD 2-2010, f. & cert. ef. 3-29-10

407-007-0420
Reporting Abuse Allegations Required

(1) This rule applies to any subject individual who is:

(a) A current Department employee;

(b) A current Department volunteer; or

(c) An individual seeking Department employment or volunteer placement, who has been offered Department employment or volunteer placement, pending the completion of the abuse check process.

(2) Subject individuals shall notify the Office of Human Resources within five calendar days of being notified that he or she has been identified as an alleged perpetrator, reported perpetrator, or accused person in an abuse investigation.

Stat. Auth.: ORS 409.027 & 409.050
Stats. Implemented: ORS 409.027 & 409.050
Hist.: DHSD 8-2009(Temp), f. & cert. ef. 10-1-09 thru 3-29-10; DHSD 2-2010, f. & cert. ef. 3-29-10

407-007-0430
Applicants to the Department for Employment or Volunteer Position

(1) Subject to any applicable collective bargaining agreements, this rule applies to any subject individual who is:

(a) Offered employment or volunteer placement with the Department;

(b) Offered a change in employment or volunteer placement within the Department.

(2) The Department may require a subject individual to have an abuse check in the following circumstances:

(a) A subject individual is offered employment or a volunteer placement with the Department.

(b) A subject individual is currently employed by or volunteering with the Department and is offered a new position within the Department. A change in a position requiring an abuse check may be due to but not limited to promotion, transfer, demotion, re-employment, job rotation, developmental assignment, restoration, bumping, or recall. For the abuse check to be required, there must be, as determined by the Office of Human Resources:

(A) A significant change in position duties or responsibilities; or

(B) A change in position classification.

(3) Using identifying information submitted on the Department's Background Check Request form, the Department may conduct an abuse check to determine if the subject individual has potentially disqualifying abuse.

(a) In order to complete an abuse check and fitness determination, the Department may require additional information from the subject individual including but not limited to additional background information or documentation regarding circumstances since the abuse occurred.

(b) If a subject individual is a represented Department employee, the process for obtaining additional information through investigatory interviews shall adhere to collective bargaining agreements on investigatory interviews.

(4) The Department may not determine a start date for a subject individual until the completion of an abuse check and a fitness determination of approval.

(5) If a subject individual has potentially disqualifying abuse, the Department shall conduct a weighing test in order to make a fitness determination. Factors to consider in a weighing test include but are not limited to:

(a) The details regarding the abuse including but not limited to:

(A) Circumstances leading to the incident of abuse;

(B) The nature or type of abuse; and

(C) Other information gathered during the scope of the abuse investigation.

(b) The date of abuse incident and abuse investigation, and the age of the subject individual at the time of the abuse.

(c) The quality of the abuse investigation including, if applicable, any exhibits and related documents with consideration to completeness, objectivity, and sufficiency.

(d) Due process provided to the subject individual after the abuse investigation.

(e) Required action resulting from the founded or substantiated abuse including but not limited to training, counseling, corrective or disciplinary action, and the subject individual's compliance.

(f) Circumstances related to the subject individual including but not limited to work history, education history, and other personal information provided by the subject individual.

(g) Changes in circumstances subsequent to the potentially disqualifying abuse.

(h) The relevancy of the abuse to the position the subject individual is seeking.

(6) Following an abuse check, the Department shall complete the fitness determination.

(a) The Department may approve a subject individual if:

(A) The subject individual has no potentially disqualifying abuse; or

(B) The subject individual has potentially disqualifying abuse but, after a weighing test, the Department determines that more likely than not the subject individual poses no risk to the Department, its clients, or vulnerable persons.

(b) The Department shall deny a subject individual who has potentially disqualifying abuse and, after a weighing test, the Department determines that more likely than not the subject individual poses a risk to the Department, its clients, or vulnerable individuals.

(7) The Department shall close the case if the subject individual discontinues the application or fails to cooperate with the abuse check process. When the application is closed without a final fitness determination, the subject individual does not have a right to contest the closure.

(8) Upon completion of a fitness determination or in a closed case, the Department shall provide written notice to the subject individual. The notice shall:

(a) Be in a Department approved format; and

(b) Include an effective date of action.

(c) For an outcome of denied:

(A) Include the reasons for the denial;

(B) Include information regarding appeal rights; and

(C) Include a statement that the notice becomes a final order in the event of a withdrawal during the contested case hearing process or a failure to appear at the contested case hearing.

(9) When a subject individual is denied or a case is closed, the individual may not work, volunteer, be employed, or otherwise perform in the position that the subject individual is seeking. If a current Department employee or volunteer is denied, the Office of Human Resources shall determine if the subject individual may continue in the current position that the subject individual is seeking to change.

(a) For Department employees, if disciplinary action up to and including dismissal is appropriate, the action shall be taken in accordance with:

(A) Relevant collective bargaining contractual provisions;

(B) Statutory provisions for unrepresented or management services employees; or

(C) Relevant Department or statewide policies or procedures.

(b) For subject individuals who are current volunteers or Work Experience clients, a denial or closed case shall result in immediate dismissal.

(10) The Department shall document fitness determinations in writing and include all necessary details including but not limited to the potentially disqualifying abuse, the weighing test, or the reasons for a closed case.

(11) The Department shall make new fitness determinations for each application. The outcome of previous fitness determinations does not ensure the same outcome of a new fitness determination.

(12) Only subject individuals not offered employment or a Jobs Plus position may contest the fitness determination.

(a) The contested case hearing process, pursuant to ORS Chapter 183 and OAR 407-007-0080, shall proceed if the subject individual requests a contested case hearing. Subject individuals must request a hearing within 15 calendar days after the effective date of action listed on the notice of fitness determination.

(b) The subject individual's hearing rights pertain to the action of denial of employment or placement, not the outcome of the abuse investigation.

(c) The only remedy that may be awarded is a fitness determination that the subject individual is approved or denied. Under no circumstances shall the Department be required to place a subject individual in any position, nor shall the Department be required to accept services or enter into a contractual agreement with a subject individual.

(d) Subject individuals may not have access to confidential information contained in abuse investigation reports or other records collected or developed during the abuse check process without a protective order limiting further disclosure of the information.

(A) A protective order issued pursuant to this section must be issued by an administrative law judge as provided in OAR 137-003-0570(8) or by a court of law.

(B) In conjunction with a protective order issued pursuant to this section, individually identifying information relating to clients, witnesses, and other persons identified in abuse investigation reports or other records collected, or developed during the abuse check process shall be redacted prior to disclosure, except for the information identifying the subject individual.

(13) Subject individuals in volunteer or Work Experience placements must have a new abuse check every three years from the date of placement.

Stat. Auth.: ORS 409.027 & 409.050
Stats. Implemented: ORS 409.010 & 409.027
Hist.: DHSD 8-2009(Temp), f. & cert. ef. 10-1-09 thru 3-29-10; DHSD 2-2010, f. & cert. ef. 3-29-10

407-007-0440
Current Employees of the Department

(1) This rule applies to any subject individual who is a current Department employee.

(2) If a subject individual is identified as an alleged perpetrator, reported perpetrator, or accused person in an abuse investigation, all relevant abuse investigation and licensing rules shall apply.

(3) The Department shall apply relevant program administrative due process policies if the subject individual is identified as responsible in a founded or substantiated abuse investigation.

(4) If a current subject individual is identified as an alleged perpetrator, reported perpetrator, or accused person in an abuse investigation, the Office of Human Resources may initiate an investigation during or following the investigation of the alleged abuse to determine whether to take any action, up to and including dismissal from employment.

(a) If the abuse investigation results in potentially disqualifying abuse, the Office of Human Resources shall initiate an investigation which may include conducting a weighing test as described in OAR 407-007-0430(5). The purpose of the investigation is to determine whether any action, up to and including dismissal, is justified.

(b) If the Office of Human Resources learns of potentially disqualifying abuse from previous investigations, the Office of Human Resources may initiate an investigation, to determine fitness for the position, which may include conducting a weighing test as described in OAR 407-007-0430(5). The purpose of the investigation is to determine whether any action, up to and including dismissal is justified.

(c) For Department employees, if disciplinary action up to and including dismissal, is appropriate, the action shall be taken in accordance with:

(A) Relevant collective bargaining agreements;

(B) Statutory provisions for unrepresented or management services employees; or

(C) Relevant Department or statewide policies or procedures.

(5) A pending related action, such as a civil, criminal, juvenile, or administrative proceeding in which the allegations of abuse are at issue shall not automatically be grounds for the subject individual to seek to detain or stay either the review of the founded or substantiated disposition or any resulting disciplinary action. The Department may detain or stay either the review of the founded or substantiated abuse disposition or any resulting disciplinary action based on the pending related action such as a civil, criminal, juvenile, or administrative proceeding in which the allegations of abuse are at issue.

Stat. Auth.: ORS 409.027 & 409.050
Stats. Implemented: ORS 409.027 & 409.050
Hist.: DHSD 8-2009(Temp), f. & cert. ef. 10-1-09 thru 3-29-10; DHSD 1-2010(Temp), f. & cert. ef. 1-8-10 thru 3-29-10; DHSD 2-2010, f. & cert. ef. 3-29-10

407-007-0450
Current Volunteers of the Department

(1) This rule applies to any subject individual who is a current Department volunteer.

(2) If a subject individual is identified as an alleged perpetrator, reported perpetrator, or accused person in an abuse investigation, the Office of Human Resources may remove the subject individual from placement and duties at any time during the investigation or any subsequent review.

(3) If removed from the placement, the subject individual may reapply for a placement under OAR 407-007-0430.

Stat. Auth.: ORS 409.027 & 409.050
Stats. Implemented: ORS 409.027 & 409.050
Hist.: DHSD 8-2009(Temp), f. & cert. ef. 10-1-09 thru 3-29-10; DHSD 2-2010, f. & cert. ef. 3-29-10

407-007-0460
Confidentiality

(1) The Department shall maintain abuse investigation reports as confidential pursuant to ORS 409.027 and other applicable state and federal laws and rules.

(2) All abuse information and other records collected or developed during the abuse check process shall be kept confidential and disseminated only on a need-to-know basis as permitted by applicable Oregon statutes and administrative rules.

(3) Abuse investigation reports may be used among the organizational units of the Department for the purpose of screening subject individuals necessary to protect the Department's vulnerable clients from abuse.

(4) The Department may use abuse and neglect reports for decisions directly affecting vulnerable individuals if the vulnerable individual is also a subject individual.

Stat. Auth.: ORS 409.027 & 409.050
Stats. Implemented: ORS 409.027 & 409.050
Hist.: DHSD 8-2009(Temp), f. & cert. ef. 10-1-09 thru 3-29-10; DHSD 2-2010, f. & cert. ef. 3-29-10

DIVISION 10

PRE-EMPLOYMENT/EMPLOYMENT SCREENING

407-010-0001
Policies and Procedures to Guide Use of Information on OYA and DHS Employees Who are Subjects of a CPS Assessment

The DHS Office of Human Resources will develop policies and procedures to guide use of information provided by CPS supervisors in relation to the requirements of OAR 413-015-0405(9).

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: DHSD 2-2006, f. & cert. ef. 3-1-06

DIVISION 12

RESTRICTING ACCESS TO DEPARTMENT OF HUMAN SERVICES PREMISES AND EMPLOYEES

407-012-0005
Definitions

The following definitions apply to OAR 407-012-0005 through 407-012-0025:

(1) "Department" means the Department of Human Services.

(2) "Division" means every individual organizational unit within the Department of Human Services.

(3) "Employee" means individuals acting in the course and scope of their duties who are on the State of Oregon payroll, contract employees, employees of temporary service agencies, and volunteers. It also includes employees of other government or social service agencies who, at the time they are accompanying a Department employee on Department business, are the target of conduct described in OAR 407-012-0010.

(4) "Premises" means any land, building, facility, and other property owned, leased, or in the possession of, and used or controlled by

the Department. When the Department occupies space in a building occupied by multiple tenants, the definition includes the common areas of the building used by all tenants such as, but not limited to, restrooms, hallways, and food service areas.

(5) "Restriction of Access" means the Department has limited an individual's access to specific Department premises, employees, or methods of communication.

(6) "Weapon" includes, but is not limited to:

(a) A dangerous or deadly weapon as defined in ORS 161.015;

(b) Any other object or substance used in a manner that compromises the safety of Department employees or visitors on Department premises;

(c) An imitation or replica of any of the above.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.050, 654.010
Hist.: DHSD 11-2007, f. 11-30-07, cert. ef. 12-1-07

407-012-0010
Prohibited Conduct

(1) Conduct that may result in restriction of access includes, but is not limited to the following:

(a) Causing or threatening to cause physical injury to Department employees or visitors;

(b) Engaging in actions which compromise the safety or health of Department employees or visitors;

(c) Causing or threatening to cause harm to the family or property of an employee or visitors through written, electronic, or verbal communication;

(d) Causing or threatening to cause damage to Department premises;

(e) Bringing a deadly or dangerous weapon onto the Department's premises, unless authorized by ORS chapter 166 to carry a handgun;

(f) Displaying, attempting, or threatening to use any weapon, on or off Department premises, that compromises the safety of Department employees or visitors;

(g) Engaging in harassing conduct as defined in ORS 166.065.

(h) Engaging in telephonic harassment as defined in ORS 166.090.

(2) The conduct listed in section (1) is also prohibited if it occurs during employees' off-work hours and off Department premises and the prohibited conduct is related to the employee's work with the Department.

(3) Prior to issuing a restriction of access notice, the Department will make an individualized assessment as to whether the conduct listed in section (1) of this rule is a result of a disability of which the Department has knowledge and whether the conduct is a "direct threat" to others as described in OAR 407-005-0000 through 407-005-0030. If the Department determines the disabled individual's conduct is not a direct threat, the Department will explore the possibility of a reasonable accommodation to mitigate the safety risk.

(4) The prohibitions on conduct in this rule do not apply to individuals who are residents of a Department-operated residential facility.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.050, 654.010
Hist.: DHSD 11-2007, f. 11-30-07, cert. ef. 12-1-07

407-012-0015
Continuation of Eligible Services

(1) An individual whose access has been restricted by the Department will continue to be provided services for which the individual meets program eligibility requirements by an alternate and effective method of communication as determined by the Department.

(2) Alternate methods may include telephone, electronic mail, written communication, meeting at a designated secure site, or through the individual's representative.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.050, 654.010
Hist.: DHSD 11-2007, f. 11-30-07, cert. ef. 12-1-07

407-012-0020
Notification

(1) If the Department determines that it is necessary to restrict access or the methods of communication because of prohibited conduct, the individual will be provided written notification, signed by the assistant director or deputy assistant director of the affected division, and sent by certified mail or other traceable means. The notice will describe the following:

(a) Conduct giving rise to the restrictions;

(b) The specific premises or parts of premises from which the individual is excluded; or the forms of communication which are restricted;

(c) The alternate method by which services may be obtained;

(d) Contact information for services or appointment scheduling;

(e) The availability of the review process, including notification that individuals with disabilities are entitled to request modification;

(f) The potential criminal consequences for violating the notice of restriction of access; and

(g) The law enforcement agency being notified.

(2) The notice will be effective upon issuance.

(3) Restrictions on access to Department premises or methods of communication will remain in place until the Department determines the individual no longer poses a threat and issues an official notification of removal.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.050, 654.010
Hist.: DHSD 11-2007, f. 11-30-07, cert. ef. 12-1-07

407-012-0025
Department Review

(1) The Department will establish an internal review process to ensure that a notice of restriction of access is warranted prior to issuing a written notice of restriction of access.

(2) Following the Department's issuance of a notice of restriction of access, the recipient of the notice may request review of the Department's determination. The request must be submitted to the office of the Director of the Department. The request must be in writing and submitted, by mail or personal delivery, within 15 business days of the date of issuance of the notice of restriction of access. If the request is submitted by mail, it must be postmarked within 15 business days. No particular format is required for the request for review; however, the individual should include specific grounds for requesting the review.

(3) Upon receipt of a request for review, the Director or an assistant director will review the request and issue a written decision. The review may include an informal conference. The decision will be issued within ten days of receipt of the request for review.

(4) The Department's decision is final.

(5) If the Department's decision rules in favor of the individual, the restricted individual's access restriction will be immediately lifted. If the decision is unfavorable to the restricted individual, the restricted individual may seek further review after six months have lapsed since the date of issuance by following the process described in this rule.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.050, 654.010
Hist.: DHSD 11-2007, f. 11-30-07, cert. ef. 12-1-07

DIVISION 14

PRIVACY AND CONFIDENTIALITY

Privacy of Protected Information

407-014-0000
Definitions

The following definitions apply to OAR 407-014-0000 to 407-014-0070:

(1) "Administrative Hearing" means an oral proceeding before an administrative law judge in a contested case hearing.

(2) "Authorization" means permission from an individual or his or her personal representative giving the Department of Human Services (Department) authorization to obtain, release or use information about the individual from third parties for specified purposes or to disclose information to a third party specified by the individual.

(3) "Business Associate" means an individual or entity performing any function or activity on behalf of the Department involving the use or disclosure of protected health information (PHI) and is not a member of the Department's workforce.

(a) "Function or activity" includes but is not limited to program administration, claims processing or administration, data analysis,

utilization review, quality assurance, billing, legal, actuarial, accounting, consulting, data processing, management, administrative, accreditation, financial services, and similar services for which the Department may contract, if access to PHI is involved.

(b) Business associates do not include licensees or providers unless the licensee or provider also performs some function or activity on behalf of the Department.

(4) "Client" means an individual who requests or receives services from the Department. This includes but is not limited to applicants for or recipients of public assistance, minors and adults receiving protective services, Oregon Health Plan members or enrollees, individuals who apply for or are admitted to a state training center or a state hospital or who are committed to the custody of the Department, children in the custody of the Department receiving services on a voluntary basis, and children committed to the custody of the Department.

(5) "Client Information" means personal information relating to a client that the Department may maintain in one or more locations and in various forms, reports, or documents, or stored or transmitted by electronic media.

(6) "Collect" or "Collection" means the assembling of personal information through interviews, forms, reports, or other information sources.

(7) "Contract" means a written agreement between the Department and a person or entity setting forth the rights and obligations of the parties including but not limited to contracts, licenses, agreements, interagency agreements, and intergovernmental agreements.

(8) "Correctional Institution" means any penal or correctional facility, jail, reformatory, detention center, work farm, halfway house, or residential community program center operated by contract with the federal government, a state, or an Indian tribe for the confinement or rehabilitation of persons charged with or convicted of a criminal offense or other persons held in lawful custody. "Other persons held in lawful custody" include juvenile offenders, adjudicated delinquents, aliens detained awaiting deportation, witnesses, or others awaiting charges or trial.

(9) "Corrective Action" means an action that a Department business associate must take to remedy a breach or violation of the business associate's obligations under the business associate's contractual requirement, including but not limited to reasonable steps that must be taken to cure the breach or end the violation.

(10) "Covered Entity" means health plans, health care clearinghouses, and health care providers who transmit any health information in electronic form in connection with a transaction that is subject to federal Health Insurance Portability and Accountability Act (HIPAA) requirements, as those terms are defined and used in the HIPAA regulations, 45 CFR parts 160 and 164.

(11) "De-identified Data" means client information from which the Department or other entity has deleted, redacted, or blocked identifiers so the remaining information cannot reasonably be used to identify an individual.

(12) "Department" means the Department of Human Services.

(13) "Department Workforce" means employees, volunteers, trainees, and other persons whose conduct, in the performance of work for the Department, is under the direction and control of the Department, whether or not they are paid by the Department.

(14) "Disclose" means the release, transfer, relay, provision of access to, or conveying of client information to any individual or entity outside the Department.

(15) "Health Care" means care, services, or supplies related to the health of an individual. Health care includes but is not limited to preventive, diagnostic, therapeutic, rehabilitative, maintenance, palliative care, counseling services, assessment, or procedures with respect to the physical or mental condition, or functional status of an individual, or that affects the structure or function of the body and the sale or dispensing of a drug, device, equipment, or other prescribed item.

(16) "Health Care Operations" means any activities of the Department to the extent that the activities are related to health care, Medicaid, or any other health care related programs, services, or activities administered by the Department and includes:

(a) Conducting quality assessment and improvement activities, including income evaluation and development of clinical guidelines;

(b) Population-based activities related to improving health or reducing health care costs, protocol development, case management and care coordination, contacting health care providers and patients with information about treatment alternatives; and related functions that do not include treatment;

(c) Reviewing the competence of qualifications of health care professionals, evaluating practitioner, provider, and health plan performance; and conducting training programs in which students and trainees in areas of health care learn under supervision to practice or improve their skills, accreditation, certification, licensing, or credentialing activities;

(d) Underwriting, premium rating, and other activities relating to the creation, renewal, or replacement of a contract for Medicaid or health care related services;

(e) Conducting or arranging for medical review, legal services, and auditing functions, including fraud and abuse detection and compliance programs, and disclosure to the Medicaid Fraud Unit pursuant to 43 CFR part 455.21;

(f) Business planning and development, such as conducting cost-management and planning-related analyses related to managing and operating the Department, including administration, development, or improvement of methods of payments or health care coverage; and

(g) Business management and general administrative activities of the Department, including but not limited to:

(A) Management activities relating to implementation of and compliance with the requirements of HIPAA;

(B) Customer service, including providing data analysis;

(C) Resolution of internal grievances, including administrative hearings and the resolution of disputes from patients or enrollees regarding the quality of care and eligibility for services; and

(D) Creating de-identified data or a limited data set.

(17) "Health Oversight Agency" means an agency or authority of the federal government, a state, territory, political subdivision of a state or territory, Indian tribe, or a person or entity acting under a grant of authority from or by contract with the public agency, including employees or agents of the public agency or its contractors or grantees that is authorized by law to oversee the health care system or government programs in which health information is necessary to determine eligibility or compliance, or to enforce civil rights laws for which health information is relevant. When performing these functions, the Department acts as a health oversight agency for the purposes of these rules.

(18) "HIPAA" means the Title II, Subtitle F of the Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d et seq, and the federal regulations adopted to implement the Act.

(19) "Individual" means the person who is the subject of information collected, used, or disclosed by the Department.

(20) "Individually Identifying Information" means any single item or compilation of information or data that indicates or reveals the identity of an individual, either specifically (such as the individual's name or social security number), or from which the individual's identity can be reasonably ascertained.

(21) "Information" means personal information relating to an individual, a participant, or a Department client.

(22) "Inmate" means a person incarcerated in or otherwise confined in a correctional institution. An individual is no longer an inmate when released on parole, probation, supervised release, or is otherwise no longer in custody.

(23) "Institutional Review Board (IRB)" means a specially constituted review body established or designated by an entity in accordance with 45 CFR part 46 to protect the welfare of human subjects recruited to participate in biomedical or behavioral research. The IRB must be registered with the Office for Human Research Protection.

(24) "Law Enforcement Official" means an officer or employee of any agency or authority of the federal government, a state, territory, political subdivision of a state or territory, or Indian tribe who is empowered by law to:

(a) Investigate and conduct an official inquiry into a potential violation of law; or

(b) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.

(25) "Licensee" means a person or entity that applies for or receives a license, certificate, registration, or similar authority from the Department to perform or conduct a service, activity, or function.

(26) "Minimum Necessary" means the least amount of information, when using or disclosing confidential client information, that

is needed to accomplish the intended purpose of the use, disclosure, or request.

(27) "Participant" means individual's participating in Department population-based services, programs, and activities that serve the general population, but who do not receive program benefits or direct services received by a client. Examples of participants include but are not limited to an individual whose birth certificate is recorded with Department of Vital Statistics, the subjects of public health studies, immunization or cancer registries, newborn screening, and other public health services, and individuals who contact Department hotlines or the ombudsman for general public information services.

(28) "Payment" means any activities undertaken by the Department related to a client to whom health care is provided in order to:

(a) Obtain premiums or to determine or fulfill its responsibility for coverage and provision of benefits under the Medicaid program or other publicly funded health care services; and

(b) Obtain or provide reimbursement for the provision of health care.

(c) Payment activities include:

(A) Determinations of eligibility or coverage, including coordination of benefits or the determination of cost sharing amounts, and adjudication of health benefit or health care claims;

(B) Risk adjusting amounts due which are based on enrollee health status and demographic characteristics;

(C) Billing, claims management, collection activities, obtaining payment under a contract for reinsurance, and related health care data processing;

(D) Review of health care services with respect to medical necessity, coverage under a health plan, appropriateness of care, or justification of charges;

(E) Utilization review activities, including pre-certification and pre-authorization of services, concurrent and retrospective review of services; and

(F) Disclosure to consumer reporting agencies relating to collection of premiums or reimbursement including name and address, date of birth, payment history, account number, and name and address of the health care provider or health plan.

(29) "Personal Representative" means a person who has authority to act on behalf of an individual in making decisions related to health care.

(30) "Protected Health Information (PHI)" means any individually identifiable health information, whether oral or recorded in any form or medium, that is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse and relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual. Any data transmitted or maintained in any other form or medium by covered entities, including paper records, fax documents, all oral communications, or any other form, such as screen prints of eligibility information, printed e-mails containing identified individual's health information, claim or billing information, or hard copy birth or death certificates. PHI does not include school records that are subject to the Family Educational Rights and Privacy Act and employment records held in the Department's role as an employer.

(31) "Protected Information" means any participant or client information that the Department may have in its records or files that must be safeguarded pursuant to Department policy. This includes but is not limited to individually identifying information.

(32) "Provider" means a person or entity that may seek reimbursement from the Department as a provider of services to Department clients pursuant to a contract. For purposes of these rules, reimbursement may be requested on the basis of claims or encounters or other means of requesting payment.

(33) "Psychotherapy Notes" mean notes recorded in any medium by a health care provider who is a mental health professional documenting or analyzing the contents of conversations during a private counseling session, or group, joint, or family counseling session, when the notes are separated from the rest of the individual's record. Psychotherapy notes do not include medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of diagnosis, functional status, treatment plan, symptoms, prognosis, or progress to date.

(34) "Public Health Agency" means a public agency, including the Department, or a person or entity acting under a grant of authority from or by contract with the Department or public agency that performs or conducts one or more of the following essential functions that characterize public health programs, services, or activities:

(a) Monitor health status to identify community health problems;

(b) Diagnose and investigate health problems and health hazards in the community;

(A) Inform, educate, and empower people about health issues;

(B) Mobilize community partnerships to identify and solve health problems;

(C) Develop policies and plans that support individual and community health efforts;

(D) Enforce laws and regulations that protect health and ensure safety;

(E) Direct individuals to needed personal health services and assure the provision of health care when otherwise unavailable;

(F) Ensure a competent public health and personal health care workforce;

(G) Evaluate the effectiveness, accessibility, and quality of personal and population-based health services; and

(H) Perform research for new insights and innovative solutions to health problems.

(35) "Public Health Authority" means an agency or authority of the federal government, a state, territory, political subdivision of a state or territory, Indian tribe, or a person or entity acting under a grant of authority from or by contract with the public agency, including the employees or agents of the public agency, or its contractors or persons or entities to whom it has granted authority, that is responsible for public health matters as part of its official mandate. When performing functions as a public health agency, the Department acts as a public health authority for purposes of these rules.

(36) "Re-disclosure" means the disclosure of information to a person, a Department program, a Department subcontracted entity, or other entity or person other than what was originally authorized.

(37) "Research" means systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to generalized knowledge.

(38) "Required by Law" means a duty or responsibility that federal or state law specifies that a person or entity must perform or exercise. Required by law includes but is not limited to court orders and court-ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information; a civil or an authorized investigative demand; Medicare conditions of participation with respect to health care providers participating in the program; and statutes or rules that require the production of information, including statutes or rules that require such information if payment is sought under a government program providing public benefits.

(39) "Treatment" means the provision, coordination, or management of heath care and related services by one or more health care providers, including the coordination or management of health care by a health care provider with a third party, consultation between health care providers relating to a patient, or the referral of a patient for health care from one health care provider to another.

(40) "Use" means the sharing of individual information within a Department program or the sharing of individual information between program staff and administrative staff that support or oversee the program.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.010
Hist.: OMAP 26-2003, f. 3-31-03 cert. ef. 4-1-03; Renumbered from 410-014-0000 by DHSD 5-2009, f. & cert. ef. 7-1-09

407-014-0010
Purpose

(1) The purpose of these rules (OAR 407-014-000 to 407-014-0070) is to govern the collection, use, and disclosure of protected information by the Department about individuals and to explain the rights and specific actions that individuals may take or request to be taken regarding the uses and disclosures of their protected information. These rules also set forth Department requirements governing the use and disclosure of PHI for purposes of HIPAA, 42 USC 1320-d through

1320d-8, Pub L 104-191, sec. 262 and 264, and the implementing HIPAA privacy rules, 45 CFR parts 160 and 164.

(2) Except as provided in section (1) of this rule, state and federal statutes, rules, and policies that govern the administration of Department programs, services, and activities continue to govern the use and disclosure of protected information in those Department programs, services, and activities.

(3) In the event that it is not possible to comply with the requirements of both sections (1) and (2) of this rule, the Department shall act in accordance with whichever federal or state law imposes a stricter requirement regarding the privacy or safeguarding of information and which provides the greater protection or access to the individual who is the subject of the information, unless one of the following applies:

(a) Public health. Nothing in these rules shall be construed to invalidate or limit the authority, power, or procedures established under any law providing for the reporting of disease or injury, birth, or death; public health surveillance; or public health investigation or intervention.

(b) Child abuse. Nothing in these rules shall be construed to invalidate or limit the authority, power, or procedures established under any law providing for the reporting of child abuse.

(c) State regulatory reporting. Nothing in these rules shall be construed to limit the ability of the State of Oregon or the Department to require a health plan to report, or to provide access to information for management audits, financial audits, program monitoring, facility licensure or certification, or individual licensure or certification.

(4) The Department may collect, maintain, use, transmit, share, and disclose information about any individual to the extent authorized by law to administer Department programs, services, and activities.

(5) The Department may use and disclose information about licensees or providers consistent with federal and state laws and regulations. Information regarding the qualifications of licensees and providers are public records.

(a) When the Department obtains information about individuals that relates to determining payment responsibility when a provider submits a request for payment to the Department, the Department shall safeguard the information consistent with federal and state laws and regulations and Department policies.

(b) The Department may review the performance of licensees and providers in the conduct of their health oversight activities and shall safeguard information obtained about individuals obtained during those activities in accordance with federal and state laws and regulations and Department policies.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.010
Hist.: OMAP 26-2003, f. 3-31-03 cert. ef. 4-1-03; Renumbered from 410-014-0010 by DHSD 5-2009, f. & cert. ef. 7-1-09

407-014-0020
Uses and Disclosures of Client or Participant Protected Information

(1) Uses and disclosures with individual authorization. The Department must obtain a completed and signed authorization for release of information from the individual, or the individual's personal representative, before obtaining or using protected information about an individual from a third party or disclosing protected information about the individual to a third party.

(a) Uses and disclosures must be consistent with what the individual has approved on the signed authorization form approved by the Department.

(b) An individual may revoke an authorization at any time. The revocation must be in writing and signed by the individual, except that substance abuse treatment patients may orally revoke an authorization to disclose information obtained from substance abuse treatment programs. No revocation shall apply to information already released while the authorization was valid and in effect.

(2) Uses and disclosures without authorization. The Department may use and disclose information without written authorization in the following circumstances:

(a) The Department may disclose information to individuals who have requested disclosure to themselves of their information, if the individual has the right to access the information under OAR 407-014-0030(6).

(b) If the law requires or permits the disclosure, and the use and disclosure complies with, and is limited to, the relevant requirements of the relevant law.

(c) For treatment, payment, and health care operations the Department may disclose the following information:

(A) Activities involving the current treatment of an individual, for the Department or health care provider;

(B) Payment activities, for the Department, covered entity, or health care provider;

(C) Protected health information for the purpose of health care operations; and

(D) Substance abuse treatment information, if the recipient has a Qualified Service Organization Agreement with the Department.

(d) Psychotherapy notes. The Department may only use and disclose psychotherapy notes in the following circumstances:

(A) In the Department's supervised counseling training programs;

(B) In connection with oversight of the originator of the psychotherapy notes; or

(C) To defend the Department in a legal action or other proceeding brought by the individual.

(e) Public health activities.

(A) The Department may disclose an individual's protected information to appropriate entities or persons for governmental public health activities and for other purposes including but not limited to:

(i) A governmental public health authority that is authorized by law to collect or receive protected information for the purpose of preventing or controlling disease, injury, or disability. This includes but is not limited to reporting disease, injury, and vital events such as birth or death; and the conducting of public health surveillance, investigations, and interventions;

(ii) An official of a foreign government agency that is acting in collaboration with a governmental public health authority;

(iii) A governmental public health authority, or other government authority that is authorized by law to receive reports of child abuse or neglect;

(iv) A person subject to the jurisdiction of the federal Food and Drug Administration (FDA), regarding an FDA-regulated product or activity for which that person is responsible for activities related to the quality, safety, or effectiveness of an FDA-regulated product or activity; or

(v) A person who may have been exposed to a communicable disease, or may be at risk of contracting or spreading a disease or condition, if the Department or other public health authority is authorized to notify the person as necessary in conducting a public health intervention or investigation.

(B) Where state or federal law prohibits or restricts use and disclosure of information obtained or maintained for public health purposes, the Department shall deny the use and disclosure.

(f) Child abuse reporting and investigation. If the Department has reasonable cause to believe that a child is a victim of abuse or neglect, the Department may disclose protected information to appropriate governmental authorities authorized by law to receive reports of child abuse or neglect (including reporting to the Department protective services staff if appropriate). If the Department receives information as the child protective services agency, the Department may use and disclose the information consistent with its legal authority and in compliance with any applicable state and federal regulations.

(g) Adult abuse reporting and investigation. If the Department has reasonable cause to believe that a vulnerable adult is a victim of abuse or neglect, the Department may disclose information, as required by law, to a government authority or regulatory agency authorized by law to receive reports of abuse or neglect including but not limited to a social service or protective services agency (which may include the Department) authorized by law to receive such reports. Vulnerable adults are adults age 65 or older and persons with disabilities. If the Department receives information as the social services or protective services agency, the Department may use and disclose the information.

(h) Health oversight activities. The Department may disclose information without authorization for health oversight activities, including audits; civil, criminal, or administrative investigations, prosecutions, licensing or disciplinary actions; Medicaid fraud; or other necessary oversight activities.

(i) Administrative and court hearings, grievances, investigations, and appeals.

(A) The Department may use or disclose information for an investigation, administrative or court hearing, grievance, or appeal about an individual's eligibility or right to receive Department benefits or services.

(B) If the Department has obtained information in performing its duties as a health oversight agency, public health authority, protective service entity, or public benefit program, the Department may use or disclose that information in an administrative or court hearing consistent with the other privacy requirements applicable to that program, service, or activity.

(j) Court orders. The Department may disclose information for judicial or administrative proceedings in response to a court order, subpoena, discovery request, or other legal process. If a court orders the Department to conduct a mental examination pursuant to ORS 161.315, 161.365, 161.370, or 419B.352, or orders the Department to provide any other report or evaluation to the court, the examination, report, or evaluation shall be deemed to be required by law for purposes of HIPAA.

(k) Law enforcement purposes. For limited law enforcement purposes, the Department may report certain injuries or wounds; provide information to identify or locate a suspect, victim, or witness; alert law enforcement of a death as a result of criminal conduct; and provide information which constitutes evidence of criminal conduct on Department premises.

(A) The Department may provide client information to a law enforcement officer in any of the following situations:

(i) The law enforcement officer is involved in carrying out any investigation, criminal, or civil proceedings connected with administering the program from which the information is sought;

(ii) A Department employee may disclose information from personal knowledge that does not come from the client's interaction with the Department;

(iii) The disclosure is authorized by statute or administrative rule;

(iv) The information informs law enforcement of a death as a result of criminal conduct;

(v) The information constitutes evidence of criminal conduct on Department premises; or

(vi) The disclosure is necessary to protect the client or others, and the client poses a threat to his or her safety or to the safety of others.

(B) Except as provided in section (2)(k)(C) of this rule, the Department may give a client's current address, Social Security number, and photo to a law enforcement officer if the law enforcement officer makes the request in the course of official duty, supplies the client's name, and states that the client:

(i) Is a fugitive felon or is violating parole, probation, or post-prison supervision;

(ii) For all public assistance programs, has information that is necessary for the officer to conduct official duties, and the location or apprehension of the client is within the officer's official duties; or

(iii) For clients only in the Food Stamp program, has information that is necessary to conduct an official investigation of a fugitive felon or person violating parole, probation, or post-prison supervision.

(C) If domestic violence has been identified in the household, the Department may not release information about a victim of domestic violence unless a member of the household is either wanted as a fugitive felon or is violating parole, probation, or post-prison supervision.

(D) For purposes of this subsection, a fugitive felon is a person fleeing to avoid prosecution or custody for a crime, or an attempt to commit a crime, that would be classified as a felony.

(E) For purposes of this section, a law enforcement officer is an employee of the Oregon State Police, a county sheriff's department, or a municipal police department, whose official duties include arrest authority.

(l) Use and disclosure of information about deceased individuals.

(A) The Department may disclose individual information to a coroner or medical examiner for the purpose of identifying a deceased individual, determining cause of death, or other duties authorized by law.

(B) The Department may disclose individual information to funeral directors as needed to carry out their duties regarding the decedent. The Department may also disclose individual information prior to, and in anticipation of, the death.

(m) Organ or tissue donation. The Department may disclose individual information to organ procurement organizations or other entities engaged in procuring, banking, or transplanting cadaver organs, eyes, or tissue for the purpose of facilitating transplantation.

(n) Research. The Department may disclose individual information without authorization for research purposes, as specified in OAR 407-014-0060.

(o) Threat to health or safety. To avert a serious threat to health or safety the Department may disclose individual information if:

(A) The Department believes in good faith that the information is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public; and

(B) The report is to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat.

(p) National security and intelligence. The Department may disclose information to authorized federal officials for lawful intelligence, counterintelligence, and other national security activities.

(q) Correctional institutions and law enforcement custody situations. The Department may disclose information to a correctional institution or a law enforcement official having lawful custody of an inmate or other person, for the limited purpose of providing health care or ensuring the health or safety of the person or other inmates.

(r) Emergency treatment. In case of an emergency, the Department may disclose individual information to the extent needed to provide emergency treatment.

(s) Government entities providing public benefits. The Department may disclose eligibility and other information to governmental entities administering a government program providing public benefits.

(3) Authorization not required if opportunity to object given. The Department may use and disclose an individual's information without authorization if the Department informs the individual in advance and gives the individual an opportunity to either agree or refuse or restrict the use and disclosure.

(a) These disclosures are limited to disclosure of information to a family member, other relative, close personal friend of the individual, or any other person named by the individual, subject to the following limitations:

(A) The Department may disclose only the protected information that directly relates to the person's involvement with the individual's care or payment for care.

(B) The Department may use and disclose protected information for notifying, identifying, or locating a family member, personal representative, or other person responsible for care of the individual, regarding the individual's location, general condition, or death. For individuals who had resided at one time at the state training center, OAR 411-320-0090(6) addresses family reconnection.

(C) If the individual is present for, or available prior to, a use and disclosure, the Department may disclose the protected information if the Department:

(i) Obtains the individual's agreement;

(ii) Provides the individual an opportunity to object to the disclosure, and the individual does not object; or

(iii) Reasonably infers from the circumstances that the individual does not object to the disclosure.

(D) If the individual is not present, or the opportunity to object to the use and disclosure cannot practicably be provided due to the individual's incapacity or an emergency situation, the Department may disclose the information if, using professional judgment, the Department determines that the use and disclosure is in the individual's best interests.

(b) Exception. For individuals referred to or receiving substance abuse treatment, mental health, or vocational rehabilitation services, the Department shall not use or disclose information without written authorization, unless disclosure is otherwise permitted under 42 CFR part 2 or ORS 179.505.

(c) Personal representative. The Department must treat a personal representative as the individual for purposes of these rules, except that:

(A) A personal representative must be authorized under state law to act on behalf of the individual with respect to use and disclosure of information. The Department may require a personal representative to

provide a copy of the documentation authorizing the person to act on behalf of the individual.

(B) The Department may elect not to treat a person as a personal representative of an individual if:

(i) The Department has a reasonable belief that the individual has been or may be subjected to domestic violence, abuse, or neglect by the person;

(ii) The Department, in the exercise of professional judgment, decides that it is not in the best interest of the individual to treat the person as the individual's personal representative.

(4) Redisclosure. The Department must inform the individual that information held by the Department and authorized by the individual for disclosure may be subject to redisclosure and no longer protected by these rules.

(5) Specific written authorization. If the use or disclosure of information requires an authorization, the authorization must specify that the Department may use or disclose vocational rehabilitation records, alcohol and drug records, HIV/AIDS records, genetics information, and mental health or developmental disability records held by publicly funded providers.

(a) Pursuant to federal regulations at 42 CFR part 2 and 34 CFR 361.38, the Department may not make further disclosure of vocational rehabilitation and alcohol and drug rehabilitation information without the specific written authorization of the individual to whom it pertains.

(b) Pursuant to ORS 433.045 and OAR 333-012-0270, the Department may not make further disclosure of individual information pertaining to HIV/AIDS.

(c) Pursuant to ORS 192.531 to 192.549, the Department may not make further disclosure pertaining to genetic information.

(6) Verification of person or entity requesting information. The Department may not disclose information about an individual without first verifying the identity of the person or entity requesting the information, unless the Department workforce member fulfilling the request already knows the person or has already verified identity.

(7) Whistleblowers. The Department may disclose an individual's protected health information under the HIPAA privacy rules under the following circumstances:

(a) The Department workforce member or business associate believes in good faith that the Department has engaged in conduct that is unlawful or that otherwise violates professional standards or Department policy, or that the care, services, or conditions provided by the Department could endanger Department staff, individuals in Department care, or the public; and

(b) The disclosure is to a government oversight agency or public health authority, or an attorney of a Department workforce member or business associate retained for the purpose of determining the legal options of the workforce member or business associate with regard to the conduct alleged under section (7)(a) above; and

(c) Nothing in this rule is intended to interfere with ORS 659A.200 to 659A.224 describing the circumstances applicable to disclosures by Department workforce or business associates.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.010, 433.045
Hist.: OMAP 26-2003, f. 3-31-03 cert. ef. 4-1-03; Renumbered from 410-014-0020 by DHSD 5-2009, f. & cert. ef. 7-1-09

407-014-0030
Client Privacy Rights

(1) Rights of clients to access their information. Clients may access, inspect, and obtain a copy of information on their own cases in Department files or records, consistent with federal and state law.

(a) A client may request access by completing the Access to Records Request form.

(b) Clients may request access to their own information that is kept by the Department by using a personal identifier such as the client's name or Department case number.

(c) If the Department maintains information in a record that includes information about other people, the client may see information only about himself or herself.

(d) If a person identified in the file is a minor child of the client, and the client is authorized under Oregon law to have access to the minor's information or to act on behalf of the minor for making decisions about the minor's care, the client may obtain information about the minor.

(e) If the requestor of information is recognized under Oregon law as a the client's guardian or custodian and is authorized under Oregon law to have access to the client's information or to act on behalf of the client for making decisions about the client's services or care, the Department shall release information to the requestor.

(f) For individuals with disabilities or mental illnesses, the named system in ORS 192.517, to protect and advocate the rights of individuals with developmental disabilities under Part C of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6041 et seq.) and the rights of individuals with mental illness under the Protection and Advocacy for Individuals with Mental Illness Act (42 U.S.C. 10801 et seq.), shall have access to all records defined in ORS 192.515.

(g) The Department may deny a client's access to their own PHI if federal law prohibits the disclosure. Clients may access, inspect, and obtain a copy of health information on their own case in Department files or records except for the following:

(A) Psychotherapy notes;

(B) Information compiled in reasonable anticipation of, or for use in civil, criminal, or administrative proceedings;

(C) Information that is subject to the federal Clinical Labs Improvement Amendments of 1988, or exempt pursuant to 42 CFR 493.3(a)(2);

(D) Information that the Department believes, in good faith, can cause harm to the client, participant, or to any other person; and

(E) Documents protected by attorney work-product privilege.

(h) The Department may deny a client access to information that was obtained under a promise of confidentiality from a person other than a health care provider to the extent that access would reveal the source of the information.

(i) The Department may deny a client access to information, if the Department gives the client a right to have the denial reviewed when:

(A) A licensed health care professional (for health information) or other designated staff (for other information) has determined, in the exercise of professional judgment, that the information requested may endanger the life or physical safety of the client or another person;

(B) The information makes reference to another person, and a licensed health care professional (for health information) or other designated staff (for other information) has determined, in the exercise of professional judgment, that the information requested may cause substantial harm to the client or to another person; or

(C) The request for access is made by the client's personal representative, and a licensed health care professional (for health information) or other designated staff (for other information) has determined, in the exercise of professional judgment, that allowing the personal representative access to the information may cause substantial harm to the client or to another person.

(j) If the Department denies access under section (1)(i) of this rule, the client may have the decision reviewed by a licensed health care professional (for health information) or other designated staff (for other information) not directly involved in making the original denial decision.

(A) The Department must promptly refer a client's request for review to the designated reviewer.

(B) The reviewer must determine, within the 30 or 60-day time limits stated in section (1)(k)(A) and (B) of this rule, whether to approve or deny the client's request for access.

(C) Based on the reviewer's decision, the Department shall:

(i) Promptly notify the client in writing of the reviewer's determination; and

(ii) If approved, take action to carry out the reviewer's determination.

(k) The Department must act on a client's request for access no later than 30 days after receiving the request, except as provided in this section and in the case of written accounts under ORS 179.505, which must be disclosed within five days.

(A) In cases where the information is not maintained or accessible to the Department on-site, and does not fall under ORS 179.505, the Department must act on the client's request no later than 60 days after receiving the request.

(B) If the Department is unable to act within the 30 or 60-day limits, the Department may extend this time period a maximum of 30 additional days, subject to the following:

(i) The Department must notify the client in writing of the reasons for the delay and the date by which the Department shall act on the request.

(ii) The Department shall use only one 30-day extension.

(l) If the Department grants the client's request, in whole or in part, the Department must inform the client of the access decision and provide the requested access.

(A) If the Department maintains the same information in more than one format or at more than one location, the Department may provide the requested information once.

(B) The Department must provide the requested information in a form or format requested by the client, if readily producible in that form or format. If not readily producible, the Department shall provide the information in a readable hard-copy format or other format as agreed to by the Department and the client.

(C) The Department may provide the client with a summary of the requested information, in lieu of providing access, or may provide an explanation of the information if access has been provided, if:

(i) The client agrees in advance; and

(ii) The client agrees in advance to pay any fees the Department may impose, under section (1)(L)(E) of this rule.

(D) The Department shall arrange with the client for providing the requested access in a time, place, and manner convenient for the client and the Department.

(E) If a client, or legal guardian or custodian, requests a copy, written summary, or explanation of the requested information, the Department may impose a reasonable cost-based fee, limited to the following:

(i) Copying the requested information, including the costs of supplies and the labor of copying;

(ii) Postage; and

(iii) Staff time for preparing an explanation or summary of the requested information.

(m) If the Department denies access, in whole or in part, to the requested information, the Department must:

(A) Give the client access to any other requested client information, after excluding the information to which access is denied; and

(B) Provide the client with a timely written denial. The denial must:

(i) Be provided within the time limits specified in section (1)(k)(A) and (B) of this rule;

(ii) State the basis of the denial in plain language;

(iii) If the Department denies access under section (1)(i) of this rule, explain the client's review rights as specified in section (1)(j) of this rule, including an explanation of how the client may exercise these rights; and

(iv) Provide a description of how the client may file a complaint with the Department, and if the information is PHI, with the United States Department of Health and Human Services (DHHS), Office for Civil Rights, pursuant to section (7) of this rule.

(n) If the Department does not maintain the requested information, in whole or in part, and knows where the information is maintained (such as by a medical provider, insurer, other public agency, private business, or other non-Department entity), the Department must inform the client where to direct the request for access.

(2) Department Notice of Privacy Practices. The Department shall send clients notice about the Department's privacy practices as follows:

(a) The Department shall make available to each client a notice of Department privacy practices that describes the duty of the Department to maintain the privacy of PHI and include a description that clearly informs the client of the types of uses and disclosures the Department is permitted or required to make;

(b) The Department shall provide all clients in direct care settings a notice of Department privacy practices and shall request the client's signature on an acknowledgement of receipt form;

(c) If the Department revises its privacy practices, the Department shall make the revised notice available to all clients;

(d) The Department shall post a copy of the Department's Notice of Privacy Practices for public viewing at each Department worksite and on the Department website; and

(e) The Department shall give a paper copy of the Department's Notice of Privacy Practices to any individual upon request.

(3) Right to request restrictions on uses or disclosures. Clients may request restrictions on the use or disclosure of their information.

(a) The Department may deny the client's request or limit its agreement to a request.

(A) The Department may not agree to restrict uses or disclosures of information if the restriction would adversely affect the quality of the client's care or services.

(B) The Department shall not agree to restrict uses or disclosures of information that would limit or prevent the Department from making or obtaining payment for services.

(b) The Department may not deny a client's request to restrict the sharing of records of alcohol and drug treatment or records relating to vocational rehabilitation services with another Department program.

(c) The Department shall document the client's request, and the reasons for granting or denying the request, in the client's Department case file.

(d) If the client needs emergency treatment and the restricted protected information is needed to provide the treatment, the Department may use or disclose the restricted protected information to a provider, for the limited purpose of providing treatment. However, once the emergency situation subsides the Department shall ask the provider not to redisclose the information.

(e) The Department may terminate its agreement to a restriction if:

(A) The client agrees to or requests the termination in writing;

(B) The client orally requests or agrees to the termination, and the Department documents the oral request or agreement in the client's Department case file; or

(C) With or without the client's agreement, the Department informs the client that the Department is terminating its agreement to the restriction. Information created or received while the restriction was in place shall remain subject to the restriction.

(4) Rights of clients to request to receive information from the Department by alternative means or at alternative locations. The Department must accommodate reasonable requests by clients to receive communications from the Department by alternative means, such as by mail, e-mail, fax, or telephone, and at an alternative location.

(a) The client must specify the preferred alternative means or location.

(b) The client may submit the request for alternative means or locations either orally or in writing.

(A) If the client makes a request in-person, the Department shall document the request and ask for the client's signature.

(B) If the client makes a request by telephone or electronically, the Department shall document the request and verify the identity of the client.

(c) The Department may terminate its agreement to an alternative location or method of communication if:

(A) The client agrees to or requests termination of the alternative location or method of communication in writing or orally. The Department shall document the oral agreement or request in the client's Department case file; or

(B) The Department informs the client that the Department is terminating its agreement to the alternative location or method of communication because the alternative location or method of communication is not effective. The Department may terminate its agreement to communicate at the alternative location or by the alternate method if:

(i) The Department is unable to contact the client at the location or by the method requested; or

(ii) The client fails to respond to payment requests, if applicable.

(5) Right of clients to request amendment of their information. Clients may request that the Department amend information about themselves in Department files.

(a) For all amendment requests, the Department shall have the client complete the approved Department form.

(b) The Department may deny the request or limit its agreement to amend.

(c) The Department must act on the client's request no later than 60 days after receiving the request. If the Department is unable to act within 60 days, the Department may extend this time limit by a maximum of 30 additional days, subject to the following:

(A) The Department must notify the client in writing, within 60 days of receiving the request, of the reasons for the delay and the date by which the Department shall act on the request; and

(B) The Department shall use only one 30-day extension.

(d) The program's medical director, a licensed health care professional designated by the program administrator, or a Department staff person involved in the client's case must review the request and any related documentation prior to making a decision to amend a health or medical record.

(e) A staff person designated by the Department shall review the request and any related documentation prior to making a decision to amend any information that is not a health or medical record.

(f) If the Department grants the request, in whole or in part, the Department shall:

(A) Make the appropriate amendment to the information or records, and document the amendment in the client's Department file or record;

(B) Provide notice to the client that the amendment has been granted, pursuant to the time limits under section (5)(c) of this rule;

(C) Obtain the client's agreement to notify other relevant persons or entities with whom the Department has shared or needs to share the amended information; and

(D) Inform and provide the amendment within a reasonable time to:

(i) Persons named by the client who have received the information and who need the amendment; and

(ii) Persons, including business associates of the Department, that the Department knows have the information that are the subject of the amendment and who may have relied, or could foreseeably rely, on the information to the client's detriment.

(g) The Department may deny the client's request for amendment if:

(A) The Department finds the information to be accurate and complete;

(B) The information was not created by the Department;

(C) The information is not part of Department records; or

(D) The information would not be available for inspection or access by the client, pursuant to section (1)(g) and (h) of this rule.

(h) If the Department denies the amendment request, in whole or in part, the Department must provide the client with a written denial. The denial must:

(A) Be sent within the time limits specified in section (5)(c) of this rule;

(B) State the basis for the denial, in plain language; and

(C) Explain the client's right to submit a written statement disagreeing with the denial and how to file the statement. If the client files a statement:

(i) The Department shall enter the written statement into the client's Department case file;

(ii) The Department may also enter a Department written rebuttal of the client's written statement into the client's Department case file. The Department shall send a copy of any written rebuttal to the client;

(iii) The Department shall include a copy of the statement and any Department written rebuttal with any future disclosures of the relevant information;

(iv) If a client does not submit a written statement of disagreement, the client may ask that if the Department makes any further disclosures of the relevant information that the Department shall also include a copy of the client's original request for amendment and a copy of the Department written denial; and

(v) The Department shall provide information on how the client may file a complaint with the Department and, if the information is PHI, with DHHS, Office for Civil Rights.

(6) Rights of clients to request an accounting of disclosures of PHI. Clients may receive an accounting of disclosures of PHI that the Department has made for any period of time, not to exceed six years, preceding the request date for the accounting.

(a) For all requests for an accounting of disclosures, the client shall complete the authorized Department form (DHS 2096, "Request for Accounting of Disclosures of Health Records").

(b) The right to an accounting of disclosures does not apply when the request is:

(A) Authorized by the client;

(B) Made prior to April 14, 2003;

(C) Made to carry out treatment, payment, or health care operations;

(D) Made to the client;

(E) Made to persons involved in the client's care;

(F) Made as part of a limited data set in accordance with OAR 407-014-0070;

(G) Made for national security or intelligence purposes; or

(H) Made to correctional institutions or law enforcement officials having lawful custody of an inmate.

(c) For each disclosure, the accounting must include:

(A) The date of the disclosure;

(B) The name and address, if known, of the person or entity who received the disclosed information;

(C) A brief description of the information disclosed; and

(D) A brief statement of the purpose of the disclosure that reasonably informs the client of the basis for the disclosure, or, in lieu of a statement, a copy of the client's written request for a disclosure, if any.

(d) If, during the time period covered by the accounting, the Department has made multiple disclosures to the same person or entity for the same purpose, the Department may provide the required information for only the first disclosure. The Department need not list the same identical information for each subsequent disclosure to the same person or entity if the Department adds the following information:

(A) The frequency or number of disclosures made to the same person or entity; and

(B) The date of the most recent disclosure during the time period for which the accounting is requested.

(e) The Department must act on the client's request for an accounting no later than 60 days after receiving the request. If the Department is unable to act within 60 days, the Department may extend this time limit by a maximum of 30 additional days, subject to the following:

(A) The Department must notify the client in writing, within 60 days of receiving the request, of the reasons for the delay and the date by which the Department shall act on the request; and

(B) The Department shall use only one 30-day extension.

(f) The Department shall provide the first requested accounting in any 12-month period without charge. The Department may charge the client a reasonable cost-based fee for each additional accounting requested by the client within the 12-month period following the first request, if the Department:

(A) Informs the client of the fee before proceeding with any additional request; and

(B) Allows the client an opportunity to withdraw or modify the request in order to avoid or reduce the fee.

(g) The Department shall document the information required to be included in an accounting of disclosures, as specified in section (6)(c) of this rule, and retain a copy of the written accounting provided to the client.

(h) The Department shall temporarily suspend a client's right to receive an accounting of disclosures that the Department has made to a health oversight agency or to a law enforcement official, for a length of time specified by the agency or official, if the agency or official provides a written or oral statement to the Department that the accounting would be reasonably likely to impede their activities. If the agency or official makes an oral request, the Department shall:

(A) Document the oral request, including the identity of the agency or official making the request.

(B) Temporarily suspend the client's request to an accounting of disclosures; and

(C) Limit the temporary suspension to no longer than 30 days from the date of the oral request, unless the agency or official submits a written request specifying a longer time period.

(7) Filing a complaint. Clients may file a complaint with the Department or, if the information is PHI, with DHHS, Office for Civil Rights.

(a) Upon request, the Department shall give clients the name and address of the specific person or office of where to submit complaints to DHHS.

(b) The Department shall not intimidate, threaten, coerce, discriminate against, or take any other form of retaliatory action against

any individual filing a complaint or inquiring about how to file a complaint.

(c) The Department may not require clients to waive their rights to file a complaint as a condition of providing treatment, payment, enrollment in a health plan, or eligibility for benefits.

(d) The Department shall designate staff to review and determine action on complaints filed with the Department.

(e) The Department shall document, in the client's Department case file all complaints, the findings from reviewing each complaint, and the Department's actions resulting from the complaint. For each complaint the documentation shall include a description of corrective action that the Department has taken, if any are necessary, or why corrective action is not needed.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.010
Hist.: OMAP 26-2003, f. 3-31-03 cert. ef. 4-1-03; Renumbered from 410-014-0030 by DHSD 5-2009, f. & cert. ef. 7-1-09

407-014-0040
Minimum Necessary Standards

(1) The Department shall limit the use and disclosure of protected information to that which is reasonably necessary to accomplish the intended purpose of the use or disclosure which is referred to in these rules as the minimum necessary standard.

(2) This minimum necessary standard is not intended to impede the essential Department activities of treatment, payment, health care operations, or service delivery.

(3) The minimum necessary standard applies:

(a) When using protected information within the Department;

(b) When disclosing protected information to a third party in response to a request; or

(c) When requesting protected information from another covered entity.

(4) The minimum necessary standard does not apply to:

(a) Disclosures to or requests by a health care provider for treatment;

(b) Disclosures made to the individual, including disclosures made in response to a request for access or an accounting;

(c) Disclosures made with a valid authorization;

(d) Disclosures made to DHHS for the purposes of compliance and enforcement of federal regulations under 45 CFR part 160 and required for compliance with 45 CFR part 164; or

(e) Uses and disclosures required by law;

(5) When requesting protected information about an individual from another entity, the Department shall limit requests to those that are reasonably necessary to accomplish the purposes for which the request is made. The Department shall not request a person's entire medical record unless the Department can specifically justify the need for the entire medical record.

Stat. Auth.: ORS 409.050
Stats. Implemented: 409.010
Hist.: OMAP 26-2003, f. 3-31-03 cert. ef. 4-1-03; Renumbered from 410-014-0040 by DHSD 5-2009, f. & cert. ef. 7-1-09

407-014-0050
Business Associate

(1) The Department may disclose an individual's PHI to a business associate, and may allow a business associate to create or receive an individual's PHI on behalf of the Department if the Department and the business associate first enter into a contract that complies with applicable federal and state law. In some limited circumstances, the Department may determine that the Department is a business associate of a covered entity. A business associate relationship with the Department requires additional contractual disclosure and privacy provisions that must be incorporated into the contract pursuant to 45 CFR part 164-504(e)(1)

(2) A contract with a business associate must comply with OAR 125-055-0100 to 125-055-0130 and the qualified service organization requirements in 42 CFR part 2.11.

Stat. Auth.: ORS 409.050
Stats. Implemented: 409.010
Hist.: OMAP 26-2003, f. 3-31-03 cert. ef. 4-1-03; Renumbered from 410-014-0050 by DHSD 5-2009, f. & cert. ef. 7-1-09

407-014-0060
Uses and Disclosures of Protected Information for Research Purposes

The Department may use and disclose an individual's information for research purposes as specified in this rule.

(1) All research disclosures are subject to applicable requirements of federal and state laws and rules including but not limited to 45 CFR part 46 and 21 CFR part 50.0 to 50.56, relating to the protection of human research subjects.

(2) The Department may use and disclose de-identified information or a limited data set for research purposes, pursuant to OAR 407-014-0070.

(3) The Department may use and disclose information regarding an individual for research purposes with the specific written authorization of the individual. The authorization must meet all requirements in OAR 407-014-0030, and may indicate an expiration date with terms such as "end of research study" or similar language. An authorization for use and disclosure for a research study may be combined with other types of written authorization for the same research study. If research includes treatment, the researcher may require an authorization for use and disclosure for the research as a provision of providing research related treatment.

(4) Notwithstanding section (3) of this rule, the Department may use and disclose an individual's information for research purposes without the individual's written authorization, regardless of the source of funding for the research, provided that:

(a) The Department obtains documentation that a waiver of an individual's authorization for release of information requirements has been approved by an IRB registered with the Office for Human Research Protection. Documentation required of an IRB when granting approval of a waiver of an individual's authorization for release of information must include all criteria specified in 45 CFR part 164.512(i)(2).

(b) A researcher may request access to individual information maintained by the Department in preparation for research or to facilitate the development of a research protocol in anticipation of research. The Department may determine whether to permit such use or disclosure, without individual authorization or use of an IRB, pursuant to 45 CFR part 164.512(i)(1)(ii).

(c) A researcher may request access to individual information maintained by the Department about deceased individuals. The Department may determine whether to permit such use or disclosure of information about decedents, without individual authorization or use of an IRB, pursuant to 45 CFR part 164.512(i)(1)(iii).

(5) The Department, as a public health authority, may obtain and use individual information without authorization for the purpose of preventing injury or controlling disease and for the conduct of public health surveillance, investigations, and interventions. The Department may also collect, use, or disclose information, without individual authorization, to the extent that the collection, use, or disclosure is required by law. When the Department uses information to conduct studies as a public health authority, no additional individual authorization is required nor does this rule require an IRB or privacy board waiver of authorization based on the HIPAA privacy rules.

(6) The Department may use and disclose information without individual authorization for studies and data analysis conducted for the Department's own quality assurance purposes or to comply with reporting requirements applicable to federal or state funding requirements in accordance with the definition of "Health Care Operations" in 45 CFR part 164.501.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.010
Hist.: OMAP 26-2003, f. 3-31-03 cert. ef. 4-1-03; Renumbered from 410-014-0060 by DHSD 5-2009, f. & cert. ef. 7-1-09

407-014-0070
De-identification of Client Information and Use of Limited Data Sets under Data Use Agreements

(1) The Department may use and disclose information as appropriate for the work of the Department, without further restriction, if the Department or another entity has taken steps to de-identify the information pursuant to 45 CFR part 164.514(a) and (b).

(2) The Department may assign a code or other means of record identification to allow the Department to re-identify the de-identified information provided that:

(a) The code or other means of record identification is not derived from or related to information about the individual and cannot otherwise be translated to identify the individual; and,

(b) The Department does not use or disclose the code or other means of record identification for any other purpose, and does not disclose the mechanism for re-identification.

(3) The Department may use and disclose a limited data set if the Department enters into a data use agreement with an entity requesting or providing the Department with a limited data set subject to the requirements of 45 CFR part 164.514(e).

(a) The Department may use and disclose a limited data set only for the purposes of research, public health, or health care operations. The Department may use limited data set for its own activities or operations if the Department has obtained a limited data set that is subject to a data use agreement.

(b) If the Department knows of a pattern of activity or practice of a limited data set recipient that constitutes a material breach or violation of a data use agreement, the Department shall take reasonable steps to cure the breach or end the violation. If such steps are unsuccessful, the Department shall discontinue disclosure of information to the recipient and report the problem to the Secretary of DHHS.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.010
Hist.: OMAP 26-2003, f. 3-31-03 cert. ef. 4-1-03; Renumbered from 410-014-0070 by DHSD 5-2009, f. & cert. ef. 7-1-09

Confidentiality and Mediation Communications

407-014-0200
Confidentiality and Inadmissibility of Mediation Communications

(1) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.

(2) Nothing in this rule affects any confidentiality created by other law. Nothing in this rule relieves a public body from complying with the Public Meetings Law, ORS 192.610 to 192.690. Whether or not they are confidential under this or other rules of the agency, mediation communications are exempt from disclosure under the Public Records Law to the extent provided in ORS 192.410 to 192.505.

(3) This rule applies only to mediations in which the agency is a party or is mediating a dispute as to which the agency has regulatory authority. This rule does not apply when the agency is acting as the "mediator" in a matter in which the agency also is a party as defined in ORS 36.234.

(4) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in ORS 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) Mediations Excluded. Sections (6)–(10) of this rule do not apply to:

(a) Mediation of workplace interpersonal disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials, unless a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed; or

(b) Mediation in which the person acting as the mediator will also act as the hearings officer in a contested case involving some or all of the same matters;

(c) Mediation in which the only parties are public bodies;

(d) Mediation involving two or more public bodies and a private party if the laws, rule or policies governing mediation confidentiality for at least one of the public bodies provide that mediation communications in the mediation are not confidential;

(e) Mediation involving 15 or more parties if the agency has designated that another mediation confidentiality rule adopted by the agency may apply to that mediation.

(6) Disclosures by Mediator. A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:

(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c)–(d), (j)–(l) or (o)–(p) of section (9) of this rule; or

(c) The mediation communication includes information related to the health or safety of any child, then the mediation communication may be disclosed and may be admitted into evidence in a subsequent proceeding to the extent the disclosure is necessary to prevent or mitigate a threat or danger to the health or safety of any child.

(d) The mediation communication includes information relating to suffering by or commission of abuse upon certain persons and that information would otherwise be required to be reported by a public or private official under the provisions of ORS 124.060 (person 65 years of age or older), 430.765 (1) and (2) (person who is mentally ill or developmentally disabled who is 18 years of age or older and receives services from a community program or facility) or 441.640 (person who is a resident in a long-term care facility), in which case that portion of the mediation communication may be disclosed as required by statute.

(7) Confidentiality and Inadmissibility of Mediation Communications. Except as provided in sections (8)-(9) of this rule, mediation communications are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced as evidence by the parties or the mediator in any subsequent proceeding.

(8) Written Agreement. Section (7) of this rule does not apply to a mediation unless the parties to the mediation agree in writing, as provided in this section, that the mediation communications in the mediation will be confidential and/or nondiscoverable and inadmissible. If the mediator is the employee of and acting on behalf of a state agency, the mediator or an authorized agency representative must also sign the agreement. The parties' agreement to participate in a confidential mediation must be in substantially the following form. This form may be used separately or incorporated into an "agreement to mediate." [Form not included. See ED. NOTE.]

(9) Exceptions to confidentiality and inadmissibility.

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(d) Any mediation communication related to the conduct of a licensed professional that is made to or in the presence of a person who, as a condition of his or her professional license, is obligated to report such communication by law or court rule is not confidential and may be disclosed to the extent necessary to make such a report.

(e) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.

(f) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.

(g) An employee of the agency may disclose confidential mediation communications to another agency employee so long as the dis-

closure is necessary to conduct authorized activities of the agency. An employee receiving a confidential mediation communication under this subsection is bound by the same confidentiality requirements as apply to the parties to the mediation.

(h) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.

(i) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.

(j) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.

(k) When a mediation is conducted as part of the negotiation of a collective bargaining agreement, the following mediation communications are not confidential and such communications may be introduced into evidence in a subsequent administrative, judicial or arbitration proceeding:

(A) A request for mediation; or

(B) A communication from the Employment Relations Board Conciliation Service establishing the time and place of mediation; or

(C) A final offer submitted by the parties to the mediator pursuant to ORS 243.712; or

(D) A strike notice submitted to the Employment Relations Board.

(l) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.

(m) Written mediation communications prepared by or for the agency or its attorney are not confidential and may be disclosed and may be introduced as evidence in any subsequent administrative, judicial or arbitration proceeding to the extent the communication does not contain confidential information from the mediator or another party, except for those written mediation communications that are:

(A) Attorney-client privileged communications so long as they have been disclosed to no one other than the mediator in the course of the mediation or to persons as to whom disclosure of the communication would not waive the privilege; or

(B) Attorney work product prepared in anticipation of litigation or for trial; or

(C) Prepared exclusively for the mediator or in a caucus session and not given to another party in the mediation other than a state agency; or

(D) Prepared in response to the written request of the mediator for specific documents or information and given to another party in the mediation; or

(E) Settlement concepts or proposals, shared with the mediator or other parties.

(n) A mediation communication made to the agency may be disclosed and may be admitted into evidence to the extent the Agency Director, Division Administrator or designee determines that disclosure of the communication is necessary to prevent or mitigate a serious danger to the public's health or safety, and the communication is not otherwise confidential or privileged under state or federal law.

(o) The terms of any mediation agreement are not confidential and may be introduced as evidence in a subsequent proceeding, except to the extent the terms of the agreement are exempt from disclosure under ORS 192.410 to 192.505, a court has ordered the terms to be confidential under ORS 17.095 or state or federal law requires the terms to be confidential.

(p) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).

(q) The mediation communication may be disclosed and may be admitted into evidence in a subsequent proceeding to the extent the disclosure is necessary to prevent or mitigate a threat or danger to the health or safety of any child or person 65 years of age or older, person who is mentally ill or developmentally disabled and receives services from a community program or facility as defined in ORS 430.735 or person who is a resident of a long-term care facility.

(10) When a mediation is subject to section (7) of this rule, the agency will provide to all parties to the mediation and the mediator a copy of this rule or a citation to the rule and an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

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

Stat. Authority: ORS 409.050

Stats. Implemented: ORS 36.224, 36.228, 36.230, 36.232 & 36.234

Hist.: OMAP 8-1999, f. & cert. ef. 3-1-99; Renumbered from 410-006-0011, DHSD 6-2007, f. 6-29-07, cert. ef. 7-1-07

407-014-0205

Confidentiality and Inadmissibility of Workplace Interpersonal Dispute Mediation Communications

(1) This rule applies to workplace interpersonal disputes, which are disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials. This rule does not apply to disputes involving the negotiation of labor contracts or matters about which a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed.

(2) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.

(3) Nothing in this rule affects any confidentiality created by other law.

(4) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in ORS 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) Disclosures by Mediator. A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:

(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c) or (h)–(j) of section (7) of this rule; or

(c) The mediation communication includes information related to the health or safety of any child, then the mediation communication may be disclosed and may be admitted into evidence in a subsequent proceeding to the extent the disclosure is necessary to prevent or mitigate a threat or danger to the health or safety of any child.

(d) The mediation communication includes information relating to suffering by or commission of abuse upon certain persons and that information would otherwise be required to be reported by a public or private official under the provisions of ORS 124.060 (person 65 years of age or older), 430.765 (1) and (2) (person who is mentally ill or developmentally disabled who is 18 years of age or older and receives services from a community program or facility) or 441.640 (person who is a resident in a long-term care facility), in which case that portion of the mediation communication may be disclosed as required by statute.

(6) Confidentiality and Inadmissibility of Mediation Communications. Except as provided in section (7) of this rule, mediation communications in mediations involving workplace interpersonal disputes are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced into evidence by the parties or the mediator in any subsequent proceeding so long as:

(a) The parties to the mediation and the agency have agreed in writing to the confidentiality of the mediation; and

(b) The person agreeing to the confidentiality of the mediation on behalf of the agency:

(A) Is neither a party to the dispute nor the mediator; and

(B) Is designated by the agency to authorize confidentiality for the mediation; and

(C) Is at the same or higher level in the agency than any of the parties to the mediation or who is a person with responsibility for human resources or personnel matters in the agency, unless the agency head or member of the governing board is one of the persons involved in the interpersonal dispute, in which case the Governor or the Governor's designee.

(7) Exceptions to confidentiality and inadmissibility.

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(d) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.

(e) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.

(f) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.

(g) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.

(h) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.

(i) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.

(j) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).

(k) The mediation communication may be disclosed and may be admitted into evidence in a subsequent proceeding to the extent the disclosure is necessary to prevent or mitigate a threat or danger to the health or safety of any child or person 65 years of age or older, person who is mentally ill or developmentally disabled and receives services from a community program or facility as defined in ORS 430.735 or person who is a resident of a long-term care facility.

(7) The terms of any agreement arising out of the mediation of a workplace interpersonal dispute are confidential so long as the parties and the agency so agree in writing. Any term of an agreement that requires an expenditure of public funds, other than expenditures of $1,000 or less for employee training, employee counseling or purchases of equipment that remain the property of the agency, may not be made confidential.

(8) When a mediation is subject to section (6) of this rule, the agency will provide to all parties to the mediation and to the mediator a copy of this rule or an explanation of where a copy may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

Stat. Authority: ORS 409.050
Stats. Implemented: ORS 36.224, 36.228, 36.230, 36.232 & 36.234
Hist.: OMAP 8-1999, f. & cert. ef. 3-1-99; Renumbered from 410-006-0021, DHSD 6-2007, f. 6-29-07, cert. ef. 7-1-07

Access Control

407-014-0300
Scope

These rules (OAR 407-014-0300 through 407-014-0320) apply to an entity or individual seeking or receiving access to Department information assets or network and information systems for the purpose of carrying out a business transaction between the Department and the user.

(1) These rules are intended to complement, and not supersede, access control or security requirements in the Department's Electronic Data Transmission rules, OAR 407-120-0100 to 407-120-0200, and whichever rule is more specific shall control.

(2) The confidentiality of specific information and the conditions for use and disclosure of specific information are governed by other laws and rules, including but not limited to the Department's rules for the privacy of protected information, OAR 410-014-0000 to 410-014-0070.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 182.122
Hist.: DHSD 14-2007, f. 12-31-07, cert. ef. 1-1-08

407-014-0305
Definitions

For purpose of these rules, the following terms have definitions set forth below. All other terms not defined in this section shall have the meaning used in the Health Insurance Portability and Accountability Act (HIPAA) security rules found at 45 CFR § 164.304:

(1) "Access" means the ability or the means necessary to read, communicate, or otherwise use any Department information asset.

(2) "Access Control Process" means Department forms and processes used to authorize a user, identify their job assignment, and determine the required access.

(3) "Client Records" means any client, applicant, or participant information regardless of the media or source, provided by the Department to the user, or exchanged between the Department and the user.

(4) "Department" means the Department of Human Services.

(5) "Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of any network and information system or Department information asset including, but not limited to unauthorized disclosure of information; failure to protect user's identification (ID) provided by the Department; or, theft of computer equipment that uses or stores any Department information asset.

(6) "Information Asset" means any information, also known as data, provided through the Department, regardless of the source or media, which requires measures for security and privacy of the information.

(7) "Network and Information System" means the State of Oregon's computer infrastructure, which provides personal communications, client records, regional, wide area and local area networks, and

the internetworking of various types of networks on behalf of the Department.

(8) "User" means any individual or entity authorized by the Department to access a network and information system or information asset.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 182.122
Hist.: DHSD 14-2007, f. 12-31-07, cert. ef. 1-1-08

407-014-0310
Information Access

The user shall utilize the Department access control process for all requested and approved access. The Department shall notify the user of each approval or denial. When approved, the Department shall provide the user with a unique login identifier to access the network and information system or information asset.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 182.122
Hist.: DHSD 14-2007, f. 12-31-07, cert. ef. 1-1-08

407-014-0315
Security Information Assets

(1) No user shall access an information asset for any purpose other than that specifically authorized by the Department access control process.

(2) Except as specified or approved by the Department, no user shall alter, delete, or destroy any information asset.

(3) The user shall prohibit unauthorized access by their staff, contractors, agents, or others to the network and information systems, or Department information assets, and shall implement safeguards to prevent unauthorized access in accordance with section (4) of this rule.

(4) The user shall develop a security risk management plan. The user shall ensure that the plan includes, at a minimum, the following:

(a) Administrative, technical and physical safeguards commonly found in the International Standards Organization 27002: 2005 security standard or National Institute of Standards and Technology (NIST) 800 Series;

(b) Standards established in accordance with HIPAA Security Rules, 45 CFR Parts 160 and 164, applicable to a user regarding the security and privacy of a client record, any information asset, or network and information system;

(c) The user's privacy and security policies;

(d) Controls and safeguards that address the security of equipment and storage of any information asset accessed to prevent inadvertent destruction, disclosure, or loss;

(e) Controls and safeguards that ensure the security of an information asset, regardless of the media, as identified below:

(A) The user keeps Department-assigned access control requirements such as identification of authorized users and access control information (passwords and personal identification numbers (PIN's), in a secure location until access is terminated;

(B) Upon request of the Department, the user makes available all information about the user's use or application of the access controlled network and information system or information asset; and

(C) The user ensures the proper handling, storage, and disposal of any information asset obtained or reproduced, and, when the authorized use of that information ends, is consistent with any applicable record retention requirements.

(f) Existing security plans developed to address other regulatory requirements, such as Sarbanes-Oxley Act of 2002 (PL 107-204), Title V of Gramm Leach Bliley Act of 1999, will be deemed acceptable as long as they address the above requirements.

(5) The Department may request additional information related to user's security measures.

(6) The user must immediately notify the Department when access is no longer required, and immediately cease access to or use of all information assets or network and information systems.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 182.122
Hist.: DHSD 14-2007, f. 12-31-07, cert. ef. 1-1-08

407-014-0320
User Responsibility

The user shall not make any root level changes to any Department or State of Oregon network and information system. The Department recognizes that some application users have root level access to certain functions to allow the user to diagnose problems (such as start-up or shutdown operations, disk layouts, user additions, deletions or modifications, or other operation) that require root privileges. This access does not give the user the right to make any changes normally restricted to root without explicit written permission from the Department.

(1) Use and disclosure of any Department information asset is strictly limited to the minimum information necessary to perform the requested and authorized service.

(2) The user shall have established privacy and security measures that meet or exceed the standards set forth in the Department privacy and information security policies, available from the Department, regarding user's disclosure of an information asset.

(3) The user shall comply with all security and privacy federal and state laws, rules, and regulations applicable to the access granted.

(4) The user shall make the security risk plan available to the Department for review upon request.

(5) The user shall report to the Department all privacy or security incidents by the user that compromise, damage, or cause a loss of protection to the Department information assets or the network and information systems. The incident report shall be made no later than five business days from the date on which the user becomes aware of such incident. The user shall provide the Department a written report to include the results of the incident assessment findings and resolution strategies.

(6) Wrongful use of a network and information system, or wrongful use or disclosure of a Department information asset by the user may cause the immediate suspension or revocation of any access granted, at the sole discretion of the Department without advance notice.

(7) The user shall comply with the Department's request 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.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 182.122
Hist.: DHSD 14-2007, f. 12-31-07, cert. ef. 1-1-08

DIVISION 20

PAIN MANAGEMENT

407-020-0000
Purpose

The Pain Management Commission was established within the Department of Human Services for the purpose of developing pain management educational programs, recommendations and curriculum; representing patient concerns to the Governor and Legislative Assembly; and creating ways to improve pain management in Oregon through research, policy analysis, and model projects. In addition, the Pain Management Commission is charged with developing a specific pain management educational program for required completion by health care professionals under specified Licensing Boards.

Stat. Authority: ORS 409.500, 409.560, 409.570
Stats. Implemented: ORS 409.500 - 409.570
Hist.: DHSD 1-2007, f. & cert. ef. 2-1-07

407-020-0005
Definitions

For the purposes of this Division 407-020, the following definitions apply:

(1) "Commission" means the Oregon Pain Management Commission.

(2) "Licensed health care professionals" means those specifically identified licensees that report to the following Licensing Boards:

(a) Oregon Board of Medical Examiners, which includes: physicians, physician assistants and acupuncturists (with the exception of those listed under OAR chapter 847.677, identified as waived);

(b) Oregon State Board of Nursing, which includes: all registered nurses, licensed practical nurses and nurse practitioners;

(c) Oregon Board of Psychologist Examiners, which includes: all licensed psychologists;

(d) Oregon Board of Chiropractic Examiners, which includes: all licensed chiropractors;

(e) Oregon Board of Naturopathic Examiners, which includes: all licensed naturopathic physicians; and

(f) Oregon Board of Pharmacy, which includes: all licensed pharmacists.

(3) "Curriculum" means a recommended list of educational topics, compiled by the Commission, for medical professionals treating pain.

(4) "Pain management education program" means a specific one-hour web-based program developed by the Commission, in addition to six accredited hours of continuing education in pain management, end of life care or a combination of both.

Stat. Authority: ORS 409.500, 409.560, 409.570
Stats. Implemented: ORS 409.500 - 409.570
Hist.: DHSD 1-2007, f. & cert. ef. 2-1-07

407-020-0010
Commission Positions

(1) The Commission consists of:

(a) Nineteen members — seventeen voting members and two non-voting ex-officio members from the Oregon legislature; and

(b) Members that have experience or a demonstrated interest in pain management issues.

(2) In order to apply for a position on the Commission, an individual must:

(a) Complete a Pain Management Commission Interest Form; and

(b) Submit the interest form to the Pain Management Program within the Department of Human Services.

(3) Voting member appointments to the Commission are:

(a) Made by the Director of the Department of Human Services; and

(b) Subject to compliance with the approved commission bylaws.

(4) Department of Human Services staff participants in Commission meetings and overall operation include the:

(a) Pain Management Coordinator, who works in the Governor's Advocacy Office within the Department of Human Services and serves as staff to the Commission through meeting facilitation, daily organization of Commission business and affairs and other duties as directed by the Commission;

(b) Administrator of Governor's Advocacy Office, who works under the Director's Office within the Department of Human Services and participates in an advisory capacity representing Department of Human Services interests, issues and public policy.

Stat. Authority: ORS 409.500, 409.560, 409.570
Stats. Implemented: ORS 409.500 - 409.570
Hist.: DHSD 1-2007, f. & cert. ef. 2-1-07

407-020-0015
Pain Management Education Program Requirements

(1) Licensed health care professionals must complete a pain management education program in order to improve the care and treatment of individuals with painful conditions. The program includes:

(a) Six accredited hours of continuing education in pain management, end of life care or a combination of both; and

(b) The web-based training offered by the Commission.

(2) The pain management education program is a one time requirement that must be obtained:

(a) Within twenty-four months of January 2, 2006, which would include approved trainings acquired between January 2, 2004 and January 2, 2008; or

(b) Within twenty-four months of the first renewal of the individual's license after January 2, 2006.

Example: If an individual's license expired on December 15, 2005 then again on December 15, 2007, the individual may have obtained training to fulfill this requirement as far back as January 2, 2004 (2)(a) or they may obtain training through December 15, 2009 (2)(b) to comply with this requirement.

(3) For out of state health care professionals obtaining Oregon licensure or newly licensed health care professionals within Oregon, the pain management education program must be completed within 24 months of their first license renewal.

Example: If an individual becomes newly licensed in Oregon on June 15, 2009, their first renewal will be June 15, 2011. The individual may obtain their training from June 15, 2009 through June 15, 2013 (2)(b) to comply with this requirement.

(4) If the licensing board for a licensed health care professional adopts, by rule, a pain management education program with topics substantially similar to the topics in the Commission's curriculum, that program satisfies this rule for the continuing education portion of the requirement, as long as the total number of hours is the same.

(5) The Commission shall update its curriculum every two years.

Stat. Authority: ORS 409.500, 409.560, 409.570
Stats. Implemented: ORS 409.500 - 409.570
Hist.: DHSD 1-2007, f. & cert. ef. 2-1-07

DIVISION 30

CLIENT CIVIL RIGHTS

407-030-0010
Purpose

This rule requires Divisions of the Department of Human Services to insure federal civil rights regulations prohibiting discrimination on the basis of race, color, national origin and handicap. It provides authority enabling Divisions of the Department of Human Services to conduct compliance reviews of certain of its grantees, contractors, or providers of services, as required by the United States Department of Health and Human Services (DHHS). Only those Divisions which receive DHHS funds will conduct reviews annually on ten of their grantees, contractors, or providers of services. The compliance reviews will insure that the following federal regulations are being followed:

(1) Title VI, Civil Rights Act of 1964. This act prohibits discrimination on the basis of race, color, and national origin by federal recipients.

(2) Section 504, Rehabilitation Act of 1973. This act prohibits discrimination on the basis of handicap by federal recipients.

Stat. Authority: ORS 409.050, 411.060
Stats. Implemented: ORS 409.050, 411.060
Hist.: HR 5-1979(Temp), f. & ef. 8-1-79; HR 16-1979, f. & ef. 11-19-79; HR 7-1982, f. & ef. 8-26-82; Renumbered from 410-030-0010, DHSD 3-2007, f. & cert. ef. 3-1-07

407-030-0020
Review Requirements

(1) The Assistant Director for each Division shall insure that all reviews for which their Division is responsible are conducted by or with state agency Title VI/504 coordinators or their designees.

(2) Each actual review shall be preceded by written notification to each provider, contractor, or grantee containing:

(a) A statement as to the purpose of the review;

(b) The approximate time of the review; and

(c) A copy of the review document to be used.

(3) Each review shall be conducted and documented by the use of a review form approved by the Department of Health and Human Services and provided by the Department of Human Services.

Stat. Authority: ORS 409.050, 411.060
Stats. Implemented: ORS 409.050, 411.060
Hist.: HR 5-1979(Temp), f. & ef. 8-1-79; HR 16-1979, f. & ef. 11-19-79; HR 7-1982, f. & ef. 8-26-82; Renumbered from 410-030-0020, DHSD 3-2007, f. & cert. ef. 3-1-07

407-030-0030
Implementation

(1) The provider compliance reviews for which each Division is responsible shall be determined by the Department of Human Services and will be issued as Department policy.

(2) The methods of internal administration and coordination shall be determined by Department of Human Services and published as Department policy. The "methods of Administration" will specify the procedures for avoiding duplication of reviews among the divisions of the Department and will define a method for informing the Department of Human Services if similar reviews are being conducted at the same facility by other agencies.

Stat. Authority: ORS 409.050, 411.060
Stats. Implemented: ORS 409.050, 411.060
Hist.: HR 5-1979(Temp), f. & ef. 8-1-79; HR 16-1979, f. & ef. 11-19-79; HR 7-1982, f. & ef. 8-26-82; Renumbered from 410-030-0030, DHSD 3-2007, f. & cert. ef. 3-1-07

407-030-0040
Penalties for Non-Compliance

Following a review, if a provider of services, contractor, or grantee is found not be to be in compliance with Title VI or Section 504 regulations, an agreement will be developed between the review-

ing Division and the provider, contractor, or grantee to assure that compliance occurs. If an agreement with time frames has been reached, compliance has not occurred, and appeal processes have been exhausted, the following will occur:

(1) Providers of Services: The reviewing Division will purchase no further services from the provider and will notify other affected agencies of the action. Service providers may be reinstated after assurance of compliance has been reached.

(2) Contractors and Grantees: The reviewing Division will notify the contractor or grantee that a breach of contract exists or the conditions of the grant have been violated. The grant or contract will be terminated and other affected agencies will be notified. Contractors and grantees may be reinstated after assurance of compliance has been reached.

Stat. Authority: ORS 409.050, 411.060
Stats. Implemented: ORS 409.050, 411.060
Hist.: HR 7-1982, f. & ef. 8-26-82; Renumbered from 410-030-0040, DHSD 3-2007, f. & cert. ef. 3-1-07

DIVISION 35

CONTRACTING AND GRANTS

Access and Effectiveness Health Care Delivery Grant Program

407-035-0000
Scope

These rules (OAR 407-035-0000 to 407-035-0015) establish criteria for awarding grants under the Access and Effectiveness Health Care Delivery grant program which was established to improve access to and the effectiveness of health care delivery for families.

Stat. Auth.: ORS 409.050 & 2008 HB 3626(21)
Stats. Implemented: 2008 HB 3626(21)
Hist.: DHSD 5-2008, f. & cert. ef. 7-1-08

407-035-0005
Program Administration

(1) The Department of Human Services (Department) shall award grants for two projects. One of the two grants must be awarded for a project that predominantly serves a rural area as defined by the Oregon Health and Science University, Office of Rural Health.

(2) The Legislature has appropriated a total of $500,000 to fund two grant projects. Each grant will be awarded for an amount not to exceed $250,000. The grant amount awarded to each project shall be based on submitted proposals and contract negotiations with the Department.

(3) The Northwest Health Foundation (NWHF), in partnership with the Department, shall administer the program, including soliciting, reviewing, and evaluating proposals. NWHF shall also provide project monitoring, technical assistance, and submit periodic status reports to the Department.

(4) Grant funding will be awarded for a two-year period commencing on the date all parties have signed their respective grant contract.

Stat. Auth.: ORS 409.050 & 2008 HB 3626(21)
Stats. Implemented: 2008 HB 3626(21)
Hist.: DHSD 5-2008, f. & cert. ef. 7-1-08

407-035-0010
Grant Award Process

(1) A request for grant proposal will be advertised by NWHF by publication on its web site, e-news, and communication to eligible entities.

(2) All proposals must be submitted by the date specified in the solicitation document.

(3) NWHF will document receipt of all proposals.

(4) Entities must submit a proposal to NWHF. NWHF shall review and evaluate the proposals on behalf of the Department following the requirements provided in the request for grant proposal issued by NWHF. To qualify for a grant, proposers must demonstrate in their proposal that they have the ability to leverage non-state resources given the strengths and limitations of their geographic locations.

(5) NWHF will evaluate and rank all proposals based on the following evaluation criteria:

(a) A brief description of project goals and how the proposer intends to address the program goals, information on methods to be used in which improved access and effective health care delivery for families may be addressed, and how the project will meet the program priorities, with emphasis to statewide applicability and replicability; (100 points)

(b) A proposed work plan, including timeline, deliverables, evaluation outcomes, and budget; (75 points)

(c) Proposer's experience with health care delivery programs and services; (50 points)

(d) A list of staff and their qualifications; (50 points)

(e) An impact description of how the project will affect the cost and quality of and access to health care; (50 points)

(f) A description of how the structure and operation of the entity reflects the interests of and is accountable to the diverse needs of the local community; (50 points); and

(g) A description of how the project will be sustained once grant funding has expired. (50 points)

(6) Projects must also meet the following:

(a) Create incentives for collaborative, community-based organizations to bring diverse stakeholders together to coordinate, communicate, and improve access to health care for local residents of the community; and

(b) Improve health care delivery in the community by providing:

(A) Patient-centered care in which there is a sustained relationship between a patient and culturally competent provider team and that utilizes patient-driven goals and evidence-based practices;

(B) Team-based care that takes advantage of nursing services, including care coordination, school-based health services, home visits, telephone triage, and clinical case management, and that maximizes services during each patient visit;

(C) Coordinated care that links patients to comprehensive services in the community, including specialty care, mental health care, dental care, vision care, and social services;

(D) Provider accessibility through the use of telephone and electronic mail, and the removal of transportation, language, cultural, and other barriers to timely care; and

(E) Collaboration with the community that ensures that health-related interests and services are coordinated, psychosocial services are incorporated, resources are leveraged and maximized, and assessments are conducted on health status, disparities, and effectiveness of services.

(7) NWHF will form a committee consisting of at least four qualified individuals to consider the proposals and create a prioritized list of recommended proposers.

(8) NWHF will make recommendations to the Department to issue grants based on the evaluation.

(9) The Department will consider NWHF recommendations and enter into negotiations with the two highest ranked proposers.

Stat. Auth.: ORS 409.050 & 2008 HB 3626(21)
Stats. Implemented: 2008 HB 3626(21)
Hist.: DHSD 5-2008, f. & cert. ef. 7-1-08

407-035-0015
Program Termination

These rules shall be effective through January 2, 2012.

Stat. Auth.: ORS 409.050, 2008 HB 3626(21)
Stats. Implemented: 2008 HB 3626(21)
Hist.: DHSD 5-2008, f. & cert. ef. 7-1-08

DIVISION 43

OREGON HEALTH AUTHORITY

407-043-0010
Oregon Health Authority Transition Period Roles and Responsibilities

(1) Effective June 26, 2009, 2009 Or. Laws Chapter 595 (House Bill 2009) created the Oregon Health Authority and transferred certain duties, functions, and powers of the Department of Human Services (Department) with respect to health and health care to the Oregon Health Authority. House Bill 2009 also authorized an operational transition period beginning June 26, 2009 and ending no later than June 30, 2011. The transferred subject areas are generally described

in Section 19(1)(a), 2009 Or. Laws Chapter 595 as including but not limited to:

(a) Developing the policies for and the provision of publicly funded medical care and medical assistance in Oregon;

(b) Ensuring the promotion and protection of public health and the licensing of health care facilities;

(c) Developing the policies for and the provision of mental health treatment and treatment for substance use disorders;

(d) Administering the Oregon Prescription Drug Program; and

(e) Establishing responsibility for the Office for Oregon Health Policy and Research and all functions of the office.

(2) The transferred functions described in section (1)(a)–(e) above are generally carried out as currently described in Department rules by the Public Health Division, the Addictions and Mental Health Division, and the Division of Medical Assistance Programs.

(3) Operational transfer of any Department program, business transaction, judicial or administrative proceeding, or any other duty, function, or power transferred to the Oregon Health Authority may occur, in whole or in part, on the date specified by the Oregon Health Authority, but no later than June 30, 2011.

(4) In accordance with OAR 943-001-0010 to 943-001-0015, the Department shall continue to exercise all of the duties, functions, and powers relating to the transfer to the Oregon Health Authority, subject to the supervision and oversight of the Oregon Health Authority, until superseded by operational transfer, either in whole or in part, to the Oregon Health Authority as follows:

(a) All rules shall remain in effect and ongoing rule filing processes may continue.

(b) All program administration, policies, and procedures shall remain in effect and may continue to be developed and implemented.

(c) Any judicial or administrative action, proceeding, contested case hearing, administrative review matter, or new action, proceeding, or matter involving or relating to the Department's duties, functions, or powers transferred to the Oregon Health Authority shall continue under the Department.

(d) All procurements, contracts, grants, or other business transactions shall remain the Department's responsibility.

(e) Rights and obligations legally incurred under contracts, leases, and business transactions shall remain legally valid.

(f) Any taxes, assessments, fees, charges, or any payments due and payable to or reimbursable by the Department relating to the duties, functions, or powers transferred to the Oregon Health Authority shall continue to be paid to or reimbursed by the Department on behalf of the Oregon Health Authority.

(g) Any former statutorily required findings, determinations, or recommendations to be made by the Department shall remain the Department's responsibility.

(h) All filings, notices, or service documents that were formerly mailed, provided to, or served upon the Department relating to the duties, functions, or powers transferred to the Oregon Health Authority shall continue to be made, provided to, or served upon the Department on behalf of the Oregon Health Authority.

(A) Mailing or service of notices or documents on the Department shall be considered notice to the Oregon Health Authority. For example, any notice sent to the Department of Human Services Estate Administration Unit for purposes of ORS 113.145, 114.525, and 130.370 shall be considered notice to the Oregon Health Authority.

(B) If mailed, provided to, or served on the Oregon Health Authority, the filing, notice, or document shall be transmitted to the Department to respond or take such other actions as necessary to protect the state's interests.

(5) Any and all remaining duties, functions, or powers relating to the duties, functions, and powers transferred to the Oregon Health Authority that are not described in section (4) shall continue in effect or be exercised by the Department until superseded by operational transfer, either in whole or in part, to the Oregon Health Authority.

Stat. Auth.: ORS 409.050 & 2009 OL Ch. 595 (HB 2009)
Stats. Implemented: 2009 OL Ch 595 (HB 2009)
Hist.: DHSD 6-2009(Temp), f. & cert. ef. 9-14-09 thru 3-12-10; DHSD 11-2009, f. 12-31-09, cert. ef. 1-1-10

DIVISION 45

OFFICE OF INVESTIGATIONS AND TRAINING

Review of Substantiated Physical Abuse When Self-Defense is Asserted at State Hospitals and Department-Operated Residential Training Homes

407-045-0000
Purpose

The purpose of these rules is to outline procedures for employees to have notice and to request a review of a determination when a physical abuse investigation in a state hospital or Department-operated residential training home results in a "substantiated" determination and the person alleged to be responsible for the abuse indicates their conduct was in self-defense. These rules outline a process to provide review, upon request, by the Human Services Abuse Review Committee (HSARC) of the Department of Human Services (Department). The HSARC makes a recommendation to the Director to change or keep the determination made in the investigation by the Office of Investigations and Training (OIT).

Stat. Auth: ORS 179.040, 409.010, 409.050
Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735 - 430.768
Hist.: DHSD 5-2006, f. & cert. ef. 6-1-06

407-045-0010
Definitions

(1) "Director" means Director of Oregon's Department of Human Services or their designee.

(2) "Department" means the Oregon Department of Human Services.

(3) "Human Services Abuse Review Committee (HSARC)" means a standing group of individuals appointed by the Director, none of whom were involved in the investigation that resulted in the specific OIT substantiated determination under review, and five of whom will be assigned for each state hospital and the Department-operated training homes.

(4) "Legal Finding" means a court finding, guilty plea or guilty verdict which identifies that the person inquiring about or requesting a review was responsible for the abuse or any other offense stemming from the employee's conduct which was the subject of the OIT substantiated determination.

(5) "Notice of OIT Substantiated Determination" means that OIT determined at the conclusion of an investigation of alleged abuse that there is reasonable cause to believe physical abuse occurred; and that there is reasonable cause to believe that a specific person or persons employed by the state hospital or residential training home were responsible for the abuse.

(6) "Notice of Waived Rights for Review" means a written notice that OIT staff will send to a person requesting a review, when OIT has documentation that a person refused to accept delivery of the notice of OIT substantiated determination or that the person accepted the delivery and did not request a review within 30 calendar days, or when there is a legal determination which indicates that the person accused was responsible for the subject abuse.

(7) "OIT" means the Office of Investigations and Training of the Department which performed the investigation of alleged abuse at the state hospitals or residential training home.

(8) "OIT Determination" is a finding that completes an OIT investigation. Determinations are defined in OAR 410-009-0060 as follows:

(a) "Substantiated" means that the evidence supports a conclusion that there is reasonable cause to believe that abuse occurred.

(b) "Not Substantiated" means that the evidence does not support a conclusion that there is reasonable cause to believe that abuse occurred.

(c) "Inconclusive" means that the available evidence does not support a final decision that there was reasonable cause to believe that abuse occurred or did not occur.

(d) OIT must make a finding of not substantiated if OIT finds that:

(A) The person was acting in self-defense in response to the use or imminent use of physical force.

(B) The amount of force used was reasonably necessary to protect the person from violence of assault; and

(C) The person used the least restrictive procedures necessary under the circumstances in accordance with an approved behavior management plan or other method of response approved by the Department.

(9) "Department approved behavior response" includes:

(a) "Oregon Intervention System" or "OIS" means a system of providing training to people who work with designated individuals with developmental disabilities, to provide elements of positive behavior support and non-aversive behavior intervention. The system uses principles of pro-active support and describes approved physical intervention techniques that are used to maintain health and safety.

(b) "Professional Assault Crisis Training Program" or "Pro-Act" means a program designed to provide employees who work with individuals at state hospitals with a systematic approach to intervention during incidents of potential assault. The program is an approach that stresses intervention principles to enable staff to remain safe and minimize the risk of injury to all.

(c) Successor system to OIS or Pro-Act.

(10) "Person requesting review" or "Requestor" means an individual who is identified as the person accused of abuse in an OIT substantiated determination and who requests a review of the determination because the individual believes it was self-defense and not abuse and therefore that the determination is wrong.

(11) "Request for Review by HSARC" means a written request from a person requesting review. The specific requirements for a request for review are described in OAR 407-045-0070.

(12) "Residential Training Home" means State-operated comprehensive 24-hour residential programs licensed by the Department of Human Services under ORS 443.400(7) and (8).

(13) "Self-Defense" means the use of physical force upon another person in self-defense or to defend a third person.

(14) "State Hospital" means Oregon State Hospital and Blue Mountain Recovery Center (Eastern Oregon Psychiatric Center).

Stat. Auth: ORS 179.040, 409.010, 409.050
Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735 - 430.768
Hist.: DHSD 5-2006, f. & cert. ef. 6-1-06

407-045-0020
Department Employee — Application of Departmental Employee Policies

The Department will refer to Departmental employee policies for additional or different requirements for individuals identified as responsible for substantiated abuse who are employees of the Department.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.050
Hist.: DHSD 1-2006, f. & cert. ef. 3-1-06

407-045-0030
Providing Notice of an OIT Substantiated Physical Abuse Determination after the Effective Date of these Rules when Self-Defense was Asserted

When OIT staff determine a person is responsible for substantiated abuse and that person asserted self-defense as an explanation of their conduct, after January 1, 2006, OIT will deliver a notice of substantiated determination along with a copy of the redacted report summary and conclusions to the person identified, in one of the following ways:

(1) By certified mail, restricted delivery, with a return receipt to the last known address; or

(2) By hand delivery; hand-delivered notice must be addressed to the individual, the original is to be signed and dated by the individual to whom it is addressed to acknowledge receipt, and signed by the person delivering the notice. OIT staff will place the document with original signature in the case record.

Stat. Auth: ORS 179.040, 409.010 & 409.050
Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210 & 430.735 - 430.768
Hist.: DHSD 5-2006, f. & cert. ef. 6-1-06

407-045-0040
Information Included in the Notice of an OIT Physical Abuse Substantiated Determination when Self-Defense was Asserted

The notice of an OIT substantiated determination when self-defense is asserted will include all of the following.

(1) The case number assigned to the investigation that resulted in the OIT substantiated determination;

(2) The full name of the individual who has been identified as responsible for the abuse as it is recorded in the case record;

(3) A statement that the OIT determination was recorded as substantiated including a description of the abuse identified and a redacted summary and conclusions of the investigation report;

(4) A statement about the right of the individual to make a request for review of the substantiated determination;

(5) Instructions for making a request for review;

(6) A statement that the person waives the right to request a review if the request for review is not received by OIT within 30 calendar days from the date of receipt of the notice of OIT substantiated determination, as documented by the U.S. Postal Service;

(7) A statement that the HSARC will consider all relevant information including the OIT investigation and determination, and all information provided by the person requesting review in their request for review, and that the HSARC will not: re-interview the alleged victim, interview or meet with the person requesting a review, or others associated with the requestor, or others mentioned in the investigation, or conduct a further investigation of the allegation of abuse; and

(8) A statement that OIT will send the requestor notification of the Director's decision within 60 calendar days of receiving a written request for review.

Stat. Auth: ORS 179.040, 409.010, 409.050
Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735 - 430.768
Hist.: DHSD 5-2006, f. & cert. ef. 6-1-06

407-045-0050
OIT Responsibilities When a Person Inquires About a Review of an OIT Substantiated Physical Abuse Determination when Self-Defense was Asserted

OIT staff will take the following steps when a person inquires about a review of an OIT substantiated physical abuse determination.

(1) OIT staff will record the individual's name and address, and a telephone number when available.

(2) OIT staff will review the records to determine whether:

(a) A notice of an OIT substantiated determination was delivered to the person; or

(b) Whether the person refused delivery.

(3) If OIT staff determine that either the notice was delivered as evidenced by the returned receipt, or that the person refused the delivery as evidenced by the returned receipt, the staff may prepare and deliver a notice of waived rights for review.

(4) If OIT staff determine that the notice was not delivered as evidenced by the returned receipt, the staff will deliver a notice of OIT substantiated determination as outlined in OAR 407-045-0030 and 407-045-0060.

Stat. Auth: ORS 179.040, 409.010, 409.050
Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735 - 430.768
Hist.: DHSD 5-2006, f. & cert. ef. 6-1-06

407-045-0060
Making a Request for a Review of an OIT Substantiated Physical Abuse Determination when Self-Defense was Asserted

(1) A person who meets the criteria outlined in OAR 407-045-0050 may make a written request for review.

(2) A person requesting review will use information found on the notice of OIT substantiated determination to prepare a written request for review. The written request for review must be delivered to OIT within 30 calendar days of the receipt of the notice of OIT substantiated determination and must include the following items:

(a) Date the request for review is written;

(b) Case number (found on the notice of OIT substantiated determination);

(c) Full name of the person identified as responsible in the OIT substantiated determination;

(d) The reason the person is requesting the review and an explanation of why the person believes the OIT substantiated determination is wrong and they believe it was self-defense;

(e) The person's current name (if it has changed from name noted in (c) above);

(f) The person's current street address, city, state, zip code and telephone number; and

(g) The person's signature.

Stat. Auth: ORS 179.040, 409.010, 409.050
Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735 - 430.768
Hist.: DHSD 5-2006, f. & cert. ef. 6-1-06

407-045-0070
Determining When Legal Findings Limit or Preclude a Right to Request a Review

(1) When a criminal process is pending, a review is not allowed under this rule until it is determined that no further criminal investigation will occur.

(2) A legal criminal investigation or finding relevant to the substantiated physical abuse determination related to the incident where self-defense was asserted will preclude a person's right to a review.

Stat. Auth: ORS 179.040, 409.010, 409.050
Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735 - 430.768
Hist.: DHSD 5-2006, f. & cert. ef. 6-1-06

407-045-0080
OIT Responsibilities Related to Notice and Review

(1) If an individual asks to review the investigation report, ORS 179.505 (public record law), the Health Insurance Portability and Accountability Act (HIPAA) and OAR 410-009-0130, will govern inspection and copying.

(2) OIT staff will maintain records to demonstrate the following, when applicable:

(a) Whether OIT delivered a notice of OIT substantiated physical abuse determination when self-defense asserted;

(b) Whether or not the notice of OIT substantiated determination was received by the addressee, as evidence by a returned receipt documenting the notice was received, refused, or not received within the 15 calendar day time period as provided by the U.S. Postal Service;

(c) Date a request for review was received; and

(d) When a review was made, whether the notice of the HSARC's decision was received by the person accused or not, as evidenced by a returned receipt documenting the notice was received, refused, or not received within the 15 calendar day time period as provided by the U.S. Postal Service.

(3) The OIT Director or designee will maintain a comprehensive record of the reviews held of OIT substantiated physical abuse determinations when self-defense was asserted. The record will include but is not limited to the date, case number, HSARC's recommendation and the Director's decision.

Stat. Auth: ORS 179.040, 409.010, 409.050
Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735 - 430.768
Hist.: DHSD 5-2006, f. & cert. ef. 6-1-06

407-045-0090
HSARC Review of OIT Substantiated Physical Abuse Determinations when Self-Defense was Asserted

(1) The HSARC must conduct a review within 30 calendar days of OIT's receipt of a request for review of an OIT substantiated physical abuse determination where self-defense was asserted.

(2) If the request for review has been retained as per OAR 407-045-0070 and a criminal finding was not made that would preclude a review, the review must occur within 30 calendar days of OIT's receipt of documentation of the legal proceeding's outcome.

(3) The HSARC will operate as follows:

(a) The HSARC will consider all relevant information including the OIT investigation report and determination, and information provided by the person requesting review. The HSARC will not: re-interview the alleged victim, interview or meet with the person requesting a review, or others associated with the requestor, or others mentioned in the investigation, or conduct a further investigation of the allegation of abuse.

(b) The HSARC will have the authority to recommend changing or maintaining an OIT determination based upon their review;

(c) When reviewing an OIT substantiated physical abuse determination, the HSARC will determine whether there is or is not reasonable cause to believe that abuse occurred and will make a recommendation that the allegation is not substantiated if:

(A) The person was acting in self-defense in response to the use or imminent use of physical force;

(B) The amount of force used was reasonably necessary to protect the person from violence of assault; and

(C) the person used the least restrictive procedures necessary under the circumstances in accordance with an approved behavior management plan or other method of Department approved response by rule.

(d) The HSARC will make their recommendation to the Director of whether the OIT determination should be retained or changed by majority vote of the participating committee members.

(e) The HSARC shall prepare and deliver their written recommendation to the Director within 15 calendar days after conclusion of their review.

Stat. Auth: ORS 179.040, 409.010, 409.050
Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735 - 430.768
Hist.: DHSD 5-2006, f. & cert. ef. 6-1-06

407-045-0100
Providing the HSARC's Recommendation to the Director

The HSARC's recommendation will include the following items:

(1) Whether there is or is not reasonable cause to believe the person requesting the review was responsible for the abuse;

(2) The recommendation of the HSARC about whether the OIT substantiated physical abuse determination should be retained or changed to not substantiated; and

(3) A summary of the information upon which the recommendation was based.

Stat. Auth: ORS 179.040, 409.010, 409.050
Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735 - 430.768
Hist.: DHSD 5-2006, f. & cert. ef. 6-1-06

407-045-0110
Director's Responsibilities Related to Decision and Notice

(1) After receipt of the HSARC recommendation, the Director must make a decision and send written notification of their final decision to OIT within 15 calendar days of their determination.

(2) The decision of the Director is the final agency action.

(3) The Director will deliver a copy of the decision to OIT, and the OIT Director or designee will place the request for review, and a copy of the HSARC's recommendation and Director's decision into the case file. No change will be made in the existing written case record.

(4) OIT will send the Director's decision by certified mail, restricted delivery, with a return receipt requested, to the person requesting review within 15 calendar days of the Director's final decision.

(5) OIT staff will notify the state hospital and residential training program operated by the Department of the decision within 15 calendar days of the Director's decision.

(6) OIT will notify anyone else who received the initial substantiated determination of the Director's decision when there is a change in the determination.

Stat. Auth: ORS 179.040, 409.010, 409.050
Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735 - 430.768
Hist.: DHSD 5-2006, f. & cert. ef. 6-1-06

Abuse Reporting and Protective Services in Community Programs and Community Facilities

407-045-0250
Purpose

These rules, OAR 407-045-0250 to 407-045-0370, prescribe standards and procedures for the investigation of, assessment for, and provision of protective services in community programs and community facilities, and the nature and content of the abuse investigation and protective services report.

Stat. Authority: ORS 179.040 & 409.050
Stats. Implemented: ORS 430.735–430.765, 443.400–443.460, 443.705–443.825
Hist.: MHD 5-1994, f. 8-22-94 & cert. ef. 9-1-94; Renumbered from 309-040-0200, OMAP 87-2004, f. 11-10-04, cert. ef. 12-1-04; Renumbered from 410-009-0050, DHSD 5-2007, f. 6-29-07, cert. ef. 7-1-07; DHSD 3-2009, f. & cert. ef. 5-1-09; DHSD 4-2010, f. & cert. ef. 6-29-10

407-045-0260
Definitions

As used in OAR 407-045-0250 to 407-045-0370, the following definitions apply:

(1) "Abuse of an adult with developmental disabilities" means:

(a) "Abandonment" including desertion or willful forsaking by a person who has assumed responsibility for providing care, when that desertion or forsaking results in harm or places the adult at risk of serious harm.

(b) Death of an adult caused by other than accidental or natural means or occurring in unusual circumstances.

(c) "Financial exploitation" including:

(A) Wrongfully taking the assets, funds, or property belonging to or intended for the use of an adult.

(B) Alarming an adult by conveying a threat to wrongfully take or appropriate money or property of the adult if the adult would reasonably believe that the threat conveyed would be carried out.

(C) Misappropriating, misusing, or transferring without authorization any money from any account held jointly or singly by an adult.

(D) Failing to use the income or assets of an adult effectively for the support and maintenance of the adult. "Effectively" means use of income or assets for the benefit of the adult.

(d) "Involuntary seclusion" means the involuntary seclusion of an adult for the convenience of a caregiver or to discipline the adult. Involuntary seclusion may include placing restrictions on an adult's freedom of movement by restriction to his or her room or a specific area, or restriction from access to ordinarily accessible areas of the facility, residence, or program, unless agreed to by the Individual Support Plan (ISP) team included in an approved Behavior Support Plan (BSP) or included in a brokerage plan's specialized support. Restriction may be permitted on an emergency or short term basis when an adult's presence would pose a risk to health or safety.

(e) "Neglect" including:

(A) Active or passive failure to provide the care, supervision, or services necessary to maintain the physical and mental health of an adult that creates a significant risk of harm or results in actual harm to an adult. Services include but are not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene, or any other services essential to the well-being of the adult

(B) Failure of a caregiver to make a reasonable effort to protect an adult from abuse.

(f) "Physical abuse" means:

(A) Any physical injury by other than accidental means or that appears to be at variance with the explanation given for the injury.

(B) Willful infliction of physical pain or injury.

(C) Physical abuse is presumed to cause physical injury, including pain, to adults otherwise incapable of expressing pain.

(g) "Sexual abuse" including:

(A) Sexual contact with a nonconsenting adult or with an adult considered incapable of consenting to a sexual act under ORS 163.315.

(B) Sexual harassment, sexual exploitation, or inappropriate exposure to sexually explicit material or language including requests for sexual favors. Sexual harassment or exploitation includes but is not limited to any sexual contact or failure to discourage sexual contact between an employee of a community facility or community program, provider, or other caregiver and an adult. For situations other than those involving an employee, provider, or other caregiver and an adult, sexual harassment or exploitation means unwelcome physical sexual contact and other physical conduct directed toward an adult.

(C) Any sexual contact between an employee of a facility or paid caregiver and an adult served by the facility or caregiver. Sexual abuse does not mean consensual sexual contact between an adult and a paid caregiver who is the spouse or partner of the adult.

(D) Any sexual contact that is achieved through force, trickery, threat, or coercion.

(E) Any sexual contact between an adult with a developmental disability and a relative of the person with a developmental disability other than a spouse or partner. "Relative" means a parent, grandparent, children, brother, sister, uncle, aunt, niece, nephew, half brother, half sister, stepparent, or stepchild.

(F) As defined in ORS 163.305, "sexual contact" means any touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party.

(h) "Wrongful restraint" means:

(A) A wrongful use of a physical or chemical restraint, excluding an act of restraint prescribed by a licensed physician, by any adult support team approved plan, or in connection with a court order.

(B) "Wrongful restraint" does not include physical emergency restraint to prevent immediate injury to an adult who is in danger of physically harming himself or herself or others, provided only that the degree of force reasonably necessary for protection is used for the least amount of time necessary.

(i) "Verbal abuse" includes threatening significant physical harm or causing emotional harm to an adult through the use of:

(A) Derogatory or inappropriate names, insults, verbal assaults, profanity, or ridicule.

(B) Harassment, coercion, punishment, deprivation, threats, implied threats, intimidation, humiliation, mental cruelty, or inappropriate sexual comments.

(C) A threat to withhold services or supports, including an implied or direct threat of termination of services. "Services" include but are not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene, or any other services essential to the well-being of an adult.

(D) For purposes of this section, verbal conduct includes but is not limited to the use of oral, written, or gestured communication that is directed to an adult or within their hearing distance, or sight if gestured, regardless of their ability to comprehend. In this circumstance the assessment of the conduct is based on a reasonable person standard.

(E) The emotional harm that can result from verbal abuse may include but is not limited to anguish, distress, or fear.

(j) An adult who in good faith is voluntarily under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner shall for this reason alone not be considered subjected to abuse.

(2) "Abuse of an adult with mental illness" means:

(a) Death of an adult caused by other than accidental or natural means or occurring in unusual circumstances.

(b) "Neglect" including:

(A) Active or passive failure to provide the care, supervision, or services necessary to maintain the physical and mental health of an adult that results in actual harm or significant mental injury to an adult. "Services" include but are not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene, or any other services essential to the well-being of the adult.

(B) Failure of a caregiver to make a reasonable effort to protect an adult from abuse.

(c) "Physical abuse" means:

(A) Any physical injury by other than accidental means or that appears to be at variance with the explanation given for the injury.

(B) Willful infliction of physical pain or injury.

(C) Physical abuse is presumed to cause physical injury, including pain, to adults otherwise incapable of expressing pain.

(d) "Sexual abuse" including:

(A) Sexual contact with a nonconsenting adult or with an adult considered incapable of consenting to a sexual act under ORS 163.315.

(B) Sexual harassment, sexual exploitation, or inappropriate exposure to sexually explicit material or language including requests for sexual favors. Sexual harassment or exploitation includes but is not limited to any sexual contact or failure to discourage sexual contact between an employee of a community facility or community program, provider, or other caregiver and an adult. For situations other than those involving an employee, provider, or other caregiver and an adult, sexual harassment or exploitation means unwelcome physical sexual contact including requests for sexual favors and other physical conduct directed toward an adult.

(C) Any sexual contact between an employee of a facility or paid caregiver and an adult served by the facility or caregiver. Sexual abuse does not mean consensual sexual contact between an adult and a paid caregiver who is the spouse or partner of the adult.

(D) Any sexual contact that is achieved through force, trickery, threat, or coercion.

(E) As defined in ORS 163.305, "sexual contact" means any touching of sexual or other intimate parts of a person or causing such person to touch sexual or other intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party.

(e) For the purpose of section (2) of this rule, the following definitions apply:

(A) "Employee" means an individual who provides a program service or who takes part in a program service and who receives wages, a salary, or is otherwise paid by the program for providing the service.

(B) "Program staff" means an employee or individual who, by contract with the program, provides a service and who has the applicable competencies, qualifications, and certification, required by the

Integrated Services and Supports Rule (ISSR) (OAR 309-032-1500 to 309-032-1565) to provide the service.

(C) "Provider" means a qualified individual or an organizational entity operated by or contractually affiliated with a community mental health program, or contracted directly with the Department of Human Services' (Department) Addictions and Mental Health Division (AMH) for the direct delivery of mental health services and supports.

(D) "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.

(E) In addition to the definitions of abuse in section (2)(a) through (d), abuse also has the following meanings for employees, program staff, providers, and volunteers:

(i) "Abandonment" including desertion or willful forsaking by an individual who has assumed responsibility for providing care when the desertion or forsaking results in harm or places the adult at a risk of serious harm.

(ii) "Financial exploitation" including:

(I) Wrongfully taking the assets, funds, or property belonging to or intended for the use of an adult.

(II) Alarming an adult by conveying a threat to wrongfully take or appropriate money or property of the adult if the adult would reasonably believe that the threat conveyed would be carried out.

(III) Misappropriating, misusing, or transferring without authorization any money from any account held jointly or singly by an adult.

(IV) Failing to use the income or assets of an adult effectively for the support and maintenance of the adult. "Effectively" means use of income or assets for the benefit of the adult.

(iii) "Involuntary Seclusion" means the involuntary seclusion of an adult for the convenience of a caregiver or to discipline the adult. Involuntary seclusion may include placing restrictions on an adult's freedom of movement by restriction to his or her room or a specific area or restriction from access to ordinarily accessible areas of the facility, residence, or program unless agreed to by the treatment plan. Restriction may be permitted on an emergency or short term basis when an adult's presence would pose a risk to health or safety.

(iv) "Neglect" including active or passive failure to provide the care, supervision, or services necessary to maintain the physical and mental health of an adult that creates a significant risk of harm to an adult or results in actual harm or significant mental injury to an adult. Services include but are not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene, or any other services essential to the well-being of the adult.

(v) "Verbal abuse" includes threatening significant physical harm or causing emotional harm to an adult through the use of:

(I) Derogatory or inappropriate names, insults, verbal assaults, profanity, or ridicule.

(II) Harassment, coercion, punishment, deprivation, threats, implied threats, intimidation, humiliation, mental cruelty, or inappropriate sexual comments.

(III) A threat to withhold services or supports, including an implied or direct threat of termination of services. "Services" include but are not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene, or any other services essential to the well-being of an adult.

(IV) For purposes of this section, verbal conduct includes but is not limited to the use of oral, written, or gestured communication that is directed to an adult or within their hearing distance or sight, regardless of their ability to comprehend. In this circumstance the assessment of the conduct is based on a reasonable person standard.

(V) The emotional harm that can result from verbal abuse may include but is not limited to anguish, distress, or fear.

(vi) "Wrongful restraint" means:

(I) A wrongful use of a physical or chemical restraint excluding an act of restraint prescribed by a licensed physician pursuant to OAR 309-033-0730.

(II) Abuse does not include physical emergency restraint to prevent immediate injury to an adult who is in danger of physically harming himself or herself or others, provided that only the degree of force reasonably necessary for protection is used for the least amount of time necessary.

(F) An adult who in good faith is voluntarily under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner shall for this reason alone not be considered subjected to abuse.

(3) "Abuse Investigation and Protective Services Report" means a completed report.

(4) "Adult" means an adult who is 18 years of age or older who:

(a) Has a developmental disability and is currently receiving services from a community program or facility or was previously determined eligible for services as an adult by a community program or facility; or

(b) Has a mental illness and is receiving services from a community program or facility.

(c) Receives services from a community program or facility or care provider which is licensed or certified by or contracts with the Department; and

(d) Is the alleged abuse victim.

(5) "Adult protective services" means the necessary actions taken to prevent abuse or exploitation of an adult, to prevent self-destructive acts, and to safeguard an allegedly abused adult's person, property, or funds.

(6) "Brokerage" or "Support service brokerage" means an entity, or distinct operating unit within an existing entity, that performs the functions listed in OAR 411-340-0120(1)(a) to (g) associated with planning for and implementation of support services for an adult with developmental disabilities.

(7) "Caregiver" means an individual or facility that has assumed responsibility for all or a portion of the care of an adult as a result of a contract or agreement.

(8) "Community facility" means a community residential treatment home or facility, community residential facility, adult foster home, community residential training home or facility, or a facility approved by AMH for acute care services or crisis respite.

(9) "Community program" means the community mental health or developmental disabilities program as established in ORS 430.610 to 430.695.

(10) "Designee" means the community program.

(11) "Department" means the Department of Human Services.

(12) "Inconclusive" means there is insufficient evidence to conclude the alleged abuse occurred or did not occur by a preponderance of the evidence. The inconclusive determination may be used only in the following circumstances:

(a) After diligent efforts have been made, the protective services investigator is unable to locate the person alleged to have committed the abuse, or cannot locate the alleged victim or another individual who might have information critical to the investigation; or

(b) Relevant records or documents are unavailable, or there is conflicting or inconsistent information from witnesses, documents, or records with the result that after the investigation is complete, there is insufficient evidence to support a substantiated or not substantiated conclusion.

(13) "Law enforcement agency" means any city or municipal police department, county sheriff's office, the Oregon State Police, or any district attorney.

(14) "Mandatory reporter" means any public or private official who, while acting in an official capacity, comes in contact with and has reasonable cause to believe that an adult has suffered abuse, or that any individual with whom the official comes in contact while acting in an official capacity has abused an adult. Pursuant to ORS 430.765(2), psychiatrists, psychologists, clergy, and attorneys are not mandatory reporters with regard to information received through communications that are privileged under ORS 40.225 to 20.295.

(15) "Not substantiated" means the preponderance of evidence establishes the alleged abuse did not occur.

(16) "OIT" means the Department's Office of Investigations and Training.

(17) "Provider agency" means an entity licensed or certified to provide services, or which is responsible for the management of services to clients.

(18) "Public or private official" means:

(a) Physician, naturopathic physician, osteopathic physician, psychologist, chiropractor, or podiatrist, including any intern or resident;

(b) Licensed practical nurse, registered nurse, nurse's aide, home health aide, or employee of an in-home health services organization;

(c) Employee of the Department, county health department, community mental health or developmental disabilities program, or private agency contracting with a public body to provide any community mental health services;

(d) Peace officer;

(e) Member of the clergy;

(f) Licensed clinical social worker;

(g) Physical, speech, or occupational therapist;

(h) Information and referral, outreach, or crisis worker;

(i) Attorney;

(j) Firefighter or emergency medical technician; or

(k) Any public official who comes in contact with adults in the performance of the official's duties.

(19) "Substantiated" means that the preponderance of evidence establishes the abuse occurred.

(20) "Unbiased investigation" means an investigation that is conducted by a community program that does not have an actual or potential conflict of interest with the outcome of the investigation.

Stat. Authority: ORS 179.040 & 409.050
Stats. Implemented: ORS 430.735 - 430.765, 443.400 - 443.460 & 443.705 - 443.825
Hist.: MHD 5-1994, f. 8-22-94 & cert. ef. 9-1-94; Renumbered from 309-040-0210, OMAP 87-2004, f. 11-10-04, cert. ef. 12-1-04; Renumbered from 410-009-0060, DHSD 5-2007, f. 6-29-07, cert. ef. 7-1-07; DHSD 3-2009, f. & cert. ef. 5-1-09; DHSD 12-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-29-10; DHSD 4-2010, f. & cert. ef. 6-29-10; DHSD 7-2010(Temp), f. & cert. ef. 8-5-10 thru 1-31-11

407-045-0280
Training for Adults Investigating Reports of Alleged Abuse

(1) The Department shall provide sufficient and timely training and consultation to community programs to ensure that the community program is able to conduct a thorough and unbiased investigation and reach a conclusion about the abuse. Training shall include initial and continuing education of any individual designated to conduct protective services investigations.

(2) The training shall address the cultural and social diversity of the State of Oregon.

Stat. Authority: ORS 179.040 & 409.050
Stats. Implemented: ORS 430.735–430.765, 443.400–443.460, 443.705–443.825
Hist.: OMAP 87-2004, f. 11-10-04, cert. ef. 12-1-04; Renumbered from 410-009-0080, DHSD 5-2007, f. 6-29-07, cert. ef. 7-1-07; DHSD 3-2009, f. & cert. ef. 5-1-09; DHSD 4-2010, f. & cert. ef. 6-29-10

407-045-0290
General Duties of the Community Program and Initial Action on Report of Alleged Abuse

(1) For the purpose of carrying out these rules, community programs are Department designees.

(2) If mandatory reporters have reasonable cause to believe abuse has occurred, the reporter must report the abuse to the community program and to a local law enforcement agency when the reporter believes a crime may have been committed.

(3) Each community program shall designate at least one employee to conduct protective services investigations. Community programs shall require their designated protective services investigators to participate in training and to demonstrate an understanding of investigative core competencies.

(4) If the Department or community program has reasonable cause to believe abuse occurred, it must immediately notify the appropriate public licensing or certifying agency and provide a copy of the abuse investigation and completed protective services report.

(5) If the Department or community program has reasonable cause to believe that an individual licensed or certified by any state agency to provide care has committed abuse, it must immediately notify the appropriate state licensing or certifying agency and provide that agency with a copy of the abuse investigation and completed protective services report.

(6) The Department or community program may share information prior to the completion of the abuse investigation and protective services report if the information is necessary for:

(a) The provision of protective services; or

(b) The function of licensing and certifying agencies or law enforcement agencies.

(7) Each community program must establish an after hours reporting system.

(8) Upon receipt of any report of alleged abuse or upon receipt of a report of a death that may have been caused by other than accidental or natural means, the community program must begin:

(a) Investigation into the nature and cause of the alleged abuse within one working day of receipt of the report to determine if abuse occurred or whether a death was caused by abuse;

(b) Assessment of the need for protective services; and

(c) Provision of protective services, if protective services are needed.

(9) The community program receiving a report alleging abuse must document the information required by ORS 430.743(1) and any additional reported information. The community program must attempt to elicit the following information from the individual making a report:

(a) The name, age, and present location of the adult;

(b) The names and addresses of the adult's programs or facilities responsible for the adult's care;

(c) The nature and extent of the alleged abuse, including any evidence of previous abuse of the adult or evidence of previous abuse by the person alleged to have committed the abuse;

(d) Any information that led the individual making the report to suspect abuse had occurred;

(e) Any information that the individual believes might be helpful in establishing the cause of the abuse and the identity of the person alleged to have committed the abuse; and

(f) The date of the incident.

(10) The community program shall maintain all reports of abuse in a confidential location.

(11) If there is reason to believe a crime has been committed, the community program must contact the law enforcement agency with jurisdiction in the county where the report is made.

(12) If there is reasonable cause to believe that abuse has occurred, the community program must determine if the adult is in danger or in need of immediate protective services and shall provide those services immediately. Under these circumstances, the community program must also advise the provider agency, brokerage, or guardian about the allegation, and must include any information appropriate or necessary for the health, safety, and best interests of the adult in need of protection.

(13) The community program shall immediately, but no later than one working day, notify the Department it has received a report of abuse, in the format provided by the Department.

(14) If the community program determines from the report that there is no reasonable cause to believe abuse occurred, the community program shall notify the provider agency or brokerage within five working days that a protective services investigation shall not commence and explain the reasons for that decision. The community program shall document the notice and maintain a record of all notices.

(15) If the community program determines that a report will be assigned for investigation, the community program must notify the provider agency, brokerage, guardian, and any other individual with responsibility for providing services and protection, unless doing so would compromise the safety, health, or best interests of the adult in need of protection, or would compromise the integrity of the abuse investigation or a criminal investigation. The notice shall include information that the case shall be assigned for investigation, identify the investigator, and provide information regarding how the assigned investigator may be contacted. The notice must be provided within five working days from the date the report was received.

(16) The community program or law enforcement agency shall notify the appropriate medical examiner in cases where the community program or law enforcement agency finds reasonable cause to believe that an adult has died as a result of abuse or where the death occurred under suspicious or unknown circumstances.

Stat. Authority: ORS 179.040 & 409.050
Stats. Implemented: ORS 430.735–430.765, 443.400–443.460, 443.705–443.825
Hist.: MHD 5-1994, f. 8-22-94 & cert. ef. 9-1-94; Renumbered from 309-040-0230, OMAP 87-2004, f. 11-10-04, cert. ef. 12-1-04; Renumbered from 410-009-0090, DHSD 5-2007, f. 6-29-07, cert. ef. 7-1-07; DHSD 3-2009, f. & cert. ef. 5-1-09; DHSD 12-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-29-10; DHSD 4-2010, f. & cert. ef. 6-29-10

407-045-0300
Investigation of Alleged Abuse

(1) Investigation of abuse shall be thorough and unbiased. Community programs may not investigate allegations of abuse made against employees of the community program. Investigations of community program staff shall be conducted by the Department or other community programs not subject to an actual or potential conflict of interest.

(2) In conducting an abuse investigation, the investigator must:

(a) Make in-person contact with the adult;

(b) Interview the adult, witnesses, the person alleged to have committed the abuse, and other individuals who may have knowledge of the facts of the abuse allegation or related circumstances. Interviews must be conducted in-person where practicable. The investigator must attempt to elicit the date of birth for each individual interviewed and shall obtain the date of birth of any person alleged to have committed the alleged abuse;

(c) Review all evidence relevant and material to the complaint; and

(d) Photograph the adult consistent with forensic guidelines, or arrange for the adult to be photographed, to preserve evidence of the alleged abuse and of the adult's physical condition at the time of investigation, unless the adult knowingly refuses.

(3) All records necessary for the investigation shall be available to the community program for inspection and copying. A community facility shall provide community programs access to employees, the adult, and the premises for investigation purposes.

(4) When a law enforcement agency is conducting a criminal investigation of the alleged abuse, the community program shall also perform its own investigation as long as it does not interfere with the law enforcement agency investigation under the following circumstances:

(a) There is potential for action by a licensing or certifying agency;

(b) Timely investigation by law enforcement is not probable; or

(c) The law enforcement agency does not complete a criminal investigation.

(5) When a law enforcement agency is conducting an investigation of the alleged abuse, the community program must communicate and cooperate with the law enforcement agency.

Stat. Authority: ORS 179.040 & 409.050
Stats. Implemented: ORS 430.735–430.765, 443.400–443.460, 443.705–443.825
Hist.: MHD 5-1994, f. 8-22-94 & cert. ef. 9-1-94; Renumbered from 309-040-0240, OMAP 87-2004, f. 11-10-04, cert. ef. 12-1-04; Renumbered from 410-009-0100, DHSD 5-2007, f. 6-29-07, cert. ef. 7-1-07; DHSD 3-2009, f. & cert. ef. 5-1-09; DHSD 4-2010, f. & cert. ef. 6-29-10

407-045-0310
Assessment for and Provision of Protective Services to the Adult

The community program shall ensure that appropriate and necessary protective services are provided to the adult to prevent further abuse and must be undertaken in a manner that is least intrusive to the adult and provide for the greatest degree of independence available within existing resources. Assessment for the provision of protective services may include:

(1) Arranging for the immediate protection of the adult;

(2) Contacting the adult to assess his or her ability to protect his or her own interest or give informed consent;

(3) Determining the ability of the adult to understand the nature of the protective service and his or her willingness to accept services;

(4) Coordinating evaluations to determine or verify the adult's physical and mental status, if necessary;

(5) Assisting in and arranging for appropriate services and alternative living arrangements;

(6) Assisting in or arranging the medical, legal, financial, or other necessary services to prevent further abuse;

(7) Providing advocacy to assure the adult's rights and entitlements are protected; and

(8) Consulting with the community facility, program, brokerage, or others as appropriate in developing recommendations or requirements to prevent further abuse.

Stat. Authority: ORS 179.040 & 409.050
Stats. Implemented: ORS 430.735–430.765, 443.400–443.460, 443.705–443.825
Hist.: MHD 5-1994, f. 8-22-94 & cert. ef. 9-1-94; Renumbered from 309-040-0250, OMAP 87-2004, f. 11-10-04, cert. ef. 12-1-04; Renumbered from 410-009-0110, DHSD 5-2007, f. 6-29-07, cert. ef. 7-1-07; DHSD 3-2009, f. & cert. ef. 5-1-09; DHSD 4-2010, f. & cert. ef. 6-29-10

407-045-0320
Abuse Investigation and Protective Services Report

(1) The Department shall provide abuse investigation and protective services report formats.

(2) Upon completion of the investigation and within 45 calendar days of the date the community program determines a report alleging abuse shall be assigned for investigation, the community programs shall prepare an abuse investigation and protective services report. This 45-day time period does not include an additional five-working day period allowing OIT to review and approve the report. The protective services report shall include:

(a) A statement of the allegations being investigated, including the date, location, and time;

(b) A list of protective services provided to the adult;

(c) An outline of steps taken in the investigation, a list of all witnesses interviewed, and a summary of the information provided by each witness;

(d) A summary of findings and conclusion concerning the allegation of abuse;

(e) A specific finding of "substantiated," "inconclusive," or "not substantiated";

(f) A plan of action necessary to prevent further abuse of the adult;

(g) Any additional corrective action required by the community program and deadlines for completing these actions;

(h) A list of any notices made to licensing or certifying agencies;

(i) The name and title of the individual completing the report; and

(j) The date the report is written.

(3) In cases where, for good cause shown, the protective services investigator cannot complete the report within 45 days, the investigator shall submit a request for time extension to OIT.

(a) An extension may be granted for good cause shown which includes but is not limited to:

(A) When law enforcement is conducting an investigation;

(B) A material party or witness is temporarily unavailable;

(C) New evidence is discovered;

(D) The investigation is complex (e.g. large numbers of witnesses need to be interviewed taking into account scheduling difficulties and limitations, consultation with experts, or a detailed review of records over an extended period of time is required); or

(E) For some other mitigating reason.

(b) When granting an extension, OIT shall consult with the program about the need for an extension and determine the length of the extension as necessary.

(c) The community program shall notify the provider agency, brokerage, and guardian when an extension is granted and advise them of the new report due date.

(4) A copy of the final abuse investigation and protective services report shall be provided to the Department within five working days of the report's completion and approval by OIT.

(5) The community program must provide notice of the outcome of the investigation, or assure that notice is provided to the alleged victim, guardian, provider agency and brokerage, accused person, and to any law enforcement agency which previously received notice of the initial report. Notice of outcome shall be provided to a reporter upon the reporter's request. Notice of outcome must be made within five working days after the date the case is completed and approved by OIT. The community program must document how the notice was provided.

(6) A centralized record of all abuse investigation and protective services reports shall be maintained by community programs for all abuse investigations conducted in their county, and by the Department for all abuse investigations in the state.

Stat. Authority: ORS 179.040 & 409.050
Stats. Implemented: ORS 430.735–430.765, 443.400–443.460, 443.705–443.825
Hist.: MHD 5-1994, f. 8-22-94 & cert. ef. 9-1-94; Renumbered from 309-040-0260, OMAP 87-2004, f. 11-10-04, cert. ef. 12-1-04; Renumbered from 410-009-0120, DHSD 5-2007, f. 6-29-07, cert. ef. 7-1-07; DHSD 3-2009, f. & cert. ef. 5-1-09; DHSD 4-2010, f. & cert. ef. 6-29-10

407-045-0330
Disclosure of the Abuse Investigation and Protective Services Report and Related Documents

(1) Portions of the abuse investigation and protective services report and underlying investigatory documents are confidential and are not available for public inspection. Pursuant to ORS 430.763, names of abuse reporters, witnesses, and the alleged abuse victim are confidential and shall not be available for public inspection. Investigatory documents, including portions of the abuse investigation and protective services report that contains "individually identifiable health information," as that term is defined under ORS 192.519 and 45 CFR160.103, are confidential under federal Health Insurance Portability and Accountability Act (HIPAA) privacy rules, 45 CFR Parts 160 and 164, and ORS 192.520 and 179.505-179.509.

(2) Notwithstanding section (1) of this rule, the Department shall make confidential information available, including any photographs if appropriate, to any law enforcement agency, public agency that licenses or certifies facilities or licenses or certifies the individuals practicing therein, and any public agency providing protective services for the adult. The Department shall make the protective services report and underlying investigatory materials available to any private agency providing protective services for the adult and to the protection and advocacy system designated pursuant to ORS 192.517(1).

(3) Individuals or entities receiving confidential information pursuant to this rule shall maintain the confidentiality of the information and shall not redisclose the confidential information to unauthorized individuals or entities, as required by state or federal law.

(4) The community program shall prepare a redacted version of the final completed abuse investigation report within 10 days after the date of the final report. The redacted report shall not contain any confidential information which is prohibited from disclosure pursuant to state or federal law. The redacted report shall be submitted to the provider agency and brokerage.

(5) The community program shall provide a redacted version of the written report to the public for inspection upon written request.

(6) When the abuse investigation and protective services report is conducted by a community program as the Department's designee, the protective services investigation may be disclosed pursuant to this rule either by the community program or the Department.

Stat. Authority: ORS 179.040 & 409.050
Stats. Implemented: ORS 430.735–430.765, 443.400–443.460, 443.705–443.825
Hist.: MHD 5-1994, f. 8-22-94 & cert. ef. 9-1-94; Renumbered from 309-040-0270, OMAP 87-2004, f. 11-10-04, cert. ef. 12-1-04; Renumbered from 410-009-0130, DHSD 5-2007, f. 6-29-07, cert. ef. 7-1-07; DHSD 3-2009, f. & cert. ef. 5-1-09; DHSD 4-2010, f. & cert. ef. 6-29-10

407-045-0340
Prohibition Against Retaliation

(1) A community facility, community program, or individual shall not retaliate against any individual who reports suspected abuse in good faith, including the adult.

(2) Any community facility, community program, or individual that retaliates against any individual because of a report of suspected abuse shall be liable, according to ORS 430.755, in a private action to that individual for actual damages and, in addition, a civil penalty up to $1,000, notwithstanding any other remedy provided by law.

(3) Any adverse action creates a presumption of retaliation if taken within 90 days of a report of abuse. For purposes of this subsection, "adverse action" means any action taken by a community facility, community program, or individual involved in a report against the individual making the report or against the adult because of the report and includes but is not limited to:

(a) Discharge or transfer from the community facility, except for clinical reasons;

(b) Termination of employment;

(c) Demotion or reduction in remuneration for services; or

(d) Restriction or prohibition of access to the community facility or its residents.

(4) Adverse action may also be evidence of retaliation after 90 days even though the presumption no longer applies.

Stat. Authority: ORS 179.040 & 409.050
Stats. Implemented: ORS 430.735–430.765, 443.400–443.460, 443.705–443.825
Hist.: MHD 5-1994, f. 8-22-94 & cert. ef. 9-1-94; Renumbered from 309-040-0280, OMAP 87-2004, f. 11-10-04, cert. ef. 12-1-04; Renumbered from 410-009-0140, DHSD 5-2007, f. 6-29-07, cert. ef. 7-1-07; DHSD 3-2009, f. & cert. ef. 5-1-09; DHSD 4-2010, f. & cert. ef. 6-29-10

407-045-0350
Immunity of Individuals Making Reports in Good Faith

(1) Any individual who makes a good faith report and who had reasonable grounds for making the report shall have immunity from civil liability with respect to having made the report.

(2) The reporter shall have the same immunity in any judicial proceeding resulting from the report as may be available in that proceeding.

(3) An individual who has personal knowledge that an employee or former employee of the adult was found to have committed abuse is immune from civil liability for the disclosure to a prospective employer of the employee of known facts concerning the abuse.

Stat. Authority: ORS 179.040 & 409.050
Stats. Implemented: ORS 430.735–430.765, 443.400–443.460, 443.705–443.825
Hist.: OMAP 87-2004, f. 11-10-04, cert. ef. 12-1-04; Renumbered from 410-009-0150, DHSD 5-2007, f. 6-29-07, cert. ef. 7-1-07; DHSD 3-2009, f. & cert. ef. 5-1-09; DHSD 12-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-29-10; DHSD 4-2010, f. & cert. ef. 6-29-10

407-045-0360
Department Investigation of Alleged Abuse

(1) If determined necessary or appropriate, the Department may conduct an investigation rather than allow the community program to investigate the alleged abuse or in addition to the investigation by the community program. Under such circumstances, the community program must receive authorization from the Department before conducting any separate investigation.

(2) The community program shall make all records necessary for the investigation available to the Department for inspection and copying. The community facilities and community programs must provide the Department access to employees, the adult, and the premises for investigation purposes.

Stat. Authority: ORS 179.040 & 409.050
Stats. Implemented: ORS 430.735–430.765, 443.400–443.460, 443.705–443.825
Hist.: MHD 5-1994, f. 8-22-94 & cert. ef. 9-1-94; Renumbered from 309-040-0290, OMAP 87-2004, f. 11-10-04, cert. ef. 12-1-04; Renumbered from 410-009-0160, DHSD 5-2007, f. 6-29-07, cert. ef. 7-1-07; DHSD 3-2009, f. & cert. ef. 5-1-09; DHSD 4-2010, f. & cert. ef. 6-29-10

407-045-0370
County Multidisciplinary Teams

(1) The community program must participate in its county Multidisciplinary Team (MDT) to coordinate and collaborate on protective services for the abuse of adults with developmental disabilities or mental illness or both.

(2) All confidential information protected by state and federal law that is shared or obtained by MDT members in the exercise of their duties on the MDT is confidential and may not be further disclosed except as permitted by law.

(3) The community program or OIT shall provide an annual report to the MDT reporting the number of investigated and substantiated allegations of abuse of adults and the number referred to law enforcement in the county.

Stat. Auth.: ORS 179.040 & 409.050
Stats. Implemented: ORS 430.735–430.765, 443.400–443.460, 443.705–443.825
Hist.: DHSD 4-2010, f. & cert. ef. 6-29-10

Abuse of Individuals Living in State Hospitals and Residential Training Centers

407-045-0400
Purpose

Purpose. To establish a policy prohibiting abuse and to define procedures for reporting, investigating, and resolving alleged incidents of abuse of individuals in state hospitals and residential training centers.

Stat. Authority: ORS 179.040, 409.010, 409.050
Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.765
Hist.: MHD 23, f. 8-5-74, ef. 8-25-74; MHD 19-1982(Temp), f. & ef. 9-10-82; MHD 4-1983, f. & ef. 3-4-83, Renumbered from 309-021-0010(1) and (2); MHD 3-1991, f. 6-21-91, cert. ef. 8-15-91; MHD 7-1995, f. 12-27-95, cert. ef. 1-1-96; Renumbered from 309-116-0000, OMAP 60-2005, f. 11-22-05, cert. ef. 1-1-06; Renumbered from 410-011-0000, DHSD 4-2007, f. 6-29-07, cert. ef. 7-1-07

407-045-0410
Definitions

(1) "Abuse" means any act or absence of action by a staff or visitor inconsistent with prescribed treatment and care, that violates the well-being or dignity of the individual.

(2) "Administrator" means the Assistant Department of Human Services Director for Seniors and People with Disabilities and the Office of Mental Health and Addiction Services or their designee.

(3) "Department" means Seniors & People with Disabilities or Office of Mental Health & Addiction Services, organizational units within the Department of Human Services.

(4) "Derogatory" means an expression of a low opinion or a disparaging remark.

(5) "Disrespectful" means lacking regard or concern; or to treat as unworthy or lacking value as a human being.

(6) "Employee" means an individual employed by the state and subject to rules for employee conduct.

(7) "Inconclusive" means the available evidence does not support a final decision that there was reasonable cause to believe that abuse occurred or did not occur.

(8) "Individual" means a person who is receiving services in a residential training center for people with developmental disabilities or at a state hospital for people with mental illness.

(9) "Not Substantiated" means the evidence does not support a conclusion that there is reasonable cause to believe that abuse occurred.

(10) "Office of Investigations and Training (OIT)"means the Department of Human Services office responsible for the investigation of allegations of abuse made at state hospitals and residential training centers.

(11) "Staff" means employees, contractors and their employees, and volunteers.

(12) "Substantiated" means the evidence supports a conclusion that there is reasonable cause to believe that abuse occurred.

(13) "Superintendent" refers to the chief executive officer of a state hospital or residential training center who serves as the designee of the Administrator to receive allegations of abuse concerning individuals and his or her designee.

(14) "Visitor" means all others persons not included as staff who visit the facility for business purposes or to visit individuals or staff.

Stat. Authority: ORS 179.040, 409.010, 409.050

Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.765

MHD 4-1983, f. & ef. 3-4-83, Renumbered from 309-021-0010(3); MHD 18-1985, f. & ef. 12-5-85; MHD 3-1987, f. & ef. 4-9-87; MHD 3-1991, f. 6-21-91, cert. ef. 8-15-91; MHD 7-1995, f. 12-27-95, cert. ef. 1-1-96; Renumbered from 309-116-0010, OMAP 60-2005, f. 11-22-05, cert. ef. 1-1-06; Renumbered from 410-011-0010, DHSD 4-2007, f. 6-29-07, cert. ef. 7-1-07

407-045-0420
General Policy

(1) The Department believes every individual is deserving of safe, respectful and dignified treatment provided in a caring environment. To that end, all employees, volunteers, contractors and their employees, as well as visitors will conduct themselves in such a manner that individuals are free from abuse.

(2) In these rules, the term "abuse" is given a broad definition because of the unique vulnerability of individuals served by the Department. While some examples are listed later in these rules (including specific conduct listed in ORS 430.735(1)), it must be clearly understood that all possible situations cannot be anticipated and each case must be evaluated based on the particular facts available.

Stat. Authority: ORS 179.040, 409.010, 409.050

Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.765

Hist.: MHD 23, f. 8-5-74, ef. 8-25-74; MHD 19-1982(Temp), f. & ef. 9-10-82; MHD 4-1983, f. & ef. 3-4-83, Renumbered from 309-021-0010(4); MHD 3-1987, f. & ef. 4-9-87; MHD 3-1991, f. 6-21-91, cert. ef. 8-15-91; MHD 7-1995, f. 12-27-95, cert. ef. 1-1-96; Renumbered from 309-116-0020, OMAP 60-2005, f. 11-22-05, cert. ef. 1-1-06; Renumbered from 410-011-0020, DHSD 4-2007, f. 6-29-07, cert. ef. 7-1-07

407-045-0430
Policy Regarding Abuse

(1) All forms of abuse are prohibited. Staff, visitors, volunteers, contractors and their employees must continually be aware of the potential for abuse in interactions with individuals.

(2) Listed below are examples of the type of conduct which constitutes abuse. This list of examples is by no means exhaustive and represents general categories of prohibited conduct. Conduct of a like or similar nature is also obviously prohibited. Examples include, but are not limited to:

(a) Physical Abuse: Examples include hitting, kicking, scratching, pinching, choking, spanking, pushing, slapping, twisting of head, arms, or legs, tripping, the use of physical force which is unnecessary or excessive or other physical contact with an individual inconsistent with prescribed treatment or care;

(b) Verbal Abuse: Verbal conduct may be abusive because of either the manner of communicating with or the content of the communication with individuals. Examples include yelling, ridicule, harassment, coercion, threats, intimidation, cursing, foul language or other forms of communication which are derogatory or disrespectful of the individual, or remarks intended to provoke a negative response by the individual;

(c) Abuse by Failure to Act: This includes neglecting the care of the individual resulting in death (including suicide), physical or psychological harm, or a significant risk of harm to the individual either by failing to provide authorized and prescribed treatment or by failing to intervene when an individual needs assistance such as denying food or drink or leaving the individual unattended when staff presence is mandated;

(d) Sexual Abuse: Examples include:

(A) Contact of a sexual nature between staff and individuals;

(B) Failure to discourage sexual advances toward staff by individuals; and

(C) Permitting the sexual exploitation of individuals or use of individual sexual activity for staff entertainment or other improper purpose.

(e) Condoning Abuse: Permitting abusive conduct toward an individual by any other staff, individual, or person; and

(f) Statutory Terms of Abuse: As defined in ORS 430.735: any death caused by other than accidental or natural means; any physical injury caused by other than accidental means, or that appears to be at variance with the explanation given of the injury; willful infliction of physical pain or injury, sexual harassment or exploitation, including but not limited to any sexual contact between an employee of a facility or community program and an adult, and neglect that leads to physical harm or significant mental injury through withholding of services necessary to maintain health and well being.

(3) At times, persons may be required to utilize self-defense. This includes control procedures that are designed to minimize physical injury to the individual or other persons. Employees are expected to use the least restrictive procedures necessary under the circumstances for dealing with an individual's behaviors or defending against an individual's attack. Abuse does not include acts of self-defense or defense of an individual or other person in response to the use or imminent use of physical force provided that only the degree of force reasonably necessary for protection is used. When excessively severe methods of control are used or when any conduct designed as self-defense is carried beyond what is necessary under the circumstances to protect the individual or other persons from further violence or assault, that conduct then becomes abuse.

Stat. Authority: ORS 179.040, 409.010, 409.050

Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.765

MHD 4-1983, f. & ef. 3-4-83, Renumbered from 309-021-0010(5); MHD 3-1987, f. & ef. 4-9-87; MHD 12-1988(Temp), f. & cert. ef. 9-7-88; MHD 1-1989, f. & cert. ef. 2-23-89; MHD 3-1991, f. 6-21-91, cert. ef. 8-15-91; MHD 7-1995, f. 12-27-95, cert. ef. 1-1-96; MHD 2-1996, f. & cert. ef. 1-12-96; Renumbered from 309-116-0015, OMAP 60-2005, f. 11-22-05, cert. ef. 1-1-06; Renumbered from 410-011-0030, DHSD 4-2007, f. 6-29-07, cert. ef. 7-1-07

407-045-0440
Reporting Requirements

(1) Oregon Statute requires mandatory reports and investigations of allegations of abuse of individuals with disabilities. Therefore, any person who has reasonable cause to believe that an incident of abuse has occurred to an individual residing at a state hospital or residential training center will immediately report the incident according to the procedures set forth in the applicable state hospital or residential training center policy on abuse reporting.

(2) Any person participating in good faith in reporting alleged abuse and who has reasonable grounds for reporting has immunity from any civil liability that otherwise might be imposed or incurred based on the reporting or the content of the report under ORS 430.753(1).

(3) The identity of the person reporting alleged abuse is confidential. The Department or OIT will reveal the names of abuse reporters to law enforcement agencies, public agencies who certify or license facilities or persons practicing therein, public agencies providing services to the individuals, private agencies providing protec-

tive services for the individual, and the protection and advocacy system for individuals designated by federal law. The identity of the person reporting alleged abuse may also be disclosed in certain legal proceedings including, but not limited to, Human Resources or other administrative proceedings and criminal prosecution.

Stat. Authority: ORS 179.040, 409.010, 409.050
Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.765
Hist.: MHD 23, f. 8-5-74, ef. 8-25-74; MHD 19-1982(Temp), f. & ef. 9-10-82; MHD 4-1983, f. & ef. 3-4-83, Renumbered from 309-021-0010(5); MHD 3-1991, f. 6-21-91, cert. ef. 8-15-91; MHD 7-1995, f. 12-27-95, cert. ef. 1-1-96; Renumbered from 309-116-0020, OMAP 60-2005, f. 11-22-05, cert. ef. 1-1-06; Renumbered from 410-011-0040, DHSD 4-2007, f. 6-29-07, cert. ef. 7-1-07

407-045-0450
Preliminary Procedures

(1) Once a report of alleged abuse is made, the following steps will be taken to ensure both a proper investigation and appropriate action are taken to ensure that individuals are free from any threat of abuse:

(a) No later than two hours after receipt of the allegation except for circumstances with good cause the Superintendent will notify the Office of Investigations and Training (OIT) of the report of alleged abuse. OIT will determine whether the allegation, if true, would fit within the definition of abuse. This determination will be made in consultation with the Superintendent. The determination must be made within 24 hours of receipt of the report of abuse;

(b) If the allegation is determined to not fit the definition of abuse, the Superintendent may take other appropriate action, such as a referral to Human Resources for review as a performance issue, worksite training, or take other systemic measures to resolve problems identified;

(c) The Superintendent with OIT will further ensure that if the allegation meets the definition of child abuse under ORS 419B.005, or elder abuse under ORS 124.050 it has been reported to the appropriate agency.

(2) Immediately and no later than 24 hours after determining that the allegation comes within the definition of abuse under this policy or other applicable laws, the Superintendent will:

(a) Provide appropriate protective services to the individual that may include arranging for immediate protection of the individual and the provision of appropriate services including medical, legal or other services necessary to prevent further abuse;

(b) Determine with OIT if there is reason to believe that an investigation by an appropriate law enforcement agency is necessary, and if so, request that such agency determine whether there is reason to believe a crime has been committed;

(c) Make a report to any other appropriate agencies, e.g., Children, Adults and Families Division (CAF) (formerly State Office for Services to Children and Families) or Seniors and People with Disabilities Division (SPD) or Addictions and Mental Health Division (AMH).

(d) Promptly notify the legal guardian (of an adjudicated incapacitated individual) of the alleged incident and give an explanation of the procedures that will be used to investigate and resolve the matter; as well as the facility's responsibility to provide appropriate protective services;

(e) Contact the Administrator of the Department if the individual has sustained serious injury.

Stat. Authority: ORS 179.040, 409.010, 409.050
Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.765
Hist.: MHD 7-1995, f. 12-27-95, cert. ef. 1-1-96; Renumbered from 309-116-0030, OMAP 60-2005, f. 11-22-05, cert. ef. 1-1-06; Renumbered from 410-011-0050, DHSD 4-2007, f. 6-29-07, cert. ef. 7-1-07

407-045-0460
Investigation by the Office of Investigations and Training

(1) Investigation of allegations of abuse will be thorough and unbiased. An investigation of the allegation will be conducted by the Office of Investigations and Training (OIT).

(2) OIT will conduct interviews with any party alleging an incident of abuse, the individual allegedly abused, and the person accused. OIT will also include interviews with persons appearing to be involved in or having knowledge of the alleged abuse or surrounding circumstances.

(3) All records necessary for the investigation will be available to OIT for inspection and copying. OIT will collect information which has relevance to the alleged event. This may include, but is not limited to, individual or facility records, statements, diagrams, photographs and videos.

(4) If the facts in the case are disputed and a law enforcement agency does not produce an investigation report, OIT will determine the manner and methods of conducting the investigation.

(5) When a law enforcement agency is conducting a criminal investigation of the alleged abuse, OIT may also perform its own investigation unless OIT is advised by the law enforcement agency that a concurrent OIT investigation would interfere with the criminal investigation.

Stat. Authority: ORS 179.040, 409.010, 409.050
Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.765
Hist.: MHD 7-1995, f. 12-27-95, cert. ef. 1-1-96; MHD 5-1998, f. 6-26-98, cert. ef. 7-1-98; Renumbered from 309-116-0040, OMAP 60-2005, f. 11-22-05, cert. ef. 1-1-06; Renumbered from 410-011-0060, DHSD 4-2007, f. 6-29-07, cert. ef. 7-1-07

407-045-0470
Abuse Investigation Report

(1) OIT will complete its investigation and submit a draft report to the Superintendent within 30 calendar days after initiating an investigation unless other laws or regulations require a shorter time frame. The investigation must be complete within 30 calendar days unless the Administrator grants an extension. The Administrator may grant an extension when a key party is unavailable, new evidence is discovered, the investigation is complex (e.g. large numbers of witnesses need to be interviewed, taking into account scheduling difficulties and limitations, consultation with experts, or a detailed review of records over an extended period of time is required) or for some other mitigating reason. The Administrator will specify the length of the extension.

(2) The Superintendent along with OIT is responsible for reviewing the OIT and/or law enforcement investigation report. The Superintendent and OIT will also review and discuss any other relevant reports or information.

(3) OIT will determine whether the evidence does or does not substantiate the allegation of abuse. In some instances, OIT may determine that the evidence is inconclusive. The determination must be made within 15 calendar days from completion of the draft investigation report, unless a key party is unavailable, additional evidence is discovered, or the Administrator grants an extension for some other mitigating reason. Any determination not made within the 15-day period must be made as soon as reasonably possible thereafter.

(4) Once this review is complete, a final report will be prepared by OIT, which includes:

(a) A statement of the alleged incident being investigated, including the dates(s), location(s) and time(s);

(b) An outline of steps taken in the investigation, a list of all witnesses interviewed and a summary of the information provided by each witness;

(c) A summary of findings and conclusion concerning the allegation of abuse;

(d) A specific finding of substantiated, inconclusive or not substantiated;

(e) A plan of action necessary to prevent further abuse of the individual;

(f) Any additional corrective action required by the hospital or residential training center and deadlines for the completion of these actions;

(g) A list of any notices made to licensing agencies;

(h) The name and title of the person completing the report; and

(i) The date it is written.

(5) If the allegation of abuse is substantiated, the Superintendent will direct that appropriate action be taken against the responsible person commensurate with the seriousness of the conduct and any aggravating or mitigating circumstances, including consideration of previous conduct of record. If Human Resources is involved, as necessary to comply with laws related to employee rights, additional investigation may be conducted.

(6) If the allegations are found to be inconclusive; the Superintendent may request a review by the Human Resources Department to determine the need for any training or disciplinary action, as warranted by the facts and any follow-up investigative work.

(7) The Superintendent will ensure that appropriate documentation exists as to the action taken as a result of an abuse investigation.

(8) The Superintendent will ensure that a copy of the law enforcement investigation report is forwarded to OIT.

Stat. Authority: ORS 179.040, 409.010, 409.050
Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.765
Hist.: MHD 7-1995, f. 12-27-95, cert. ef. 1-1-96; Renumbered from 309-116-0050, OMAP 60-2005, f. 11-22-05, cert. ef. 1-1-06; Renumbered from 410-011-0070, DHSD 4-2007, f. 6-29-07, cert. ef. 7-1-07

407-045-0480
Disclosure of Investigation Report and Related Documents

(1) Investigation Reports prepared by OIT are subject to the following:

(a) Portions of the abuse investigation report and underlying investigatory documents are confidential and not available for public inspection. Pursuant to ORS 430.763, names of persons who make reports of abuse, witnesses, and the alleged abuse victim are confidential and shall not be available for public inspection. Investigatory documents, including portions of the abuse investigation report that contains "Individually identifiable health information", as that term is defined under ORS 192.519 and 45 CFR160.103, are confidential under HIPAA privacy rules, 45 CFR Part 160 and 164, and ORS 192.520 and 179.505 to 509.

(b) Notwithstanding subsection (a) of this rule, the Department and OIT will make the confidential information, including any photographs, available, if appropriate, to any law enforcement agency, to any public agency that licenses or certifies facilities or licenses or certifies the persons practicing therein, and to any public agency providing protective services for the adult. The Department and OIT will also make the protective services report and underlying investigatory materials available to any private agency providing protective services for the adult and to the protection and advocacy system designated pursuant to ORS 192.517(1).

(c) Persons or entities receiving confidential information pursuant to this rule must maintain the confidentiality of the information and may not redisclose the confidential information to unauthorized persons or entities, as required by state or federal law.

(d) When the report is completed, a redacted version of the abuse investigation report not containing any confidential information, the disclosure of which would be prohibited by state or federal law, will be available for public inspection.

(2) The OIT report will be disclosed by OIT or the Superintendent to:

(a) The Administrator of the Department; and

(b) Any person designated by the Superintendent for purposes related to the proper administration of the institution or center such as assessing patterns of abuse or to respond to personnel actions and may be disclosed in the Superintendent's discretion;

(c) The individual involved;

(d) The guardian of an adjudicated incapacitated person; and

(e) The person or persons who allegedly abused the individual.

(3) Copies of all reports will be maintained by the Superintendent in a place separate from personnel files of employees. The chart of the individual allegedly abused must contain a reference to the report sufficient to enable authorized persons to retrieve and review the report.

Stat. Authority: ORS 179.040, 409.010, 409.050
Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.765
Hist.: MHD 7-1995, f. 12-27-95, cert. ef. 1-1-96; Renumbered from 309-116-0060, OMAP 60-2005, f. 11-22-05, cert. ef. 1-1-06; Renumbered from 410-011-0080, DHSD 4-2007, f. 6-29-07, cert. ef. 7-1-07

407-045-0490
Consequences of Abuse

(1) All persons will be subject to appropriate action if found responsible for:

(a) Abusing an individual;

(b) Failing to report an alleged incident of abuse; or

(c) Refusing to give information or giving untruthful information during an investigation of alleged abuse.

(2) Any discipline of an employee as a result of the above-described conduct must be in conformance with any applicable standards contained in state law or in a Collective Bargaining Agreement.

(3) Any employee dismissed for violating the abuse policy will not be rehired in any capacity, nor will the person be permitted to visit or otherwise have contact with individuals in any manner.

(4) Any volunteer found violating the abuse policy may be denied visitation or any other contact with individuals.

(5) Any contractor found violating the abuse policy will be at risk of immediate termination of the contract. Any employee of the contractor found in violation of the abuse policy may be excluded from the grounds and may be subject to appropriate disciplinary action by his or her employer.

(6) Any visitor found in violation of the abuse policy may be excluded from the grounds and will be subject to other appropriate actions as determined by the Superintendent.

(7) Any employee, volunteer, contractor, contractor's employee, or visitor may be subject to criminal prosecution depending on the outcome of any allegation referred to law enforcement for investigation.

(8) Any staff found to have violated the abuse policy will be reported to any appropriate professional licensing or certification boards or associations; and is at risk of sanctions imposed by such a body.

Stat. Authority: ORS 179.040, 409.010, 409.050
Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.765
Hist.: MHD 7-1995, f. 12-27-95, cert. ef. 1-1-96; Renumbered from 309-116-0090, OMAP 60-2005, f. 11-22-05, cert. ef. 1-1-06; Renumbered from 410-011-0090, DHSD 4-2007, f. 6-29-07, cert. ef. 7-1-07

407-045-0500
Notice of Abuse Policy

(1) Each individual must be informed upon admission and his or her guardian, if any, or his or her family will also be informed orally and in writing of the rights, policies, abuse definitions and procedures concerning prohibition of abuse of individuals.

(2) A clear and simple statement of the title and number of this policy and how to seek advice about its content will be prominently displayed in areas frequented by individuals at each state hospital and residential training center.

(3) All staff will be provided a copy of this rule, either at the commencement of their employment, and/or duties, or, for current staff, within 90 days of the effective date of this rule and once a year thereafter. All staff must sign a form acknowledging receipt of this information on the date of receipt.

(4) A summary of this policy will be posted in all state hospitals and residential training centers in areas regularly frequented by visitors and in a manner designed to notify visitors of the policy. Copies of the complete policy will be provided to visitors upon request.

Stat. Authority: ORS 179.040, 409.010, 409.050
Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.765
Hist.: MHD 7-1995, f. 12-27-95, cert. ef. 1-1-96; Renumbered from 309-116-0100, OMAP 60-2005, f. 11-22-05, cert. ef. 1-1-06; Renumbered from 410-011-0100, DHSD 4-2007, f. 6-29-07, cert. ef. 7-1-07

407-045-0510
Retaliation

(1) No state hospital or residential training center staff or other person will retaliate against any person who reports in good faith suspected abuse or against the individual with respect to any report.

(2) Any state hospital or residential training center staff or other person who retaliates against any person because of a report of suspected abuse or neglect will be liable according to ORS 430.755, in a private action to that person for actual damages and, in addition, will be subject to a penalty of up to $1,000, notwithstanding any other remedy provided by law.

Stat. Authority: ORS 179.040, 409.010, 409.050
Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.765
Hist.: MHD 7-1995, f. 12-27-95, cert. ef. 1-1-96; Renumbered from 309-116-0090, OMAP 60-2005, f. 11-22-05, cert. ef. 1-1-06; Renumbered from 410-011-0110, DHSD 4-2007, f. 6-29-07, cert. ef. 7-1-07

407-045-0520
Quality Assurance Review

(1) Each of the State Hospitals and Residential Training Centers will report on critical indicators, identified by the Department; and on quality improvement activities undertaken to improve any identified issues.

(2) These reports must be provided to the Department monthly.

(3) Representatives from each State Hospital or Training Center and OIT will meet quarterly with the Administrators of the Department, or designee. They will regularly review quality indicators and any other Department generated information regarding the abuse and neglect system in State Hospitals and Training Centers.

(4) The Department must make such information part of any quality improvement activities of the Department.

Stat. Authority: ORS 179.040, 409.010, 409.050

Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.765
Hist.: MHD 7-1995, f. 12-27-95, cert. ef. 1-1-96; Renumbered from 309-116-0100, OMAP 60-2005, f. 11-22-05, cert. ef. 1-1-06; Renumbered from 410-011-0120, DHSD 4-2007, f. 6-29-07, cert. ef. 7-1-07

Notice and Review of Substantiated Abuse or Neglect in 24-Hour Residential Care for Children with Developmental Disabilities

407-045-0600
Purpose and Statutory Authority

(1) Purpose. The purpose of these rules is to state procedures for ensuring the rights of individuals to have notice and to request a review to appeal a determination when an abuse or neglect investigation in a 24-hour residential care facility for children with developmental disabilities results in a "substantiated" determination. These rules outline a process to provide review, upon request, by the Office of Developmental Disability Services Review Committee (ODDSRC) of the Mental Health and Developmental Disability Services Division (MHDDSD) of the Department of Human Services. The ODDSRC has the authority to change the determination made in the investigation by the Office of Investigations and Training (OIT).

(2) Statutory Authority. These rules are authorized by ORS 430.041 and carry out the provisions of the Federal Child Abuse Prevention and Treatment Act (CAPTA) which requires child protective service agencies to provide notice to individuals identified as responsible for child abuse or neglect and to provide individuals with an opportunity to request and have a review to appeal a "substantiated" determination.

Stat. Auth.: ORS 430.041
Stats. Implemented: CAPTA & ORS 430.041
Hist.: MHD 14-2000(Temp), f. & cert. ef. 10-26-00 thru 4-23-01; MHD 1-2001, f. 4-9-01, cert. ef. 4-23-01; Renumbered from 309-045-0100, DHSD 9-2007, f. & cert. ef. 10-1-07

407-045-0610
Definitions

For the purposes of these rules, the following words and phrases have these meanings:

(1) "24-Hour Program" means a residential program licensed by the Office of Developmental Disability Services (ODDS) in the Mental Health and Developmental Disability Services Division (MHDDSD) under the 24-hour rule and contracted by MHDDSD to serve children under the age of 18 who have developmental disabilities.

(2) "Legal Finding" means a Court finding, guilty plea or guilty verdict which identifies that the person inquiring about or requesting a review was responsible for the child abuse or neglect or any other offense stemming from the employee's or subcontracting individual's conduct which was the subject of the OIT substantiated determination.

(3) "Notice of Office of Developmental Disability Review Committee Decision" means a written notice of the decision of the ODDSRC. This notice is delivered to the agency or program employee or subcontracting individual identified as responsible for the child abuse or neglect.

(4) "Notice of OIT Substantiated Determination" means that OIT determined at the conclusion of an investigation of alleged child abuse or neglect that there is reasonable cause to believe child abuse or neglect occurred; and, when known, that there is reasonable cause to believe that a specific person or persons employed by the 24-hour residential program or subcontracting with that program were responsible for the child abuse or neglect.

(5) "Notice of Waived Rights for Review" means a written notice that OIT staff may send to a person requesting a review, when OIT has documentation that a person refused to accept delivery of the notice of OIT substantiated determination or that the person accepted the delivery and did not request a review within 30 calendar days, or when there is a legal determination which indicates that the perpetrator was responsible for the subject child abuse or neglect.

(6) "Office of Developmental Disability Services Review Committee" or "ODDSRC" means a group of three MHDDSD employees selected by the ODDS Assistant Administrator or a designee, none of whom were involved in the investigation that resulted in the specific OIT substantiated determination under review.

(7) "OIT" means the Office of Investigations and Training of the Mental Health and Developmental Disability Services Division, which performs investigations of alleged child abuse or neglect where the alleged victim has developmental disabilities and lives in an ODDS licensed 24-hour residential program and the perpetrator is an employee or subcontracting individual of that program.

(8) "OIT Determination" is a finding that completes an OIT investigation. Determinations are defined in OAR 309-045-0160 and summarized as follows:

(a) "Substantiated" means that based on the evidence there is reasonable cause to believe that conduct in violation of the abuse or neglect definitions occurred and such conduct is attributable to the person(s) alleged to have engaged in the conduct.

(b) "Unsubstantiated" means that based on the evidence, it was determined that there is reasonable cause to believe that the alleged incident was not in violation of the definitions of abuse and/or attributable to the person(s) alleged to have engaged in such conduct.

(c) "Inconclusive" means that the matter is not resolved and the available evidence does not support a final decision that there was reasonable cause to believe that abuse or neglect occurred or did not occur.

(9) "Perpetrator" means an individual employee or subcontracting individual identified by OIT as responsible for child abuse or neglect in an OIT substantiated determination.

(10) "Person Requesting Review" or "Requestor" means an individual who is identified as the perpetrator in an OIT substantiated determination and who requests a review of the determination because the individual believes the determination is in error.

(11) "Request for Review by Office of Development Disability Review Committee" means a written request from a person requesting review. The specific requirements for a request for review are described in OAR 309-045-0170.

(12) "Retain a Request for Review" means an ODDS manager or designee determines a request for review will be held until a court legal finding is made. More specific details are described in OAR 309-045-0180.

Stat. Auth.: ORS 430.041
Stats. Implemented: CAPTA & ORS 430.041
Hist.: MHD 14-2000(Temp), f. & cert. ef. 10-26-00 thru 4-23-01; MHD 1-2001, f. 4-9-01, cert. ef. 4-23-01; Renumbered from 309-045-0110, DHSD 9-2007, f. & cert. ef. 10-1-07

407-045-0620
MHDDSD Employee — Application of MHDDSD Employee Policies

When the individual identified as responsible for substantiated child abuse or neglect is an employee of MHDDSD, the Division will refer to MHDDSD employee policies for additional and/or different requirements.

Stat. Auth.: ORS 430.041
Stats. Implemented: CAPTA & ORS 430.041
Hist.: MHD 14-2000(Temp), f. & cert. ef. 10-26-00 thru 4-23-01; MHD 1-2001, f. 4-9-01, cert. ef. 4-23-01; Renumbered from 309-045-0120, DHSD 9-2007, f. & cert. ef. 10-1-07

407-045-0630
Providing Notice of an OIT Substantiated Determination On/After the Effective Date of These Rules (October 26, 2000)

When staff of the Office of Investigations and Training (OIT) determines a person is responsible for substantiated abuse or neglect, on or after the effective date of this rule (October 26, 2000), OIT shall deliver a notice of substantiated determination to the person identified in one of the following ways:

(1) By certified mail, restricted delivery, with a return receipt requested to the last known address; or

(2) By hand delivery; hand-delivered notice must be addressed to the individual, the original is to be signed and dated by the individual to whom it is addressed to acknowledge receipt, and signed by the person delivering the notice. OIT staff shall place the document with original signatures in the case record.

Stat. Auth.: ORS 430.041
Stats. Implemented: CAPTA & ORS 430.041
Hist.: MHD 14-2000(Temp), f. & cert. ef. 10-26-00 thru 4-23-01; MHD 1-2001, f. 4-9-01, cert. ef. 4-23-01; Renumbered from 309-045-0130, DHSD 9-2007, f. & cert. ef. 10-1-07

407-045-0640
Inquiry About a Review of an OIT Substantiated Determination When a Person Believes They Have Not Received a Notice

If a person believes they have not received a notice of OIT substantiated determination, the person may contact OIT to inquire about a review of the determination. OIT will follow the procedures outlined in OAR 309-045-0150 to determine if a review of a determination may be requested.

Stat. Auth.: ORS 430.041
Stats. Implemented: CAPTA & ORS 430.041
Hist.: MHD 14-2000(Temp), f. & cert. ef. 10-26-00 thru 4-23-01; MHD 1-2001, f. 4-9-01, cert. ef. 4-23-01; Renumbered from 309-045-0140, DHSD 9-2007, f. & cert. ef. 10-1-07

407-045-0650
OIT Responsibilities When a Person Inquires About a Review of an OIT Substantiated Determination

OIT staff shall take the following steps when a person inquires about a review of an OIT substantiated determination.

(1) Staff of OIT will record the individual's name and address, and a telephone number when available.

(2) OIT staff shall review the records to determine whether:

(a) A notice of an OIT substantiated determination was delivered to the person; or

(b) Whether the person refused delivery.

(3) If OIT staff determine that either the notice was delivered as evidenced by the returned receipt, or that the person refused the delivery as evidenced by the returned receipt, the staff may prepare and deliver a notice of waived rights for review.

(4) If OIT staff determine that the notice was not delivered as evidenced by the returned receipt, the staff shall deliver a notice of OIT substantiated determination as outlined in OAR 309-045-0130 and 309-045-0160.

Stat. Auth.: ORS 430.041
Stats. Implemented: CAPTA & ORS 430.041
Hist.: MHD 14-2000(Temp), f. & cert. ef. 10-26-00 thru 4-23-01; MHD 1-2001, f. 4-9-01, cert. ef. 4-23-01; Renumbered from 309-045-0150, DHSD 9-2007, f. & cert. ef. 10-1-07

407-045-0660
Information Included in the Notice of an OIT Substantiated Determination

The Notice of an OIT substantiated determination shall include all of the following:

(1) The case number assigned to the investigation that resulted in the OIT substantiated determination;

(2) The full name of the individual who has been identified as responsible for the child abuse or neglect as it is recorded in the case record;

(3) A statement that the OIT determination was recorded as substantiated, including a description of the type of child abuse or neglect identified;

(4) A statement about the right of the individual to make a request for review of the substantiated determination;

(5) Instructions for making a request for review, which must include the reason the individual believes the OIT substantiated determination is in error;

(6) A statement that the person waives the right to request a review if the request for review is not received by the Office of Investigations and Training within 30 calendar days from the date of receipt of the notice of OIT substantiated determination, as documented by the U.S. Postal Service.

(7) A statement that the ODDSRC shall consider all relevant case file information including the OIT investigation and determination, and all information provided by the person requesting review in their request for review, and that the ODDSRC shall not: re-interview the victim, interview or meet with the person requesting a review, or others associated with the requestor, or others mentioned in the investigation, or conduct a further investigation of the allegation of child abuse or neglect.

(8) A statement that OIT will send the requestor notification of the ODDSRC's decision within 45 calendar days of receiving a written request for review.

Stat. Auth.: ORS 430.041
Stats. Implemented: CAPTA & ORS 430.041
Hist.: MHD 14-2000(Temp), f. & cert. ef. 10-26-00 thru 4-23-01; MHD 1-2001, f. 4-9-01, cert. ef. 4-23-01; Renumbered from 309-045-0160, DHSD 9-2007, f. & cert. ef. 10-1-07

407-045-0670
Making a Request for a Review of an OIT Substantiated Determination

(1) A person who meets the criteria outlined in OAR 309-045-0150 may make a written request for review as follows:

(2) A person requesting review shall use information found on the notice of OIT substantiated determination to prepare a written request for review. The written request for review shall be delivered to OIT within 30 calendar days of the receipt of the notice of OIT substantiated determination and shall include the following items:

(a) Date the request for review is written;

(b) Case number (found on the notice of OIT substantiated determination);

(c) Full name of the person identified as responsible in the OIT substantiated determination;

(d) The reason the person is requesting the review and an explanation of why the person believes the OIT substantiated determination is in error;

(e) The person's current name (if it has changed from the name noted in (c) above;

(f) The person's current street address, city, state, zip code, and telephone number; and

(g) The person's signature.

Stat. Auth.: ORS 430.041
Stats. Implemented: CAPTA & ORS 430.041
Hist.: MHD 14-2000(Temp), f. & cert. ef. 10-26-00 thru 4-23-01; MHD 1-2001, f. 4-9-01, cert. ef. 4-23-01; Renumbered from 309-045-0170, DHSD 9-2007, f. & cert. ef. 10-1-07

407-045-0680
Determining When Legal Findings Preclude a Right to Request a Review

(1) A legal process or finding relevant to the substantiated determination will preclude a person's right to a review.

(2) When the request for review is held pending the outcome of the legal process, and a legal finding is made that the child abuse or neglect or other offense stemming from the employee's or subcontracting individual's conduct occurred and is the subject of the OIT substantiated determination and that the person requesting review is responsible, a review shall not occur.

(3) At the conclusion of a Court proceeding or legal process, when the person requesting a review is found not guilty, documentation of the legal finding must be provided to OIT by the requestor. The requested review will then be held within 30 calendar days of OIT's receipt of the documentation.

Stat. Auth.: ORS 430.041
Stats. Implemented: CAPTA & ORS 430.041
Hist.: MHD 14-2000(Temp), f. & cert. ef. 10-26-00 thru 4-23-01; MHD 1-2001, f. 4-9-01, cert. ef. 4-23-01; Renumbered from 309-045-0180, DHSD 9-2007, f. & cert. ef. 10-1-07

407-045-0690
OIT Responsibilities Related to Notices and Reviews

(1) If an individual asks to review the record, ORS 179.505 and OAR 309-040-0200 through 309-040-0290 shall govern inspection and copying of records.

(2) OIT staff shall maintain records to demonstrate the following, when applicable:

(a) Whether OIT delivered a notice of OIT substantiated determination;

(b) Whether or not the notice of OIT substantiated determination was received by the addressee, as evidenced by a returned receipt documenting the notice was received, refused, or not received within the 15 calendar day time period as provided by the U.S. Postal Service;

(c) Date a request for review was received;

(d) When a review was made, whether the notice of the ODDSRC's decision was received by the perpetrator or not, as evidence by a returned receipt documenting the notice was received, refused, or not received within the 15 calendar day time period as provided by the U.S. Postal Service;

(3) The OIT Director or designee shall maintain a comprehensive record of the reviews held of OIT substantiated determinations. The

record shall include but is not limited to the date, case number, and ODDSRC decision.

Stat. Auth.: ORS 430.041
Stats. Implemented: CAPTA. & ORS 430.041
Hist.: MHD 14-2000(Temp), f. & cert. ef. 10-26-00 thru 4-23-01; MHD 1-2001, f. 4-9-01, cert. ef. 4-23-01; Renumbered from 309-045-0190, DHSD 9-2007, f. & cert. ef. 10-1-07

407-045-0700
ODDS Review Committees and Reviews of OIT Substantiated Determinations

(1) The ODDSRC shall conduct a review within 30 calendar days of OIT's receipt of a request for review of an OIT substantiated determination and issue a notice of ODDSRC decision.

(2) If the request for review has been retained as per OAR 309-045-0180 and a legal finding was not made that would preclude a review, the review shall occur within 30 calendar days of OIT's receipt of documentation of the legal proceeding's outcome.

(3) The ODDS Review Committee will operate as follows:

(a) The ODDSRC shall consider all relevant case file information including the OIT investigation report and determination, and information provided by the person requesting review in their request. The ODDSRC shall not: re-interview the victim, interview or meet with the person requesting a review, or others associated with the requestor, or others mentioned in the investigation, or conduct a further investigation of the allegation of child abuse or neglect.

(b) The ODDSRC shall have the authority to retain or change an OIT determination after a review has occurred;

(c) When reviewing an OIT substantiated determination, the ODDSRC shall determine whether there is or is not reasonable cause to believe that child abuse or neglect occurred and whether there is or is not reasonable cause to believe the person requesting review is responsible;

(d) The ODDSRC will decide by majority vote of the participating committee members if the OIT determination will be retained or changed. The decision of the ODDSRC is the final agency action.

(4) The ODDSRC shall prepare and deliver a notice of the ODDSRC's decision to OIT.

Stat. Auth.: ORS 430.041
Stats. Implemented: CAPTA & ORS 430.041
Hist.: MHD 14-2000(Temp), f. & cert. ef. 10-26-00 thru 4-23-01; MHD 1-2001, f. 4-9-01, cert. ef. 4-23-01; Renumbered from 309-045-0200, DHSD 9-2007, f. & cert. ef. 10-1-07

407-045-0710
Providing a Notice of the ODDSRC's Decision

(1) The notice of the ODDSRC's decision shall include the following items:

(a) Whether there is or is not reasonable cause to believe that child abuse or neglect occurred;

(b) Whether there is or is not reasonable cause to believe the person requesting the review was responsible for the child abuse or neglect;

(c) The decision of the ODDSRC about whether the OIT substantiated determination will be retained or changed; and if changed, whether it will be changed to either unsubstantiated or inconclusive;

(d) A summary of the information upon which the decision was based. When an OIT substantiated determination is changed, the information will be added to the investigation file.

(2) The ODDS Assistant Administrator or designee shall deliver a copy of the ODDSRC decision to OIT, and the OIT Director or designee shall place the request for review and a copy of the ODDSRC decision into the case file. No change shall be made in the existing written case record.

(3) If an OIT substantiated determination is changed by the ODDSRC, OIT staff shall notify the 24-hour program and the State Office for Services to Children and Families (SOSCF) within 30 days of the decision. The 24-hour program shall notify the victim and his or her parent or guardian.

(4) OIT shall send the ODDSRC decision by certified mail, restricted delivery, with a return receipt requested, to the person requesting review within 15 calendar days of the ODDSRC review.

Stat. Auth.: ORS 430.041
Stats. Implemented: CAPTA & ORS 430.041
Hist.: MHD 14-2000(Temp), f. & cert. ef. 10-26-00 thru 4-23-01; MHD 1-2001, f. 4-9-01, cert. ef. 4-23-01; Renumbered from 309-045-0210, DHSD 9-2007, f. & cert. ef. 10-1-07

Abuse Reporting and Protective Services in Children's Residential Care Agencies, Day Treatment Programs, Therapeutic Boarding Schools, Foster Care Agencies, and Outdoor Youth Programs

407-045-0800
Scope

These rules (OAR 407-045-0800 to 407-045-0980) prescribe standards and procedures for investigating, assessing, and providing protective services in certain therapeutic or treatment programs, when abuse or neglect of a child is reported to have occurred. Specifically, these rules govern children's residential care agencies, day treatment programs, therapeutic boarding schools, foster care agencies, and outdoor youth programs (hereafter, "children's care providers" or "CCPs"). These rules also set forth the nature and content of the abuse investigation, the protective services report, and review rights and procedure.

Stat. Auth.: ORS 409.050 & 418.005
Stats. Implemented: ORS 409.185, 418.015, 418.205-418.327, & 419B.005-419B.050
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

407-045-0810
General Policy and Applicability

(1) Every child deserves safe, respectful, and dignified treatment provided in a caring environment. All CCPs governed by these rules, and their staff, shall conduct themselves in such a manner that children are free from abuse.

(2) In these rules, the term "abuse" is defined in some detail because of the unique vulnerabilities of children served by CCPs and the nature of the settings where abuse may occur. All forms of abuse are prohibited. CCPs and their staff must always be aware of the potential for abuse in interactions with children.

(3) These rules govern reports of abuse or neglect in which the CCP, or its staff, is reported to be responsible. All such reports shall be investigated by the Department of Human Services's (Department) Office of Investigations and Training (OIT).

(4) OIT shall evaluate each case based on available facts and on the individual circumstances of the child, including the child's particular vulnerabilities.

(5) Nothing in these rules relieves any mandatory reporter, including a CCP, from reporting abuse or neglect alleged to have been caused by other individuals, including but not limited to family members. Those reports shall continue to be investigated by the Department's Children, Adults and Families Division (CAF) or by law enforcement.

Stat. Auth: ORS 409.050, 418.005 & 418.189
Stats. Implemented: ORS 418.189 & 418.205 – 418.327
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

407-045-0820
Definitions

The following definitions apply to OAR 407-045-0800 through 407-045-0980:

(1) "Abuse" includes but is not limited to:

(a) Any assault, as defined in ORS chapter 163, of a child and any physical injury to a child which has been caused by other than accidental means, including any injury which appears to be at variance with the explanation given of the injury.

(b) Any mental injury to a child, which shall include only observable and substantial impairment of the child's mental or psychological ability to function caused by cruelty to the child, with due regard to the culture of the child.

(c) Rape of a child, which includes but is not limited to rape, sodomy, unlawful sexual penetration, and incest, as defined in ORS chapter 163.

(d) Sexual abuse, as defined in ORS chapter 163.

(e) Sexual exploitation which includes but is not limited to:

(A) Contributing to the sexual delinquency of a minor, as defined in ORS chapter 163, and any other conduct which allows, employs, authorizes, permits, induces, or encourages a child to engage in the performing for people to observe or the photographing, filming, tape recording, or other exhibition which, in whole or in part, depicts

sexual conduct or contact, as defined in ORS 167.002 or described in ORS 163.665 and 163.670;

(B) Sexual abuse involving a child or rape of a child, but not including any conduct which is part of any investigation conducted pursuant to ORS 419B.020 or which is designed to serve educational or other legitimate purposes; or

(C) Allowing, permitting, encouraging, or hiring a child to engage in prostitution, as defined in ORS chapter 167.

(f) Negligent treatment or maltreatment of a child which includes but is not limited to failure to provide adequate food, clothing, shelter, or medical care that is likely to endanger the child's health or welfare.

(g) Threatened harm to a child, which means subjecting a child to a substantial risk of harm to the child's health or welfare.

(h) Buying or selling an individual under 18 years of age, as described in ORS 163.537.

(i) Permitting an individual under 18 years of age to enter or remain in or upon premises where methamphetamines are being manufactured.

(j) Unlawful exposure to a controlled substance, as defined in ORS 475.005, that subjects a child to a substantial risk of harm to the child's health or safety.

(2) "Child" means an unmarried individual under 18 years of age.

(3) "Children's care provider (CCP)" means a licensed residential care agency, day treatment program, foster care agency, therapeutic boarding school, or outdoor youth program that has assumed responsibility for all or a portion of the care of a child. The term includes the CCP's employees, agents, contractors and their employees, and volunteers.

(4) "Day treatment program" means a licensed CCP that provides day treatment services.

(5) "Day treatment services" means comprehensive, interdisciplinary, nonresidential, community based, psychiatric treatment, family treatment, and therapeutic activities integrated with an accredited education program provided to children with emotional disturbances.

(6) "Department" means the Department of Human Services.

(7) "Designated medical professional" means a medical professional as defined in ORS 418.747 who has been trained to conduct child abuse medical assessments pursuant to ORS 418.782.

(8) "Foster care agency" means a licensed child-caring agency that offers to place children by taking physical custody of and then placing the children in homes certified by that agency.

(9) "Inconclusive" means a preponderance of evidence is not available to determine whether the alleged abuse did or did not occur. Evidence may be inconclusive because relevant witnesses, documents, or records are unavailable, or because there is conflicting or inconsistent information from witnesses, documents, or records, with the result that at the conclusion of the investigation there is insufficient evidence to support a "substantiated" or a "not substantiated" conclusion.

(10) "Legal finding" means a court or administrative finding, judgment, order, stipulation, plea, or verdict that determines who was responsible for the child abuse that is the subject of an OIT substantiation.

(11) "Likely to endanger the health or welfare of the child" means negligent treatment or maltreatment that is likely to result in harm to the child, based on the available facts, and on the individual child's particular physical, emotional, behavioral, or mental health needs, circumstances, or vulnerabilities.

(12) "Maltreatment" means any action toward a child which carries a risk of harm to the child's physical, emotional, behavioral, or mental health or welfare. Examples of staff behaviors that must be reported as potential abuse by maltreatment include but are not limited to the willful infliction of pain or injury (e.g. hitting, kicking, pushing, arm twisting, head twisting, etc.); exposure to domestic violence; inappropriate or excessive force during a containment hold or restraint; or other physical contact with the child inconsistent with prescribed treatment or care. All injuries during a restraint or hold must be reported, including minor injuries. Other behaviors that must be reported include the use of derogatory names, phrases, profanity, ridicule, harassment, intimidation, or coercion. While such behaviors do not automatically mean abuse has occurred, such actions may be abuse if the investigation determines the actions were likely to endanger the child's health or welfare.

(13) "Mandatory reporter" means an individual or entity having a duty to report as defined in ORS 419B.005 to 419B.050.

(14) "Negligent treatment" means failure to perform duties or failure to take action required to protect the child's health or welfare. Examples of staff behaviors that must be reported as potential abuse by negligent treatment include but are not limited to failure to supervise a child or failure to intervene when a child needs assistance or care. While such failures do not automatically mean abuse has occurred, such actions may be abuse if the investigation determines the failures were likely to endanger the child's health or welfare.

(15) "Not substantiated" means the preponderance of evidence establishes the alleged abuse did not occur.

(16) "OIT" means the Department's Office of Investigations and Training.

(17) "OIT investigator" means an employee of the Department's OIT who is authorized and trained to investigate reports of child abuse or neglect under these rules.

(18) "OIT Substantiation Review Committee (OSRC)" means a group of three Department employees selected by the Department's Deputy Director or designee, none of whom was involved in any part of the investigation that resulted in the OIT substantiation under review. The committee 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 neglect, and Department employees with knowledge of abuse investigations, especially where abuse is alleged to have occurred in out-of-home settings.

(19) "Outdoor youth program" means a licensed program that provides, in an outdoor living setting, services to youth who are enrolled in the program because they have behavioral or mental problems, or problems with abuse of alcohol or drugs. "Outdoor youth program" does not include any program, facility, or activity operated by a governmental entity, operated or affiliated with the Oregon Youth Conservation Corps, or licensed by the Department as a child-caring agency under other Department authority. It does not include outdoor activities for youth designed to be primarily recreational such as YMCA, Outward Bound, Boy Scouts, Girl Scouts, Campfire, church groups, or other similar activities.

(20) "Person" means the person OIT has reasonable cause to believe is responsible for child abuse in a substantiated OIT report, and about whom a substantiated finding has been made.

(21) "Protective action" means a set of services or activities undertaken to address and meet a child's safety needs after a report of abuse has been received by OIT.

(22) "Residential care agency" means a licensed child-caring agency that provides services to children 24 hours a day.

(23) "Substantiated" means that a preponderance of evidence establishes the alleged abuse occurred.

(24) "Suspicious physical injury" is defined in ORS 419B.005 and includes but is not limited to burns or scalds; extensive bruising or abrasions on any part of the body; bruising, swelling, or abrasions on the head, neck, or face; fractures of any bone in a child under the age of three; multiple fractures in a child of any age; dislocations, soft tissue swelling, or moderate to severe cuts; loss of the ability to walk or move normally according to the child's developmental ability; unconsciousness or difficulty maintaining consciousness; multiple injuries of different types; injuries causing serious or protracted disfigurement or loss or impairment of the function of any bodily organ; or any other injury that threatens the physical well-being of the child.

(25) "Therapeutic boarding school" means a licensed organization or a program in an organization that:

(a) Is primarily a school and not a residential care agency;

(b) Provides educational services and care to children 24 hours a day; and

(c) Holds itself out as serving children with emotional or behavioral problems, providing therapeutic services, or ensuring that children receive therapeutic services.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 409.185, 418.005, 418.189, 418.205 - 418.327, 418.747, 419B.005 - 419B.050 & 419B.328

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 6-2010(Temp), f. & cert. ef. 7-12-10 thru 1-8-11

407-045-0830
Training of Children's Care Providers

(1) The Department shall provide training and consultation to CCPs to identify abuse and to prevent abuse from occurring.

(2) The Department shall provide training to assist CCPs to understand the abuse investigation process and the CCP's responsibility in cooperating with the investigation.

Stat. Auth.: ORS 409.050 & 418.005
Stats. Implemented: ORS 418.189 & 418.702
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

407-045-0850
Responsibilities of the CCP

(1) CCPs and their staff are mandatory reporters governed by ORS 419B.005 to 419B.050. Mandatory reporters must immediately report when they have reasonable cause to believe any child with whom they have come in contact has suffered abuse or that any person with whom they have come in contact has abused a child. For purposes of reporting, the belief need only be a reasonable suspicion, and does not need to rise to the level of probable cause. All reports must be made verbally or in writing to the Department or to a law enforcement agency within the county where the individual making the report is located at the time of the contact.

(2) Concurrent with reporting the suspected abuse or neglect of a child, CCPs shall immediately assess the safety of the child and take any action necessary to remove the child from danger and keep the child safe. CCPs shall cooperate with OIT in establishing a safety plan for the child who is the subject of the report, and for other children who may be at risk of abuse or neglect. In establishing a safety plan, CCPs may not take any actions beyond determining:

(a) Whether the alleged victim is in danger or in need of immediate protective services, in light of the nature of the report; and

(b) Whether any immediate personnel action needs to be taken.

(c) When taking protective action as described in section (2) above, the CCP may not conduct an internal investigation without prior authorization from OIT. For purposes of this section, a prohibited internal investigation includes:

(A) Interviews with the alleged victim, witnesses, the accused person, or any other individual or witness who may have knowledge of the facts of the abuse allegation or related circumstances that include questions beyond those necessary for immediate protection of the child or other children; or

(B) Review of relevant evidence, other than the initial report or other documents necessary for immediate protection of the child or other children.

(3) CCPs shall document all reports of suspected abuse or neglect of a child including, to the extent possible, the following information:

(a) The name, age, and present location of the child;

(b) The names and addresses of individuals, programs, or facilities responsible for the child's care;

(c) The nature and extent of the alleged abuse;

(d) Any information that led the individual making the report to suspect abuse had occurred;

(e) Any information that the individual believes might aid in establishing the cause of the abuse and the identity of the individual alleged to be responsible for the abuse; and

(f) The date of the incident.

(4) Every CCP shall cooperate fully with OIT under these rules. Cooperation includes but is not limited to:

(a) Providing the investigator with access to the child, the facility, and to all potential witnesses; and

(b) Producing all records and reports requested, including but not limited to medical, psychiatric and psychological records and reports, and individual service or behavioral support plans for the child.

Stat. Auth.: ORS 409.050 & 418.005
Stats. Implemented: ORS 419B.010–419B.015
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

407-045-0860
Responsibilities of the Office of Investigations and Training

(1) When OIT receives a report of abuse, OIT shall notify a law enforcement agency within the county where the report was made. If the abuse is reported to have occurred in a different county, OIT must also cross-report to the law enforcement agency in the county where the reported abuse occurred.

(2) OIT shall cross-report to law enforcement on the same day the OIT screener determines the report requires an immediate or a 24-hour response.

(a) Required same day cross-reports include but are not limited to reports of moderate to severe physical abuse, visible injuries to a child, sexual abuse, or the suspicious or unexpected death of a child. Same day reports may be cross-reported verbally, by electronic transmission, or by hand delivery.

(b) When a cross-report is verbal and OIT and law enforcement do not respond to the report together, OIT must send a completed screening report to law enforcement.

(3) All other reports, including those investigated at screening but closed, must be cross-reported to law enforcement no later than ten days after the Department receives the report. The cross-report may be made by electronic transmission, hand delivery, or regular mail.

(4) When OIT receives a report of alleged abuse or neglect, OIT shall notify the child's parent or legal guardian that an allegation has been made, unless notice is prohibited by law or court order or would compromise the child's safety or a criminal investigation. If the child is in the legal custody of the Department, OIT shall notify the child's assigned Department caseworker, if notice has not already been provided. If the child has been placed at the CCP through the Oregon Youth Authority (OYA), OIT shall notify OYA. If OIT has reason to believe the child is an Indian child, OIT shall notify the tribe within 24 hours from the time the report was received by the Department. In cases in which OIT finds reasonable cause to believe that a child has died as a result of abuse or where the death occurred under suspicious or unknown circumstances, OIT shall notify the appropriate law enforcement agency.

Stat. Auth: ORS 409.050 & 418.005
Stats. Implemented: ORS 418.005 & 419B.005 - 419B.050
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

407-045-0870
Office of Investigations and Training Screening Decision Time Frames

(1) When the information received constitutes a report of abuse in which a child may be unsafe, OIT shall interview the child, conduct a site visit, or coordinate with CCP staff to assure that the child is safe within 24 hours after the report is received. If OIT plans to interview the child, OIT must notify the child's parent or legal guardian, unless notification is prohibited by law or court order or would compromise the child's safety or a criminal investigation.

(2) When it has not been reported that the child is unsafe and there are no other indicators the child is unsafe, OIT may decide to open the case for investigation or to close it at screening. OIT must make the decision to open or close the case within five calendar days from the date the report is received by the Department. The OIT screener may request approval for an extension of time beyond five days if extenuating circumstances exist. Extensions may only be granted by the OIT Director or the Director's designee.

(3) OIT shall screen all reports to identify the nature and cause of the reported abuse.

(a) In all cases, the screener shall evaluate whether the child is safe or unsafe, assess the need for protective action, request that protective action be taken and necessary services provided, and assess the need for further investigation.

(b) In conducting the screening process, OIT may:

(A) Coordinate in-person or by telephone with any CCP staff authorized to take protective action on behalf of the child;

(B) Conduct a site visit at the CCP;

(C) Interview the child or other witnesses;

(i) Prior to interviewing a child victim or child witness, OIT shall give notice of its intent to interview to the child's legal guardian, unless notice is prohibited by law or court order, or would compromise the child's safety or a criminal investigation.

(ii) If OIT determines contact with the child should occur at the child's school, OIT shall comply with the requirements of ORS 419B.045.

(D) Gather and secure physical evidence as necessary;

(E) Take photographs of the child and obtain a medical assessment, as necessary, consistent with OAR 407-045-0880(2)(d) and (e) of this rule;

(F) Take photographs of the facility as necessary or appropriate; and

(G) Receive, review, or copy records pertaining to the child or the incident, including but not limited to incident reports, evaluations, treatment or support plans, treatment notes or progress records, or other documents concerning the welfare of the child.

(4) If OIT decides the information received does not constitute a report of child abuse or neglect as defined in these rules, the report shall be closed at screening. If the report is closed at screening, the screener shall document the information supporting the decision to close. If the child is in the legal custody of the Department, OIT shall notify the child's assigned caseworker of the decision to close the case. If the child has been placed in the CCP by OYA, OIT shall notify OYA. OIT shall notify the CCP and the individual who made the report that the report has been closed. All notices of the decision to close shall be made within three days of the decision.

(5) If, after screening, OIT determines that the information constitutes a report of child abuse or neglect under these rules, it shall open the case for investigation. If OIT decides to investigate, OIT shall immediately notify the child's legal guardian, unless notification is prohibited by law or by court order, or could compromise the child's safety or a criminal investigation. OIT shall also notify the child's caseworker if the child is in the legal custody of the Department and shall notify OYA or the child's tribe, as applicable.

(6) Whenever an OIT investigator takes photographs of physical injuries to a child who is in the custody of the Department, the investigator shall promptly forward copies of the photographs to the CAF caseworker assigned to the child. When conducting screenings or investigations in foster home settings, the investigator shall ascertain whether any other children living in the foster home are in the custody of the Department and if so, shall notify each child's caseworker that a report of abuse or neglect in the foster home is being investigated or screened, and the nature of the investigation.

Stat. Auth: ORS 409.050 & 418.005
Stats. Implemented: ORS 418.005, 419B.015, 419B.017 & 419B.020
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

407-045-0880
OIT Investigative Process in Cases Opened for Investigation

(1) OIT shall conduct thorough and unbiased investigations of abuse allegations.

(2) In conducting abuse investigations, the OIT investigator shall:

(a) Make in-person contact with the child;

(b) Interview the child, any witnesses, the accused person, and other individuals who may have knowledge of the facts of the abuse allegation or related circumstances;

(c) Review all relevant and material evidence;

(d) Take photographs as appropriate or necessary. If the investigator observes a child who has suffered a suspicious physical injury and the investigator has a reasonable suspicion that the injury may be the result of abuse, the investigator must immediately photograph or have photographed the suspicious physical injury, pursuant to ORS 418.747; and

(e) If the investigator observes a child who has suffered a suspicious physical injury and the investigator has a reasonable suspicion that the injury may be the result of abuse, the investigator must, pursuant to ORS 418.747, ensure that a designated medical professional conducts a medical assessment within 48 hours of the observation, or sooner if dictated by the child's medical needs. If a designated medical professional is not available, the investigator must ensure that an available physician conducts the medical assessment. The investigator must document the efforts made to locate the designated medical professional.

(3) A person accused of abuse may have a peer consultant present during the OIT interview. Any individual providing peer support shall be obligated to maintain the confidentiality of information declared to be confidential under state or federal law. Peer supporters shall not be involved in the investigation as witnesses or potential witnesses. CCP certification or human resources staff shall not serve as peer supporters. An accused person wishing to have a peer supporter present during the interview shall notify the OIT investigator in advance of the scheduled interview and shall provide the investigator with the peer's name and job title.

(4) When a law enforcement agency is conducting an investigation of the alleged abuse, the OIT investigator shall cooperate with the law enforcement agency. When a law enforcement agency is conducting a criminal investigation of the alleged abuse, OIT may also conduct its own investigation, as long as it does not interfere with the law enforcement agency investigation, when:

(a) There is potential for action by a licensing agency;

(b) Timely investigation by law enforcement is not likely; or

(c) When the law enforcement agency does not complete a criminal investigation.

(5) During the investigation, if the investigator knows or has reason to believe the child is an Indian child, the investigator must give notice to the child's tribe within 24 hours that an investigation is being conducted, if the tribe has not already been notified.

Stat. Auth.: ORS 409.050 & 418.005
Stats. Implemented: ORS 409.185, 418.005, 418.747, 419B.045 & 419B.005-419B.050
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

407-045-0890
Abuse Investigation and Protective Services Report

(1) When the investigation is complete, OIT shall issue a final decision stating whether the allegation is substantiated, not substantiated, or inconclusive, and shall prepare a written report which must include:

(a) A description of the allegation being investigated, including the date, location and time;

(b) An outline of steps taken in the investigation, a list of all witnesses interviewed, and a summary of the information provided by each witness;

(c) A summary of findings and conclusion concerning the allegation of abuse;

(d) A specific finding of substantiated, not substantiated, or inconclusive;

(e) A list of protective services provided to the child at the date of the report;

(f) A plan of action necessary to prevent further abuse of the child;

(g) Any additional corrective action required by the CCP and deadlines for completing the action;

(h) A list of any notices made to licensing or certifying agencies; and

(i) The name and title of the individual completing the report.

(2) The report must be competed within 30 business days from the date the case was opened for investigation. The OIT Director or designee may authorize an extension of time for good cause shown.

(3) The report and underlying investigatory documents are confidential and not available for public inspection. Except as provided in ORS 419B.035, names of witnesses and the alleged abuse victim are confidential unless the provisions of ORS 419B.035(1)(h) and (2)(a) apply. The names and identifying information about a reporter are confidential and may not be disclosed. Investigatory documents, including portions of the abuse investigation and protective services report that contain "individually identifiable health information," as that term is defined in ORS 192.519 and 45 CFR160.103, are confidential under HIPAA privacy rules, 45 CFR Part 160 and 164, and ORS 192.520 and 179.505 to 179.509. Disclosure of substance abuse treatment records are governed by 42 U.S.C. 290dd-2 and 42 CFR Part 2. The Department shall make otherwise confidential records available to individuals identified in ORS 419B.035(1), and may release records if permitted by ORS 419B.035(3) and other federal and state confidentiality laws.

(4) Except as provided in section (3) of this rule, the Department shall make the confidential information, including any photographs, available, if appropriate, to any law enforcement agency, to any public agency that licenses or certifies facilities, and to any public agency providing protective services for the child.

(5) Subject to ORS 419B.035(3), the Department may make the protective services report or relevant materials, in redacted form, available to the CCP, any public agency that licenses or certifies the individuals working in a CCP, or to any person who was alleged to have

abused or neglected the child. The Department may not disclose confidential information which is prohibited by state or federal law.

(6) Individuals or entities receiving confidential information pursuant to this rule shall maintain the confidentiality of the information and may not re-disclose the confidential information to unauthorized individuals or entities, if disclosure is prohibited by state or federal law.

Stat. Auth.: ORS 409.050 & 418.005
Stats. Implemented: ORS 409.185, 409.225, 418.015, 419B.005-050 & 419B.035
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

407-045-0900
Right to Request Review of a Substantiated Finding of Abuse

(1) When OIT has substantiated that abuse of a child has occurred, the person against whom the finding has been made, or a CCP against whom the finding has been made, has the right to request an administrative review of the OIT decision following the procedure set forth in OAR 407-045-0940.

(2) When OIT issues a substantiated abuse report, OIT shall also include written notice of the right to request an administrative review.

Stat. Auth.: ORS 409.050 & 418.005
Stats. Implemented: ORS 419B.010 & 419.370
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

407-045-0910
Providing Notice of an OIT Substantiation

OIT must deliver a notice of an OIT substantiation of abuse or neglect to the person identified as the person substantiated in the OIT report or to a substantiated CCP. The notice must be delivered:

(1) By certified mail, restricted delivery, return receipt requested to the last known address of the person or CCP; or

(2) By hand delivery to the person or CCP. If hand delivered, the notice must be addressed to the person or to the OIT contact on record for a CCP and a copy of the notice must be signed and dated by the person or CCP representative acknowledging receipt and also signed by the person delivering the notice.

Stat. Auth.: ORS 409.050 & 418.005
Stats. Implemented: ORS 418.005
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

407-045-0920
Claim of Lack of Notice

(1) If a person or CCP believes they are entitled to a notice of OIT substantiation but has not received one, the person or CCP may contact OIT to inquire about a review of the disposition.

(2) OIT must determine whether a notice of OIT substantiation was delivered to the person or CCP or if the person or CCP refused delivery of the notice, as evidenced by the returned receipt.

(3) If a notice was delivered to the person or CCP or if the person or CCP refused delivery of the notice, as evidenced by a returned receipt, and the time for requesting review has expired, OIT must:

(a) Prepare and deliver a notice of waived rights for review; or

(b) Inform the person or CCP by telephone of the information required in the notice of waived rights for review. OIT must document the telephone call.

(4) If no return receipt exists or if it appears that notice was not properly provided, OIT must deliver a notice of OIT substantiation as provided in these rules.

Stat. Auth.: ORS 409.050 & 418.005
Stats. Implemented: ORS 418.005
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

407-045-0930
Information Included in the Notice of an OIT Substantiation

The notice of an OIT substantiation must include the following:

(1) The case number assigned to the investigation that resulted in the OIT substantiation;

(2) The full name of the person or CCP who has been identified as responsible for the child abuse as recorded in the OIT report;

(3) A statement that the OIT investigation resulted in a substantiation, including a description of the type of child abuse or neglect identified;

(4) A description of the OIT investigation, including a summary of findings and conclusions;

(5) A statement that the person or CCP has a right to request a review;

(6) Instructions for making a request for review, including the requirement that the person or CCP provide a full explanation why the person believes the OIT substantiation is wrong;

(7) A statement that the Department may not review an OIT substantiation if a legal proceeding is pending and that the person or CCP may request a review within 30 calendar days of the resolution of the pending legal proceeding unless the proceeding results in a legal finding that is consistent with the OIT substantiation;

(8) A statement that the person waives the right to request a review if the request for review is not received by OIT within 30 calendar days from the date of the notice of OIT substantiation, as documented by a returned receipt.

(9) A statement that the OSRC shall consider relevant documentary information, including the OIT report and accompanying exhibits, and information submitted with the request for review by the person or CCP requesting review.

(10) A statement that the OSRC may not re-interview the victim; interview or meet with the person or CCP, with others associated with the person or CCP, or with others mentioned in the report; or conduct a field assessment of the allegation of child abuse; and

(11) A statement that OIT shall send the person or CCP a notice of OSRC decision within 60 calendar days of receiving a request for review.

Stat. Auth.: ORS 409.050 & 418.005
Stats. Implemented: ORS 418.005
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

407-045-0940
Requesting Review of an OIT Substantiation

A person or CCP requesting a review must use information contained in the notice of OIT substantiation to prepare a written request for review. The written request for review must be received by OIT within 30 calendar days of the receipt of the notice of OIT substantiation. If the request is submitted by mail, it must be postmarked within 30 calendar days. The request must include the following:

(1) Date the request for review is written;

(2) Case number found on the notice of OIT substantiation;

(3) Full name of the person or CCP;

(4) The person's or CCP's current name (if it has changed from the name noted in section (3) of this rule);

(5) A full explanation, responsive to the information provided in the Department's notice, explaining why the person or CCP believes the OIT substantiation is wrong and any additional information and documents the person or CCP wants considered during the review;

(6) The person's or CCP's current street address and telephone number; and

(7) The person's signature or the signature of a CCP employee authorized to sign on behalf of the organization.

Stat. Auth.: ORS 409.050 & 418.005
Stats. Implemented: ORS 418.005
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

407-045-0950
When Legal Findings Precludes Right to Request a Review and Providing Notice of Legal Proceeding

(1) If OIT has knowledge of a pending legal proceeding, the OSRC may not review the disposition until the legal proceeding is completed.

(2) If OIT has knowledge of a pending legal proceeding, OIT must prepare and deliver a notice of legal proceeding within 30 calendar days after receipt of a request for review informing the person or CCP that the Department may not review the substantiation until the legal proceeding is completed and may not take further action on the request.

(3) If the completed legal proceeding results in a legal finding consistent with the OIT substantiation, the Department may not conduct a review. In that case, OIT shall provide a notice of legal finding to the person or CCP.

(4) If the completed legal proceeding results in a legal finding which is inconsistent with the OIT substantiation, the person or CCP may, at the conclusion of the legal proceeding, re-submit a request for

review within 30 calendar days from the date of resolution of legal proceeding.

Stat. Auth.: ORS 409.050 & 418.005
Stats. Implemented: ORS 418.005
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

407-045-0960
OIT Responsibilities Related to Notices and Reviews

(1) If a person or CCP asks to review Department records for the purpose of reviewing an OIT substantiation, state and federal confidentiality laws, including OAR 413-010-0000 to 413-010-0075 and 413-350-0000 to 413-350-0090, govern the inspection and copying of records.

(2) OIT must maintain records to demonstrate the following, when applicable:

(a) Whether the Department delivered a notice of OIT substantiation;

(b) Whether the notice of OIT substantiation was received by the addressee, as evidenced by a returned receipt documenting that the notice was received, refused, or not received; and

(c) The date a request for review was received by OIT.

(3) The OIT Director or designee must maintain a comprehensive record of completed OIT substantiation reviews.

Stat. Auth.: ORS 409.050 & 418.005
Stats. Implemented: ORS 418.005
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

407-045-0970
OSRC Review

(1) The OSRC shall conduct a review and issue a notice of OSRC decision within 60 calendar days from the date OIT receives a request for review.

(2) The OSRC shall operate as follows:

(a) The OSRC shall consider relevant documentary information contained in the OIT investigation file, investigative report and exhibits, and information provided by the person.

(b) The OSRC may not re-interview the victim; interview or meet with the person or CCP staff, with others associated with the person or CCP, or with others mentioned in the report; or conduct a field assessment of the allegation of child abuse or neglect.

(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 shall make a determination as to:

(A) Whether there is reasonable cause to believe that child abuse or neglect occurred; and

(B) Whether there is reasonable cause to believe that the person or CCP is responsible for the child abuse or neglect.

(e) The OSRC shall decide to either uphold the OIT substantiation, or change that conclusion to not substantiated or inconclusive.

(3) Within 60 calendar days from the date the OSRC receives the request for review, the OSRC shall prepare and send to the requestor by certified mail or restricted delivery, with return receipt requested, a notice of OSRC decision that includes the following:

(a) Whether there is reasonable cause to believe that child abuse occurred;

(b) Whether there is reasonable cause to believe that the person or CCP was responsible for the child abuse;

(c) Whether the OSRC is changing the OIT substantiation;

(d) If the OIT substantiation is changed, whether the changed conclusion is being changed to "not substantiated" or "inconclusive;" and

(e) A summary of the information used by the OSRC and its reasoning in reaching its decision.

(4) OSRC shall send the notice of OSRC decision to the person or CCP, CAF, the OIT investigator who conducted the investigation, applicable public agencies, other entities or individuals who received notice of the original substantiation, and the OIT Director.

Stat. Auth.: ORS 409.050 & 418.005
Stats. Implemented: ORS 418.005
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 8-2008, f. 8-29-08, cert. ef. 9-1-08; DHSD 5-2010, f. 6-30-10, cert. ef. 7-1-10

407-045-0980
Retaliation Prohibited

No individual, including a child who reports suspected abuse, shall be subject to retaliatory action by a CCP.

Stat. Auth.: ORS 409.050 & 418.005
Stats. Implemented: ORS 418.005
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

DIVISION 50

HEALTH SERVICES

Medicare Part D Authorized Decision Makers

407-050-0000
Purpose

These rules set forth parameters concerning who can make decisions and take action on behalf of individuals who are incapable of making their own Medicare Part D Decisions. The decisions and actions include choosing a Medicare Part D prescription drug plan or a Part C Medicare Advantage Plan and filing drug coverage exceptions and appeals, and pursuing grievances with Medicare Part C or D plan sponsors and the federal Centers for Medicare and Medicaid Services (CMS). These rules only pertain to those individuals who receive benefits or services, which are provided by, operated by, authorized or funded by Oregon Department of Human Services (Department). Those acting under the authority of this rule must do so with the express purpose of meeting the pharmaceutical and medical needs of the individual receiving the assistance.

Stat. Auth.: ORS 409.050, 410.070, 410.090, 411.116, 426.500 & 430.640
Stats. Implemented: ORS 409.010, 410.250, 410.280, 410.020, 411.060, 426.490 & 430.630
Hist.: DHSD 1-2005(Temp), f. & cert. ef. 11-28-05 thru 5-26-06; DHSD 4-2006, f. & cert. ef. 5-26-06

407-050-0005
Definitions

(1) "Authorized Representative" for purposes of these rules means one of the following, as determined in accordance with these rules:

(a) Closest Available Relative;

(b) Friend or Advocate;

(c) Department Case Manager/Eligibility Specialist or Department Social Worker or designee named by the Department office responsible for enrollment;

(d) Owner, operator, or employee of a Department licensed or certified residential service, nursing home, foster home, or a Brokerage funded by the Department to provide Developmental Disability Support Services.

(2) "Capable" means that a person has the ability to receive and evaluate information effectively or communicate decisions to such an extent that the person currently has the ability to make Medicare Part D Decisions.

(3) "Closest Available Relative" means a Capable person who is related by blood, marriage, or adoption or a Domestic Partner and is aware of the Part D-eligible Individual's medical and pharmaceutical needs. This person has a history of acting to the benefit of the Part D-eligible Individual's health and safety and is available to make the needed decisions. It does not refer to physical proximity.

(4) "Domestic Partner" means a person who attests to meet all the following criteria:

(a) Is responsible for the Part-D eligible Individual's welfare;

(b) Is the Part-D eligible Individual's sole domestic partner;

(c) Has jointly shared the same regular and permanent residence with the Part-D eligible Individual for at least six months; and,

(d) Is jointly financially responsible for basic living expenses defined as the cost of food, shelter, and any other expenses of maintaining a household.

(5) "Department" means Oregon Department of Human Services.

(6) "Department Case Manager/Eligibility Specialist" means an employee of the Department, the Department's designee, Community Developmental Disability Program, Community Mental Health Program or the local Area Agency on Aging that provides case

management services or determines eligibility for Department services for the Part D-eligible Individual.

(7) "Enroll and Enrollment" means the act of enrolling a Part D-eligible Individual into a Medicare Part D Prescription Drug Plan (PDP) or Medicare Advantage Plan (MA or MA-PD) or changing plans.

(8) "Friend or Advocate" means a Capable person known to the Part D-eligible Individual, who has had an ongoing, consistent personal relationship with the Part D-eligible Individual, is aware of the medical and pharmaceutical needs and who is interested in the welfare of the individual and will advocate appropriately on behalf of the individual.

(9) "Incapable" means that the Part D-eligible Individual's ability to receive and evaluate information effectively or communicate decisions is impaired to such an extent that the person currently lacks the ability to make Medicare Part D Decisions.

(10) "Individual Designee" means a Capable person appointed verbally, in writing or by any means of communication by the Part D-eligible Individual for the purpose of making enrollment or post-enrollment decisions on behalf of the Part D-eligible Individual.

(11) "Medicare Part D Decision" means a decision to enroll or disenroll in a Medicare Part C or D plan, or any post-enrollment decision, as those terms are used in these rules.

(12) "Medicare Part D Plan, Medicare Prescription Drug Plan, Medicare Part C Plan, Medicare Advantage Plan" all mean a program under contract with the federal Centers for Medicare and Medicaid Services (CMS) to provide prescription drug insurance to people enrolled in the Medicare program.

(13) "Part D-eligible Individual" means an individual who is eligible to receive Medicare Part C or D drug benefits and who also receives benefits or services, which are provided by, operated by, authorized or funded by the Department.

(14) "Personal Representative" means:

(a) A person appointed as a guardian under ORS 125.305, 419B.370, 419C.481, or 419C.555 with authority to make medical, health care or fiscal decisions.

(b) A person appointed as a Health Care Representative under ORS 127.505 to 127.660 or a representative under ORS 127.700 to 127.737 to make health care decisions or mental health treatment decisions.

(c) Attorney-in-fact authorized to make Medicare decisions.

(d) Any other entity authorized in state or federal law or by order of a court of competent jurisdiction.

(15) "Post-enrollment Actions/Decision" means determining whether and how to do any of the following within the Part C or D program:

(a) File a grievance;

(b) Submit a complaint to the quality improvement organization;

(c) Request and obtain a coverage determination, including exception requests and requests for expedited procedures;

(d) File and request an appeal and direct any part of the appeals process; and,

(e) Disenroll from a Medicare Part C or D Plan.

Stat. Auth.: ORS 409.050, 410.070, 410.090, 411.116, 426.500 & 430.640
Stats. Implemented: ORS 409.010, 410.250, 410.280, 410.020, 411.060, 426.490 & 430.630
Hist.: DHSD 1-2005(Temp), f. & cert. ef. 11-28-05 thru 5-26-06; DHSD 4-2006, f. & cert. ef. 5-26-06

407-050-0010
Authorized Decision Makers

(1) These rules only pertain to those Part D-eligible Individuals who receive benefits or services, which are provided by, operated by, authorized or funded by the Department. Those acting under the authority of this rule must do so with the express purpose of assisting the Part D-eligible Individual to obtain the Part C or D drug benefit that will appropriately meet their pharmaceutical needs and protect their health and safety.

(2) These rules only apply to those persons who can make decisions and take action on behalf of Part D-eligible Individuals for Medicare Part D Decisions.

(3) A Capable Part D-eligible Individual or their Individual Designee must be allowed to make all Medicare Part D Decisions.

(4) If the Part D-eligible Individual is incapable and has a Personal Representative, the Personal Representative must be allowed to make all Medicare Part D Decisions.

(5) If the Part D-eligible Individual is incapable and has an Individual Designee, the Individual Designee must be allowed to make Part D Decisions within the scope of their authority as a designee of the Part D-eligible Individual.

(6) If the Part D-eligible Individual is incapable and does not have an Individual Designee or Personal Representative, these rules authorize the first available person from the following list to be an Authorized Representative for the Part D-eligible Individual solely for the purpose of making Medicare Part D Decision, in order of priority:

(a) Closest Available Relative;

(b) Friend or Advocate;

(c) Department Case Manager/ Eligibility Specialist or Department Social Worker or designee named by the Department office responsible for enrollment;

(d) Owner, operator, or employee of a Department licensed or certified residential service, nursing home, foster home, or a Brokerage funded by the Department to provide Developmental Disability Support Services.

(7) The person acting under authority of OAR 407-050-0010(6)(c) or (d) must provide the Part D-eligible Individual a written copy of the enrollment or disenrollment decision that includes the name of the person making the decision and his or her relationship to the Part D-eligible Individual and a statement that if he or she does not agree with the decision, he or she may change the decision or request the assistance of a different person. The written notice must be retained in the individual's file and made available to the Part D-eligible Individual upon request. In addition to providing the written information, this information may also be provided to the Part D-eligible Individual orally or in a manner that will effectively communicate with the individual.

(8) Medicare Part D Decisions by a person acting under authority of subsection (6) of these rules must be clearly guided by the Part D-eligible Individual's expressed wishes or in the Part D-eligible Individual's best interest in the drug benefit that will appropriately meet their pharmaceutical needs.

(9) An individual may not act as a Authorized Representative under subsection (6) of these rules or Individual Designee under subsection (5) of these rules if the individual or any entity from which that individual receives remuneration:

(a) Receives monetary remuneration or any other compensation from a pharmacy or a Part C or D plan based on Part C or D plan enrollment or post-enrollment activities;

(b) Makes Part C or D decisions for the benefit of a facility, pharmacy, or a plan; or

(c) Is an agent of a Medicare Part C or D plan.

(10) Any individual may be disqualified as acting as an Authorized Representative under subsection (6) or as an Individual Designee under subsection (5) of these rules by the Part D-eligible Individual, a court or hearing process or determination by the Department that an individual is disqualified based upon a substantiated finding of abuse or neglect.

(11) Nothing in this rule implies or authorizes an individual to act on behalf of another individual as a Health Care Representative as defined in OAR 309-041-1500.

(12) These rules do not impair or supersede the existing laws relating to:

(a) The right of a person has to make his or her own decisions;

(b) Health Care Representatives;

(c) Protective proceedings; or

(d) Powers of Attorney.

(13) The intent of these rules is to encourage ongoing review of these Part D Decisions during regularly scheduled service planning. Nothing in these rules should be construed to limit regular review procedures that may include prescription drug needs of the Part D-eligible Individual and their coverage under a Medicare Part C or D plan.

(14) If a dispute exists over the decision of incapability, over whom should be the Authorized Representative or over a decision made by an Authorized Representative, the Part D-eligible Individual's Department Case Manager/Eligibility Specialist and service plan-

ning team, which must include the Authorized Representative, must review the Part D Decision and make modifications as necessary.

(15) If the dispute is not resolved by the Department Case Manager and service planning team, the dispute may be referred by any party to the Assistant Director of the Department's Seniors and People with Disabilities cluster or designee.

Stat. Auth.: ORS 409.050, 410.070, 410.090, 411.116, 426.500 & 430.640
Stats. Implemented: ORS 409.010, 410.250, 280, 410.020, 411.060, 426.490 & 430.630
Hist.: DHSD 1-2005(Temp), f. & cert. ef. 11-28-05 thru 5-26-06; DHSD 4-2006, f. & cert. ef. 5-26-06

DIVISION 120

PROVIDER RULES

Electronic Data Transmission

407-120-0100
Definitions

The following definitions apply to OAR 407-120-0100 through 407-120-0200:

(1) "Access" means the ability or means necessary to read, write, modify, or communicate data or information or otherwise use any information system resource.

(2) "Agent" means a third party or organization that contracts with a provider, allied agency, or prepaid health plan (PHP) to perform designated services in order to facilitate a transaction or conduct other business functions on its behalf. Agents include billing agents, claims clearinghouses, vendors, billing services, service bureaus, and accounts receivable management firms. Agents may also be clinics, group practices, and facilities that submit billings on behalf of providers but the payment is made to a provider, including the following: an employer of a provider, if a provider is required as a condition of employment to turn over his fees to the employer; the facility in which the service is provided, if a provider has a contract under which the facility submits the claim; or a foundation, plan, or similar organization operating an organized health care delivery system, if a provider has a contract under which the organization submits the claim. Agents may also include electronic data transmission submitters.

(3) "Allied Agency" means local and regional allied agencies and includes local mental health authority, community mental health programs, Oregon Youth Authority, Department of Corrections, local health departments, schools, education service districts, developmental disability service programs, area agencies on aging, federally recognized American Indian tribes, and other governmental agencies or regional authorities that have a contract (including an interagency, intergovernmental, or grant agreement, or an agreement with an American Indian tribe pursuant to ORS 190.110) with the Department to provide for the delivery of services to covered individuals and that request to conduct electronic data transactions in relation to the contract.

(4) "Clinic" means a group practice, facility, or organization that is an employer of a provider, if a provider is required as a condition of employment to turn over his fees to the employer; the facility in which the service is provided, if a provider has a contract under which the facility submits the claim; or a foundation, plan, or similar organization operating an organized health care delivery system, if a provider has a contract under which the organization submits the claim; and the group practice, facility, or organization is enrolled with the Department, and payments are made to the group practice, facility, or organization. If the entity solely submits billings on behalf of providers and payments are made to each provider, then the entity is an agent.

(5) "Confidential Information" means information relating to covered individuals which is exchanged by and between the Department, a provider, PHP, clinic, allied agency, or agents for various business purposes, but which is protected from disclosure to unauthorized individuals or entities by applicable state and federal statutes such as ORS 344.600, 410.150, 411.320, 418.130, or the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 and its implementing regulations. These statutes and regulations are collectively referred to as "Privacy Statutes and Regulations."

(6) "Contract" means a specific written agreement between the Department and a provider, PHP, clinic, or allied agency that provides or manages the provision of services, goods, or supplies to covered individuals and where the Department and a provider, PHP, clinic, or allied agency may exchange data. A contract specifically includes, without limitation, a Department provider enrollment agreement, fully capitated heath plan managed care contract, dental care organization managed care contract, mental health organization managed care contract, chemical dependency organization managed care contract, physician care organization managed care contract, a county financial assistance agreement, or any other applicable written agreement, interagency agreement, intergovernmental agreement, or grant agreement between the Department and a provider, PHP, clinic, or allied agency.

(7) "Covered Entity" means a health plan, health care clearing house, health care provider, or allied agency that transmits any health information in electronic form in connection with a transaction, including direct data entry (DDE), and who must comply with the National Provider Identifier (NPI) requirements of 45 CFR 162.402 through 162.414.

(8) "Covered Individual" means individuals who are eligible for payment of certain services or supplies provided to them or their eligible dependents by or through a provider, PHP, clinic, or allied agency under the terms of a contract applicable to a governmental program for which the Department processes or administers data transmissions.

(9) "Data" means a formalized representation of specific facts or concepts suitable for communication, interpretation, or processing by individuals or by automatic means.

(10) "Data Transmission" means the transfer or exchange of data between the Department and a web portal or electronic data interchange (EDI) submitter by means of an information system which is compatible for that purpose and includes without limitation, web portal, EDI, electronic remittance advice (ERA), or electronic media claims (EMC) transmissions.

(11) "Department" means the Department of Human Services.

(12) "Department Network and Information Systems" means the Department's computer infrastructure that provides personal communications, confidential information, regional, wide area and local networks, and the internetworking of various types of networks on behalf of the Department.

(13) "Direct Data Entry (DDE)" means the process using dumb terminals or computer browser screens where data is directly keyed into a health plan's computer by a provider or its agent, such as through the use of a web portal.

(14) "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 Department designates for EDI transactions. For purposes of these rules (OAR 407-120-0100 through 407-120-0200), EDI does not include electronic transmission by web portal.

(15) "Electronic Data Interchange Submitter" means an individual or entity authorized to establish the electronic media connection with the Department to conduct an EDI transaction. An EDI submitter may be a trading partner or an agent of a trading partner.

(16) "Electronic Media" means electronic storage media including memory devices in computers or computer hard drives; any removable or transportable digital memory medium such as magnetic tape or disk, optical disk, or digital memory card; or transmission media used to exchange information already in electronic storage media. Transmission media includes but is not limited to the internet (wide-open), extranet (using internet technology to link a business with information accessible only to collaborating parties), leased lines, dial-up lines, private networks, and the physical movement of removable or transportable electronic storage media. Certain transmissions, including paper via facsimile and voice via telephone, are not considered transmissions by electronic media because the information being exchanged did not exist in electronic form before transmission.

(17) "Electronic Media Claims (EMC)" means an electronic media means of submitting claims or encounters for payment of services or supplies provided by a provider, PHP, clinic, or allied agency to a covered individual.

(18) "Electronic Remittance Advice (ERA)" means an electronic file in X12 format containing information pertaining to the dispo-

sition of a specific claim for payment of services or supplies rendered to covered individuals which are filed with the Department on behalf of covered individuals by providers, clinics, or allied agencies. The documents include, without limitation, the provider name and address, individual name, date of service, amount billed, amount paid, whether the claim was approved or denied, and if denied, the specific reason for the denial. For PHPs, the remittance advice file contains information on the adjudication status of encounter claims submitted.

(19) "Electronic Data Transaction (EDT)" means a transaction governed by the Health Insurance Portability and Accountability Act (HIPAA) transaction rule, conducted by either web portal or EDI.

(20) "Envelope" means a control structure in a mutually agreed upon format for the electronic interchange of one or more encoded data transmissions either sent or received by an EDI submitter or the Department.

(21) "HIPAA Transaction Rule" means the standards for electronic transactions at 45 CFR Part 160 and 162 (version in effect on January 1, 2008) adopted by the Department of Health and Human Services (DHHS) to implement the Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d et. seq.

(22) "Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of an information system or information asset including but not limited to unauthorized disclosure of information, failure to protect user IDs, and theft of computer equipment using or storing Department information assets or confidential information.

(23) "Individual User Profile (IUP)" means Department forms used to authorize a user, identify their job assignment, and the required access to the Department's network and information system. It generates a unique security access code used to access the Department's network and information system.

(24) "Information Asset" means all information, also known as data, provided through the Department, regardless of the source, which requires measures for security and privacy of the information.

(25) "Information System" means an interconnected set of information resources under the same direct management control that shares common functionality. A system normally includes hardware, software, information, data, applications, communications, and trained personnel necessary for successful data transmission.

(26) "Lost or Indecipherable Transmission" means a data transmission which is never received by or cannot be processed to completion by the receiving party in the format or composition received because it is garbled or incomplete, regardless of how or why the message was rendered garbled or incomplete.

(27) "Mailbox" means the term used by the Department to indicate trading partner-specific locations on the Department's secure file transfer protocol (SFTP) server to deposit and retrieve electronic data identified by a unique Department assigned trading partner number.

(28) "Password" means the alpha-numeric codes assigned to an EDI submitter by the Department for the purpose of allowing access to the Department's information system, including the web portal, for the purpose of successfully executing data transmissions or otherwise carrying out the express terms of a trading partner agreement or provider enrollment agreement and these rules.

(29) "Personal Identification Number (PIN)" means the alpha-numeric codes assigned to web portal submitters by the Department for the purpose of allowing access to the Department's information system, including the web portal, for the purpose of successfully executing DDE, data transmissions, or otherwise carrying out the express terms of a trading partner agreement, provider enrollment agreement, and these rules.

(30) "Prepaid Health Plan (PHP) or Plan" means a managed health care, dental care, chemical dependency, physician care organization, or mental health care organization that contracts with the Department on a case managed, prepaid, capitated basis under the Oregon Health Plan (OHP).

(31) "Provider" means an individual, facility, institution, corporate entity, or other organization which supplies or provides for the supply of services, goods or supplies to covered individuals pursuant to a contract, including but not limited to a provider enrollment agreement with the Department. A provider does not include billing providers as used in the Division of Medical Assistance (DMAP) general rules. DMAP billing providers are defined in these rules as agents, except for DMAP billing providers that are clinics.

(32) "Provider Enrollment Agreement" means an agreement between the Department and a provider for payment for the provision of covered services to covered individuals.

(33) "Registered Transaction" means each type of EDI transaction applicable to a trading partner that must be registered with the Department before it can be tested or approved for EDI transmission.

(34) "Security Access Codes" means the alpha-numeric codes assigned by the Department to the web portal submitter or EDI submitter for the purpose of allowing access to the Department's information system, including the web portal, to execute data transmissions or otherwise carry out the express terms of a trading partner agreement, provider enrollment agreement, and these rules. Security access codes may include passwords, PINs, or other codes.

(35) "Source Documents" means documents or electronic files containing underlying data which is or may be required as part of a data transmission with respect to a claim for payment of charges for medical services or supplies provided to a covered individual, or with respect to any other transaction. Examples of data contained within a specific source document include but are not limited to an individual's name and identification number, claim number, diagnosis code for the services provided, dates of service, service procedure description, applicable charges for the services provided, and a provider's, PHP's, clinic's, or allied agency's name, identification number, and signature.

(36) "Standard" means a rule, condition, or requirement describing the following information for products, systems, or practices:

(a) Classification of components;

(b) Specification of materials, performance, or operations; or

(c) Delineation of procedures.

(37) "Standards for Electronic Transactions" mean a transaction that complies with the applicable standard adopted by DHHS to implement standards for electronic transactions.

(38) "Transaction" means the exchange of data between the Department and a provider using web portal access or a trading partner using electronic media to carry out financial or administrative activities.

(39) "Trade Data Log" means the complete written summary of data and data transmissions exchanged between the Department and an EDI submitter during the period of time a trading partner agreement is in effect and includes but is not limited to sender and receiver information, date and time of transmission, and the general nature of the transmission.

(40) "Trading Partner" means a provider, PHP, clinic, or allied agency that has entered into a trading partner agreement with the Department in order to satisfy all or part of its obligations under a contract by means of EDI, ERA, or EMC, or any other mutually agreed means of electronic exchange or transfer of data.

(41) "Trading Partner Agreement (TPA)" means a specific written request by a provider, PHP, clinic, or allied agency to conduct EDI transactions that governs the terms and conditions for EDI transactions in the performance of obligations under a contract. A provider, PHP, clinic, or allied agency that has executed a TPA will be referred to as a trading partner in relation to those functions.

(42) "User" means any individual or entity authorized by the Department to access network and information systems or information assets.

(43) "User Identification Security (UIS)" means a control method required by the Department to ensure that only authorized users gain access to specified information assets. One method of control is the use of passwords and PINs with unique user identifications.

(44) "Web Portal" means a site on the World Wide Web that typically provides personalized capabilities to its visitors and a pathway to other content. It is designed to use distributed applications, different numbers, and types of middleware and hardware to provide services from a number of different sources.

(45) "Web Portal Submitter" means an individual or entity authorized to establish an electronic media connection with the Department to conduct a DDE transaction. A web portal submitter may be a provider or a provider's agent.

Stat. Auth.: ORS 409.050, 414.065
Stats. Implemented: ORS 414.065
Hist.: OMAP 25-2003(Temp), f. & cert. ef. 3-21-03 thru 9-8-03; OMAP 55-2003, f. & cert. ef. 8-22-03; DMAP 30-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-28-08; Renumbered from 410-001-0100, DHSD 1-2008, f. & cert. ef. 2-1-08

407-120-0110
Purpose

(1) These rules establish requirements applicable to providers, PHPs, and allied agencies that want to conduct electronic data transactions with the Department. These rules govern the conduct of all web portal or EDI transactions with the Department. These rules only apply to services or items that are paid for by the Department. If the service or item is paid for by a plan or an allied agency, these rules do not apply.

(2) These rules establish the Department's electronic data transaction requirements for purposes of the Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d — 1320d-8, Public Law 104-191, sec. 262 and sec. 264, and the implementing standards for electronic transactions rules. Where a federal HIPAA standard has been adopted for an electronic data transaction, this rule implements and does not alter the federal standard.

(3) These rules establish procedures that must be followed by any provider, PHP, or allied agency in the event of a security or privacy incident, regardless of whether the incident is related to the use of an electronic data transaction.

Stat. Auth.: ORS 409.050, 414.065
Stats. Implemented: ORS 414.065
Hist.: OMAP 25-2003(Temp), f. & cert. ef. 3-21-03 thru 9-8-03; OMAP 55-2003, f. & cert. ef. 8-22-03; DMAP 30-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-28-08; Renumbered from 410-001-0110, DHSD 1-2008, f. & cert. ef. 2-1-08

407-120-0112
Scope and Sequence of Electronic Data Transmission Rules

(1) The Department communicates with and receives communications from its providers, PHPs, and allied agencies using a variety of methods appropriate to the services being provided, the nature of the entity providing the services, and constantly changing technology. These rules describe some of the basic ways that the Department will exchange data electronically. Additional details may be provided in the Department's access control rules, provider-specific rules, or the applicable contract documents.

(2) Access to eligibility information about covered individuals may occur using one or more of the following methods:

(a) Automated voice response, via a telephone;

(b) Web portal access;

(c) EDI submitter access; or

(d) Point of sale (POS) for pharmacy providers.

(3) Claims for which the Department is responsible for payment or encounter submissions made to the Department may occur using one or more of the following methods:

(a) Paper, using the form specified in the provider specific rules and supplemental billing guidance. Providers may submit paper claims, except that pharmacy providers are required to use the POS process for claims submission and plans are required to use the 837 electronic formats;

(b) Web portal access;

(c) EDI submitter access; or

(d) POS for pharmacy providers.

(4) Department informational updates, provider record updates, depository for plan reports, or EDT as specified by the Department for contract compliance.

(5) Other Department network and information system access is governed by specific program requirements, which may include but is not limited to IUP access. Affected providers, PHPs, and allied agencies will be separately instructed about the access and requirements. Incidents are subject to these rules.

(6) Providers and allied agencies that continue to use only paper formats for transactions are only subject to the confidentiality and security rule, OAR 407-120-0170.

Stat. Auth.: ORS 409.050, 414.065
Stats. Implemented: ORS 414.065
Hist.: DHSD 13-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-28-08; DHSD 1-2008, f. & cert. ef. 2-1-08

407-120-0114
Provider Enrollment Agreement

(1) When a provider applies to enroll, the application form will include information about how to participate in the web portal for use of DDE and automated voice response (AVR) inquiries. The enrollment agreement will include a section describing the process that will permit the provider, once enrolled, to participate in DDE over the Internet using the secure Department web portal.

(2) When the provider number is issued by the Department, the provider will also receive two PINs: one that may be used to access the web portal and one that may be used for AVR.

(a) If the PINs are not activated within 60 days of issuance, the Department will initiate a process to inactivate the PIN. If the provider wants to use PIN-based access to the web portal or AVR after deactivation, the provider must submit an update form to obtain another PIN.

(b) Activating the PIN will require Internet access and the provider must supply security data that will be associated with the use of the PIN.

(c) Providers using the PIN are responsible for protecting the confidentiality and security of the PIN pursuant to OAR 407-120-0170.

Stat. Auth.: ORS 409.050, 414.065
Stats. Implemented: ORS 414.065
Hist.: DHSD 13-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-28-08; DHSD 1-2008, f. & cert. ef. 2-1-08

407-120-0116
Web Portal Submitter

(1) Any provider activating their web portal access for web portal submission may be a web portal submitter. The provider will be referred to as the web portal submitter when functioning in that capacity, and shall be required to comply with these rules governing web portal submitters.

(2) The authorized signer of the provider enrollment agreement shall be the individual who is responsible for the provider's DDE claims submission process.

(a) If a provider submits their own claims directly, the provider will be referred to as the web portal submitter when functioning in that capacity and shall be required to comply with these rules governing web portal submitters.

(b) If a provider uses an agent or clinic to submit DDE claims using the Department's web portal, the agent or clinic will be referred to as the web portal submitter when functioning in that capacity and shall be required to comply with these rules governing web portal submitters.

Stat. Auth.: ORS 409.050, 414.065
Stats. Implemented: ORS 414.065
Hist.: DHSD 13-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-28-08; DHSD 1-2008, f. & cert. ef. 2-1-08

407-120-0118
Conduct of Direct Data Entry Using Web Portal

(1) The web portal submitter is responsible for the conduct of the DDE transactions submitted on behalf of the provider, as follows:

(a) Accuracy of Web Portal Submissions. The web portal submitter must take reasonable care to ensure that data and DDE transmissions are timely, complete, accurate, and secure, and must take reasonable precautions to prevent unauthorized access to the information system or the DDE transmission. The Department will not correct or modify an incorrect DDE transaction prior to processing. The transactions may be rejected and the web portal submitter will be notified of the rejection.

(b) Cost of Equipment. The web portal submitter and the Department must bear their own information system costs. The web portal submitter must, at their own expense, obtain access to Internet service that is compatible with and has the capacity for secure access to the Department's web portal. Web portal submitters must pay their own costs for all charges, including but not limited to charges for equipment, software and services, Internet connection and use time, terminals, connections, telephones, and modems. The Department is not responsible for providing technical assistance for access to or use of Internet web portal services or the processing of a DDE transaction.

(c) Format of DDE Transactions. The web portal submitter must send and receive all data transactions in the Department's approved format. Any attempt to modify or alter the DDE transaction format may result in denial of web portal access.

(d) Re-submissions. The web portal submitter must maintain source documents and back-up files or other means sufficient to re-create a data transmission in the event that re-creation becomes necessary for any purpose, within timeframes required by federal or state law, or by contractual agreement. Back ups, archives, or related files are subject to the terms of these rules to the same extent as the original data transmission.

(2) Security and Confidentiality. To protect security and confidentiality, web portal submitters must comply with the following:

(a) Refrain from copying, reverse engineering, disclosing, publishing, distributing, or altering any data or data transmissions, except as permitted by these rules or the contract, or use the same for any purpose other than that which the web portal submitter was specifically given access and authorization by the Department or the provider.

(b) Refrain from obtaining access by any means to any data or the Department's network and information system for any purpose other than that which the web portal submitter has received express authorization to receive access. If the web portal submitter receives data or data transmissions from the Department which are clearly not intended for the receipt of web portal submitter, the web portal submitter will immediately notify the Department and make arrangements to return or re-transmit the data or data transmission to the Department. After re-transmission, the web portal submitter must immediately delete the data contained in the data transmission from its information system.

(c) Install necessary security precautions to ensure the security of the DDE transmission or records relating to the information system of either the Department or the web portal submitter when the information system is not in active use by the web portal submitter.

(d) Protect and maintain, at all times, the confidentiality of security access codes issued by the Department. Security access codes are strictly confidential and specifically subject, without limitation, to all of the restrictions in OAR 407-120-0170. The Department may change the designated security access codes at any time and in any manner as the Department in its sole discretion considers necessary.

(e) Install, maintain, and use security measures for confidential information transmitted between a provider and the web portal submitter if a provider uses an agent or clinic as the web portal submitter.

Stat. Auth.: ORS 409.050, 414.065
Stats. Implemented: ORS 414.065
Hist.: DHSD 13-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-28-08; DHSD 1-2008, f. & cert. ef. 2-1-08

407-120-0120
Registration Process – EDI Transactions

(1) The EDI transaction process is preferred by providers, PHPs, and allied agencies for conducting batch or real time transactions, rather than the individual data entry process used for DDE. EDI registration is an administrative process governed by these rules. The EDI registration process begins with the submission of a TPA by a provider, PHP, clinic, or allied agency, including all requirements and documentation required by these rules.

(2) Trading partners must be Department providers, PHPs, clinics, or allied agencies with a current Department contract. The Department will not accept a TPA from individuals or entities who do not have a current contract with the Department.

(a) The Department may receive and hold the TPA for individuals or entities that have submitted a provider enrollment agreement or other pending contract, subject to the satisfactory execution of the pending document.

(b) Termination, revocation, suspension, or expiration of the contract will result in the concurrent termination, revocation, suspension, or expiration of the TPA without any additional notice; except that the TPA will remain in effect to the extent necessary for a trading partner or the Department to complete obligations involving EDI under the contract for dates of service when the contract was in effect. Contracts that are periodically renewed or extended do not require renewal or extension of the TPA unless there is a lapse of time between contracts.

(c) Failure to identify a current Department contract during the registration process will result in a rejection of the TPA. The Department will verify that the contract numbers identified by a provider, PHP, clinic, or allied agency are current contracts.

(d) If contract number or contract status changes, the trading partner must provide the Department with updated information within five business days of the change in contract status. If the Department determines that a valid contract no longer exists, the Department shall discontinue EDI transactions applicable for any time period in which the contract no longer exists; except that the TPA will remain in effect to the extent necessary for the trading partner or the Department to complete obligations involving EDI under the contract for dates of service when the contract was in effect.

(3) Trading Partner Agreement. To register as a trading partner with the Department, a provider, PHP, clinic, or allied agency must submit a signed TPA to the Department.

(4) Application for Authorization. In addition to the requirements of section (3) of this rule, a trading partner must submit an application for authorization to the Department. The application provides specific identification and legal authorization from the trading partner for an EDI submitter to conduct EDI transactions on behalf of a trading partner.

(5) Trading Partner Agents. A trading partner may use agents to facilitate the electronic transmission of data. If a trading partner will be using an agent as an EDI submitter, the application for authorization required under section (4) of this rule must identify and authorize an EDI submitter and must include the EDI certification signed by an EDI submitter before the Department may accept electronic submission from or send electronic transmission to an EDI submitter.

(6) EDI Registration. In addition to the requirements of section (3) of this rule, a trading partner must also submit its EDI registration form. This form requires the trading partner or its authorized EDI submitter to register an EDI submitter and the name and type of EDI transaction they are prepared to conduct. Signature of the trading partner or authorized EDI submitter is required on the EDI registration form. The registration form will also permit the trading partner to identify the individuals or EDI submitters who are authorized to submit or receive EDI registered transactions.

(7) Review and Acceptance Process. The Department will review the documentation provided to determine compliance with sections (1) through (6) of this rule. The information provided may be subject to verification by the Department. When the Department determines that the information complies with these rules, the Department will notify the trading partner and EDI submitter by email about any testing or other requirements applicable to place the registered transaction into a production environment.

Stat. Auth.: ORS 409.050, 414.065
Stats. Implemented: ORS 414.065
Hist.: OMAP 25-2003(Temp), f. & cert. ef. 3-21-03 thru 9-8-03; OMAP 55-2003, f. & cert. ef. 8-22-03; DMAP 30-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-28-08; Renumbered from 410-001-0120, DHSD 1-2008, f. & cert. ef. 2-1-08

407-120-0130
Trading Partner as EDI Submitter – EDI Transactions

(1) A trading partner may be an EDI submitter. Registered trading partners that also qualify as an EDI submitter may submit their own EDI transactions directly to the Department. A trading partner will be referred to as an EDI submitter when functioning in that capacity and will be required to comply with applicable EDI submitter rules, except as provided in section (3) of this rule.

(2) Authorization and Registration Designating Trading Partner as EDI Submitter. Before acting as an EDI submitter, a trading partner must designate in the application for application that they are an EDI submitter who is authorized to send and receive data transmissions in the performance of EDI transactions. A trading partner must complete the "Trading Partner Application for Authorization to Submit EDI Transactions" and the "EDI Submitter Information" required in the application. A trading partner must also submit the EDI registration form identifying them as an EDI submitter. A trading partner must notify the Department of any material changes in the information no less than ten days prior to the effective date of the change.

(3) EDI Submitter Certification Conditions. Where a trading partner is acting as its own EDI submitter, the trading partner is not required to submit the EDI submitter certification conditions in the application for authorization applicable to agents.

Stat. Auth.: ORS 409.050, 414.065
Stats. Implemented: ORS 414.065
Hist.: OMAP 25-2003(Temp), f. & cert. ef. 3-21-03 thru 9-8-03; OMAP 55-2003, f. & cert. ef. 8-22-03; DMAP 30-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-28-08; Renumbered from 410-001-0130, DHSD 1-2008, f. & cert. ef. 2-1-08

407-120-0140
Trading Partner Agents as EDI Submitters — EDI Transactions

(1) Responsibility for Agents. If a trading partner uses the services of an agent, including but not limited to an EDI submitter in any capacity in order to receive, transmit, store, or otherwise process data or data transmissions or perform related activities, a trading partner shall be fully responsible to the Department for the agent's acts.

(2) Notices Regarding EDI Submitter. Prior to the commencement of an EDI submitter's services, a trading partner must designate in the application for authorization the specific EDI submitters that are authorized to send and receive data transmissions in the performance of EDI transactions of a trading partner. A trading partner must complete the "Trading partner Authorization of EDI Submitter" and the "EDI Submitter Information" required in the application. A trading partner must also submit the EDI registration form identifying and providing information about an EDI submitter. A trading partner or authorized EDI submitter must notify the Department of any material changes in the EDI submitter authorization or information no less than five days prior to the effective date of the changes.

(3) EDI Submitter Authority. A trading partner must authorize the actions that an EDI submitter may take on behalf of a trading partner. The application for authorization permits a trading partner to authorize which decisions may only be made by a trading partner and which decisions are authorized to be made by an EDI submitter. The EDI submitter information authorized in the application for authorization will be recorded by the Department in an EDI submitter profile. The Department may reject EDI transactions from an EDI submitter acting without authorization from a trading partner.

(4) EDI Submitter Certification Conditions. Each authorized EDI submitter acting as an agent of a trading partner must execute and comply with the EDI submitter certification conditions that are incorporated into the application for authorization. Failure to include the signed EDI submitter certification conditions with the application shall result in a denial of EDI submitter authorization by the Department. Failure of an EDI submitter to comply with the EDI submitter certification conditions may result in termination of EDI submitter registration for EDI transactions with the Department.

(5) EDI Submitters Responsibilities. In addition to the requirements of section (1) of this rule, a trading partner is responsible for ensuring that an EDI submitter makes no unauthorized changes in the data content of all data transmissions or the contents of an envelope, and that an EDI submitter will take all appropriate measures to maintain the timeliness, accuracy, truthfulness, confidentiality, security, and completeness of each data transmission. A trading partner is responsible for ensuring that its EDI submitters are specifically advised of, and will comply with, the terms of these rules and any TPA.

Stat. Auth.: ORS 409.050, 414.065
Stats. Implemented: ORS 414.065
Hist.: OMAP 25-2003(Temp), f. & cert. ef. 3-21-03 thru 9-8-03; OMAP 55-2003, f. & cert. ef. 8-22-03; DMAP 30-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-28-08; Renumbered from 410-001-0140, DHSD 1-2008, f. & cert. ef. 2-1-08

407-120-0150
Testing – EDI Transactions

(1) When a trading partner or authorized EDI submitter registers an EDI transaction with the Department, the Department may require testing before authorizing the transaction. Testing may include business-to-business testing. An EDI submitter must be able to demonstrate its capacity to send and receive each transaction type for which it has registered. The Department will reject any EDI transaction if an EDI submitter either refuses or fails to comply with the Department testing requirements.

(2) The Department may require EDI submitters to complete compliance testing at an EDI submitter's expense for each transaction type if either the Department or an EDI submitter has experienced a change to hardware or software applications by entering into business-to-business testing.

(3) When business-to-business testing is completed to the Department's satisfaction, the Department will notify an EDI submitter that it will register and accept the transactions in the production environment. This notification authorizes an EDI submitter to submit the registered EDI transactions to the Department for processing and response, as applicable. If there are any changes in the trading partner or EDI submitter authorization, profile data or EDI registration information on file with the Department, updated information must be submitted to the Department as required in OAR 407-120-0190.

(4) Testing will be conducted using secure electronic media communications methods.

(5) An EDI submitter may be required to re-test with the Department if the Department format changes or if the EDI submitter format changes.

Stat. Auth.: ORS 409.050, 414.065
Stats. Implemented: ORS 414.065
Hist.: OMAP 25-2003(Temp), f. & cert. ef. 3-21-03 thru 9-8-03; OMAP 55-2003, f. & cert. ef. 8-22-03; DMAP 30-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-28-08; Renumbered from 410-001-0150, DHSD 1-2008, f. & cert. ef. 2-1-08

407-120-0160
Conduct of Transactions — EDI Transactions

(1) EDI Submitter Obligations. An EDI submitter is responsible for the conduct of the EDI transactions registered on behalf of a trading partner, including the following:

(a) EDI Transmission Accuracy. An EDI submitter shall take reasonable care to ensure that data and data transmissions are timely, complete, accurate, and secure; and shall take reasonable precautions to prevent unauthorized access to the information system, the data transmission, or the contents of an envelope which is transmitted either to or from the Department. The Department will not correct or modify an incorrect transaction prior to processing. The transaction may be rejected and an EDI submitter notified of the rejection.

(b) Re-transmission of Indecipherable Transmissions. Where there is evidence that a data transmission is lost or indecipherable, the sending party must make best efforts to trace and re-transmit the original data transmission in a manner which allows it to be processed by the receiving party as soon as practicable.

(c) Cost of Equipment. An EDI submitter and the Department will pay for their own information system costs. An EDI submitter shall, at its own expense, obtain and maintain its own information system. An EDI submitter shall pay its own costs for all charges related to data transmission including, without limitation, charges for information system equipment, software and services, electronic mailbox maintenance, connect time, terminals, connections, telephones, modems, any applicable minimum use charges, and for translating, formatting, sending, and receiving communications over the electronic network to the electronic mailbox, if any, of the Department. The Department is not responsible for providing technical assistance in the processing of an EDI transaction.

(d) Back-up Files. EDI submitters must maintain adequate data archives and back-up files or other means sufficient to re-create a data transmission in the event that re-creation becomes necessary for any purpose, within timeframes required by state and federal law, or by contractual agreement. Data archives or back-up files shall be subject to these rules to the same extent as the original data transmission.

(e) Transmissions Format. Except as otherwise provided herein, EDI submitters must send and receive all data transmissions in the federally mandated format, or (if no federal standard has been promulgated) other formats as the Department designates.

(f) Testing. EDI submitters must, prior to the initial data transmission and throughout the term of a TPA, test and cooperate with the Department in the testing of information systems as the Department considers reasonably necessary to ensure the accuracy, timeliness, completeness, and confidentiality of each data transmission.

(2) Security and Confidentiality. To protect security and confidentiality of transmitted data, EDI submitters must comply with the following:

(a) Refrain from copying, reverse engineering, disclosing, publishing, distributing, or altering any data, data transmissions, or the contents of an envelope, except as necessary to comply with the terms of these rules or the TPA, or use the same for any purpose other than that which an EDI submitter was specifically given access and authorization by the Department or a trading partner;

(b) Refrain from obtaining access by any means to any data, data transmission, envelope, mailbox, or the Department's information system for any purpose other than that which an EDI submitter has received express authorization. If an EDI submitter receives data or data transmissions from the Department which clearly are not intended for an EDI submitter, an EDI submitter shall immediately notify the Department and make arrangements to return or re-transmit the data or data transmission to the Department. After re-transmission, an EDI submitter shall immediately delete the data contained in the data transmission from its information system;

(c) Install necessary security precautions to ensure the security of the information systems or records relating to the information systems of either the Department or an EDI submitter when the information system is not in active use by an EDI submitter;

(d) Protect and maintain the confidentiality of security access codes issued by the Department to an EDI submitter; and

(e) Provide special protection for security and other purposes, where appropriate, by means of authentication, encryption, the use of passwords, or other means. Unless otherwise provided in these rules, the recipient of a protected data transmission must at least use the same level of protection for any subsequent transmission of the original data transmission.

(3) Department Obligations. The Department shall:

(a) Make available to an EDI submitter, by electronic media, those types of data and data transmissions which an EDI submitter is authorized to receive.

(b) Inform an EDI submitter of acceptable formats in which data transmissions may be made and provide notification to an EDI submitter within reasonable time periods consistent with HIPAA transaction standards, if applicable, or at least 30 days prior by electronic notice of other changes in formats.

(c) Provide an EDI submitter with security access codes that will allow an EDI submitter access to the Department's information system. Security access codes are strictly confidential and EDI submitters must comply with all of the requirements of OAR 407-120-0170. The Department may change the designated security access codes at any time and manner as the Department, in its sole discretion, deems necessary. The release of security access codes shall be limited to authorized electronic data personnel of an EDI submitter and the Department with a need to know.

Stat. Auth.: ORS 409.050, 414.065
Stats. Implemented: ORS 414.065
Hist.: OMAP 25-2003(Temp), f. & cert. ef. 3-21-03 thru 9-8-03; OMAP 55-2003, f. & cert. ef. 8-22-03; DMAP 30-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-28-08; Renumbered from 410-001-0160, DHSD 1-2008, f. & cert. ef. 2-1-08

407-120-0165
Pharmacy Point of Sale Access

Pharmacy providers who electronically bill pharmaceutical claims must participate in and submit claims using the POS system, except as provided in OAR 410-121-0150.

Stat. Auth.: ORS 409.050, 414.065
Stats. Implemented: ORS 414.065
Hist.: DHSD 13-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-28-08; DHSD 1-2008, f. & cert. ef. 2-1-08

407-120-0170
Confidentiality and Security

(1) Individually Identifiable Health Information. All providers, PHPs, and allied agencies are responsible for ensuring the confidentiality of individually identifiable health information, consistent with the requirements of the privacy statutes and regulations, and shall take reasonable action to prevent any unauthorized disclosure of confidential information by a provider, PHP, allied agency, or other agent. A provider, web portal submitter, trading partner, EDI submitter, or other agent must comply with any and all applicable privacy statutes and regulations relating to confidential information.

(2) General Requirements for Electronic Submitters. A provider (web portal submitter), trading partner (EDI submitter), or other agent must maintain adequate security procedures to prevent unauthorized access to data, data transmissions, security access codes, or the Department's information system, and must immediately notify the Department of all unauthorized attempts by any individual or entity to obtain access to or otherwise tamper with the data, data transmissions, security access codes, or the Department's information system.

(3) Notice of Unauthorized Disclosures. All providers, PHPs, and allied agencies must promptly notify the Department of all unlawful or unauthorized disclosures of confidential information that come to its agents' attention, and shall cooperate with the Department if corrective action is required by the Department. The Department will promptly notify a provider, PHP, or allied agency of all unlawful or unauthorized disclosures of confidential information in relation to a provider, PHP, or allied agency that come to the Department's or its agents' attention, and will cooperate with a provider, PHP, or allied agency if corrective action is required.

(4) Wrongful use of the web portal, EDI systems, or the Department's network and information system, or wrongful use or disclosure of confidential information by a provider, allied agency, electronic submitters, or their agents may result in the immediate suspension or revocation of any access granted under these rules or other Department rules, at the sole discretion of the Department.

(5) A provider, allied agency, PHP, or electronic submitter must report to the Department's Information Security Office at dhsinfo.security@state.or.us and to the Department program contact individual, any privacy or security incidents that compromise, damage, or cause a loss of protection to confidential information, information assets, or the Department's network and security system. Reports must be made in the following manner:

(a) No later than five business days from the date on which a provider, allied agency, PHP, or electronic submitter becomes aware of the incident; and

(b) Provide the results of the incident assessment findings and resolution strategies no later than 30 business days after the report is due under section (4)(a).

(6) A provider, allied agency, PHP, or electronic submitter must comply with the Department's requests for corrective action concerning a privacy or security incident and with applicable laws requiring mitigation of harm caused by the unauthorized use or disclosure of confidential information.

Stat. Auth.: ORS 409.050, 414.065
Stats. Implemented: ORS 414.065
Hist.: OMAP 25-2003(Temp), f. & cert. ef. 3-21-03 thru 9-8-03; OMAP 55-2003, f. & cert. ef. 8-22-03; DMAP 30-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-28-08; Renumbered from 410-001-0170, DHSD 1-2008, f. & cert. ef. 2-1-08

407-120-0180
Record Retention and Audit

(1) Records Retention. A provider, web portal submitter, trading partner, and EDI submitter shall maintain, for a period of no less than seven years from the date of service, complete, accurate, and unaltered copies of all source documents associated with all data transmissions.

(2) EDI Trade Data Log. An EDI submitter must establish and maintain a trade data log that must record all data transmissions taking place between an EDI submitter and the Department during the term of a TPA. A trading partner and EDI submitter must take necessary and reasonable steps to ensure that the trade data log constitutes a current, truthful, accurate, complete, and unaltered record of all data transmissions between the parties and must be retained by each party for no less than 24 months following the date of the data transmission. The trade data log may be maintained on electronic media or other suitable means provided that, if necessary, the information may be timely retrieved and presented in readable form.

(3) Right to Audit. A provider must allow and require any web portal submitter to allow, and a trading partner must allow and require an EDI submitter or other agent to allow access to the Department, the Oregon Secretary of State, the Oregon Department of Justice Medicaid Fraud Unit, or its designees, and DHHS or its designees to audit relevant business records, source documents, data, data transmissions, trade data logs, or information systems of a provider and its web portal submitter, and a trading partner, and its agents, as necessary, to ensure compliance with these rules. A provider must allow and require its web portal submitter to allow, and a trading partner must allow and require an EDI submitter or other agent to allow the Department, or its designee, access to ensure that adequate security precautions have been made and are implemented to prevent unauthorized disclosure of any data, data transmissions, or other information.

Stat. Auth.: ORS 409.050, 414.065
Stats. Implemented: ORS 414.065
Hist.: OMAP 25-2003(Temp), f. & cert. ef. 3-21-03 thru 9-8-03; OMAP 55-2003, f. & cert. ef. 8-22-03; DMAP 30-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-28-08; Renumbered from 410-001-0180, DHSD 1-2008, f. & cert. ef. 2-1-08

407-120-0190
Material Changes

(1) Changes in Any Material Information – EDT Process. A trading partner must submit an updated TPA, application for authorization, or EDI registration form to the Department within ten business days of any material change in information. A material change includes but is not limited to mailing or email address change, contract number or contract status (termination, expiration, extension), identification of authorized individuals of a trading partner or EDI submitter, the addition or deletion of authorized transactions, or any other change that may affect the accuracy of or authority for an EDI transaction. The Department may act on data transmissions submitted by a trading partner and its EDI submitter based on information on file in the application for authorization and EDI registration forms until an updated form has been received and approved by the Department. A trading

partner's signature or the signature of an authorized EDI submitter is required to ensure that an updated TPA, authorization, or EDI registration form is valid and authorized.

(2) Changes in Any Material Information – Web Portal Access. Providers must submit an updated web portal registration form to the Department within ten business days of any material changes in information. A material change includes but is not limited to mailing or email address change, contract number or contract status (termination, suspension, expiration), identification of web portal submitter contact information, or any other change that may affect the accuracy of or authority for a DDE transaction. The Department is authorized to act on data transmissions submitted by a provider and its web portal submitter based on information on file in the web portal registration form until an updated form has been received and approved by the Department. A provider's signature or the signature of an authorized business representative is required to ensure that an updated web portal registration form is valid and authorized.

(3) Failure to submit a timely updated form may impact the ability of a data transaction to be processed without errors. Failure to submit a signed, updated form may result in the rejection of a data transmission.

Stat. Auth.: ORS 409.050, 414.065
Stats. Implemented: ORS 414.065
Hist.: OMAP 25-2003(Temp), f. & cert. ef. 3-21-03 thru 9-8-03; OMAP 55-2003, f. & cert. ef. 8-22-03; DMAP 30-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-28-08; Renumbered from 410-001-0190, DHSD 1-2008, f. & cert. ef. 2-1-08

407-120-0200
Department System Administration

(1) No individual or entity shall be registered to conduct a web portal or an EDI transaction with the Department except as authorized under these the rules. Eligibility and continued participation as a provider or web portal submitter in the conduct of DDE transactions, or as a trading partner or EDI submitter in the conduct of registered transactions, is conditioned on the execution and delivery of the documents required in these rules, the continued accuracy of that information consistent with OAR 407-120-0190, and compliance with a requirements of these rules. Data, including confidential information, governed by these rules may be used for purposes related to treatment, payment, and health care operations and for the administration of programs or services by the Department.

(2) In addition to the requirements of section (1) of this rule, in order to qualify as a trading partner:

(a) An individual or entity must be a Department provider, PHP, clinic, or allied agency pursuant to a current valid contract; and

(b) A provider, PHP, clinic, or allied agency must have submitted an executed TPA and all related documentation, including the application for authorization, that identifies and authorizes an EDI submitter.

(3) In addition to the requirements of section (1) of this rule, in order to qualify as an EDI submitter:

(a) A trading partner must have identified the individual or entity as an authorized EDI submitter in the application for authorization;

(b) If a trading partner identifies itself as an EDI submitter, the application for authorization must include the information required in the "Trading Partner Authorization of EDI Submitter" and the "EDI Submitter Information"; and

(c) If a trading partner uses an agent as an EDI submitter, the application for authorization must include the information described in section (3)(b) and the signed EDI submitter certification.

(4) The EDI registration process described in these rules provides the Department with essential profile information that the Department may use to confirm that a trading partner or EDI submitter is not otherwise excluded or disqualified from submitting EDI transactions to the Department.

(5) Nothing in these rules or a TPA prevents the Department from requesting additional information from a trading partner or an EDI submitter to determine their qualifications or eligibility for registration as a trading partner or EDI submitter.

(6) The Department shall deny a request for registration as a trading partner or for authorization of an EDI submitter or an EDI registration if it finds any of the following:

(a) A trading partner or EDI submitter has substantially failed to comply with the applicable administrative rules or laws;

(b) A trading partner or EDI submitter has been convicted of (or entered a plea of nolo contendre) a felony or misdemeanor related to a crime or violation of federal or state public assistance laws or privacy statutes or regulations;

(c) A trading partner or EDI submitter is excluded from participation in the Medicare program, as determined by the DHHS secretary; or

(d) A trading partner or EDI submitter fails to meet the qualifications as a trading partner or EDI submitter.

(7) Failure to comply with these rules, trading partner agreement, or EDI submitter certification or failure to provide accurate information on an application or certification may also result in sanctions and payment recovery pursuant to applicable Department program contracts or rules.

(8) For providers using the DDE submission system by the Department web portal, failure to comply with the terms of these rules, a web portal registration form, or failure to provide accurate information on the registration form may result in sanctions or payment recovery pursuant to the applicable Department program contracts or rules.

Stat. Auth.: ORS 409.050, 414.065
Stats. Implemented: ORS 414.065
Hist.: OMAP 25-2003(Temp), f. & cert. ef. 3-21-03 thru 9-8-03; OMAP 55-2003, f. & cert. ef. 8-22-03; DMAP 30-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-28-08; Renumbered from 410-001-0200, DHSD 1-2008, f. & cert. ef. 2-1-08

MMIS Provider Enrollment and Claiming

407-120-0300
Definitions

The following definitions apply to OAR 407-120-0300 to 407-120-0400:

(1) "Abuse" means provider practices that are inconsistent with sound fiscal, business, or medical practices resulting in an unnecessary cost to the Department, or in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care. It also includes actions by clients or recipients that result in unnecessary cost to the Department.

(2) "Advance Directive" means a form that allows an individual to have another individual make health care decisions when he or she cannot make decisions and informs a doctor if the individual does not want any life sustaining help if he or she is near death.

(3) "Benefit Package" means the package of covered health care services for which the client is eligible.

(4) "Billing Agent or Billing Service" means a third party or organization that contracts with a provider to perform designated services in order to facilitate claim submission or electronic transactions on behalf of the provider.

(5) "Billing Provider" means an individual, agent, business, corporation, clinic, group, institution, or other entity who, in connection with submission of claims to the Department, receives or directs payment from the Department on behalf of a performing provider and has been delegated the authority to obligate or act on behalf of the performing provider.

(6) "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 Division of Medical Assistance Programs (DMAP).

(7) "Claim" means a bill for services, a line item of a service, or all services for one client within a bill. Claim includes a bill or an encounter associated with requesting reimbursement, whether submitted on paper or electronically. Claim also includes any other methodology for requesting reimbursement that may be established in contract or program-specific rules.

(8) "Client or Recipient" means an individual found eligible by the Department to receive services under the OHP demonstration, medical assistance program, or other public assistance programs administered by the Department. The following OHP categories are eligible for enrollment:

(a) Temporary Assistance to Needy Families (TANF) are categorically eligible families with income levels under current TANF eligibility rules;

(b) CHIP children under one year of age whose household has income under 185% Federal Poverty Level (FPL) and do not meet one of the other eligibility classifications;

(c) Poverty Level Medical (PLM) adults under 100% of the FPL are clients who are pregnant women with income under 100% of FPL;

(d) PLM adults over 100% of the FPL are clients who are pregnant women with income between 100% and 185% of the FPL;

(e) PLM children under one year of age who have family income under 133% of the FPL or were born to mothers who were eligible as PLM adults at the time of the child's birth;

(f) PLM or CHIP children one through five years of age who have family income under 185% of the FPL and do not meet one of the other eligibility classifications;

(g) PLM or CHIP children six through 18 years of age who have family income under 185% of the FPL and do not meet one of the other eligibility classifications;

(h) OHP adults and couples are clients age 19 or over and not Medicare eligible, with income below 100% of the FPL who do not meet one of the other eligibility classifications, and do not have an unborn child or a child under age 19 in the household;

(i) OHP families are clients, age 19 or over and not Medicare eligible, with income below 100% of the FPL who do not meet one of the other eligibility classifications, and have an unborn child or a child under the age of 19 in the household;

(j) General Assistance (GA) recipients are clients who are eligible by virtue of their eligibility under the GA program, ORS 411.710 et seq.;

(k) Assistance to Blind and Disabled (AB/AD) with Medicare eligibles are clients with concurrent Medicare eligibility with income levels under current eligibility rules;

(l) AB/AD without Medicare eligibles are clients without Medicare with income levels under current eligibility rules;

(m) Old Age Assistance (OAA) with Medicare eligibles are clients with concurrent Medicare Part A or Medicare Parts A and B eligibility with income levels under current eligibility rules;

(n) OAA with Medicare Part B only are OAA eligibles with concurrent Medicare Part B only income under current eligibility rules;

(o) OAA without Medicare eligibles are clients without Medicare with income levels under current eligibility rules; or

(p) Children, Adults and Families (CAF) children are clients with medical eligibility determined by CAF or Oregon Youth Authority (OYA) receiving OHP under ORS 414.025, 418.034, and 418.187 to 418.970. These individuals are generally in placement outside of their homes and in the care or custody of CAF or OYA.

(9) "Client Representative" means an individual who can make decisions for clients who are not able to make such decisions themselves. For purposes of medical assistance, a client representative may be, in the following order of priority, an individual who is designated as the client's health care representative under ORS 127.505(12), a court-appointed guardian, a spouse or other family member as designated by the client, the individual service plan team (for developmentally disabled clients), a Department case manager, or other Department designee. To the extent that other Department programs recognize other individuals who may act as a client representative, that individual may be considered the client representative in accordance with program-specific rules or applicable contracts.

(10) "Clinical Records" means the medical, dental, or mental health records of a client. These records include the Primary Care Provider (PCP) records, the inpatient and outpatient hospital records and the Exceptional Needs Care Coordinator (ENCC), complaint and disenrollment for cause records which may be located in the Prepaid Health Plan (PHP) administrative offices.

(11) "Conviction or Convicted" means that a judgment of conviction has been entered by a federal, state, or local court, regardless of whether an appeal from that judgment is pending.

(12) "Covered Services" means medically appropriate health services or items that are funded by the legislature and described in ORS chapter 414, including OHP authorized under ORS 414.705 to 414.750, and applicable Department rules describing the benefit packages of covered services except as excluded or limited under OAR 410-141-0500 or such other public assistance services provided to eligible clients under program-specific requirements or contracts by providers required to enroll with the Department under OAR 407-120-0300 to 407-120-0400.

(13) "Date of Service" means the date on which the client receives medical services or items, unless otherwise specified in the appropriate provider rules.

(14) "Department" means the Department of Human Services.

(15) "Diagnosis Code" means the code as identified in the International Classification of Diseases, 9th Revision, Clinical Modification (ICD-9-CM). The primary diagnosis code is shown in all billing claims and PHP encounters, unless specifically excluded in individual provider rules. Where they exist, diagnosis codes must be shown to the degree of specificity outlined in OAR 407-120-0340 (claim and PHP encounter submission).

(16) "Electronic Data Transaction (EDT)" means the electronic exchange of business documents from application to application in a federally mandated format or, if no federal standard has been promulgated, conducted by either web portal or electronic data interchange in accordance with the Department's electronic data transaction rule (OAR 407-120-0100 to 407-120-0200).

(17) "Exclusion" means the Department shall not reimburse a specific provider who has defrauded or abused the Department for items or services that a provider furnished.

(18) "False Claim" means a claim or PHP encounter that a provider knowingly submits or causes to be submitted that contains inaccurate or misleading information, and that information would result, or has resulted, in an overpayment or improper use for per capita cost calculations.

(19) "Fraud" means an intentional deception or misrepresentation made by an individual with the knowledge that the deception could result in some unauthorized benefit to himself or herself, or some other individual. It includes any act that constitutes fraud or false claim under applicable federal or state law.

(20) "Healthcare Common Procedure Coding System (HCPCS)" means a method for reporting health care professional services, procedures and supplies. HCPCS consists of the Level 1 — American Medical Association's Physicians' Current Procedural Terminology (CPT), Level II — National Codes and Level III — Local Codes.

(21) "Health Insurance Portability and Accountability Act (HIPAA)" means a 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.

(22) "Hospice" means a public agency or private organization or subdivision of either that is primarily engaged in providing care to terminally ill individuals, is certified for Medicare, accredited by the Oregon Hospice Association, and is listed in the Hospice Program Registry.

(23) "Individual Adjustment Request" means a form (DMAP 1036) used to resolve an incorrect payment on a previously paid claim, including underpayments or overpayments.

(24) "Medicaid" means a federal and state funded portion of the medical assistance program established by Title XIX of the Social Security Act, as amended, and administered in Oregon by the Department.

(25) "Medicaid Management Information System (MMIS)" means the automated claims processing and information retrieval system for handling all Medicaid transactions. The objectives of the system include verifying provider enrollment and client eligibility, managing health care provider claims and benefit package maintenance, and addressing a variety of Medicaid business needs.

(26) "Medical Assistance Program" means a program for payment of health care provided to eligible Oregonians. Oregon's medical assistance program includes Medicaid services including the OHP Medicaid Demonstration, and CHIP. The medical assistance program is administered and coordinated by DMAP, a division of the Department.

(27) "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 which are:

(a) Consistent with the symptoms 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 a 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 client in the provider's judgment.

(28) "Medicare" means the federal health insurance program for the aged and disabled administered by the Centers for Medicare and Medicaid Services (CMS) under Title XVIII of the Social Security Act.

(29) "National Provider Identification (NPI)" means a federally directed provider number mandated for use on HIPAA covered transactions by individuals, provider organizations, and subparts of provider organizations that meet the definition of health care provider (45 Code of Federal Regulations (CFR) 160.103) and who conduct HIPAA covered transactions electronically.

(30) "Non-Covered Services" means services or items for which the Department is not responsible for payment. Non-covered services are identified in:

(a) OAR 410-120-1200, Excluded Services and Limitations;

(b) OAR 410-120-1210, Medical Assistance Benefit Packages and Delivery System;

(c) OAR 410-141-0480, OHP Benefit Package of Covered Services;

(d) OAR 410-141-0520, Prioritized List of Health Services; and

(e) The individual Department provider rules, program-specific rules, and contracts.

(31) "Non-Participating Provider" means a provider who does not have a contractual relationship with the PHP.

(32) "Nursing Facility" means a facility licensed and certified by the Department's Seniors and People with Disabilities Division (SPD) defined in OAR 411-070-0005.

(33) "Oregon Health Plan (OHP)" means the Medicaid demonstration project that expands Medicaid eligibility to eligible clients. The OHP relies substantially upon prioritization of health services and managed care to achieve the public policy objectives of access, cost containment, efficacy, and cost effectiveness in the allocation of health resources.

(34) "Out-of-State Providers" means any provider located outside the borders of Oregon:

(a) Contiguous area providers are those located no more than 75 miles from the border of Oregon;

(b) Non-contiguous area providers are those located more than 75 miles from the borders of Oregon.

(35) "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.

(36) "Prepaid Health Plan (PHP)" means a managed health, dental, chemical dependency, physician care organization, or mental health care organization that contracts with DMAP or Addictions and Mental Health Division (AMH) on a case managed, prepaid, capitated basis under the OHP. PHP's may be a Dental Care Organization (DCO), Fully Capitated Health Plan (FCHP), Mental Health Organization (MHO), Primary Care Organization (PCO) or Chemical Dependency Organization (CDO).

(37) "Prohibited Kickback Relationships" means remuneration or payment practices that may result in federal civil penalties or exclusion for violation of 42 CFR 1001.951.

(38) "PHP Encounter" means encounter data submitted by a PHP or by a provider in connection with services or items reimbursed by a PHP.

(39) "Prior Authorization" means payment authorization for specified covered services or items given by Department staff, or its contracted agencies, or a county if required by the county, prior to provision of the service. A physician or other referral is not a prior authorization.

(40) "Provider" means an individual, facility, institution, corporate entity, or other organization which supplies health care or other covered services or items, also termed a performing provider, that must be enrolled with the Department in accordance with OAR 407-120-0300 to 407-120-0400 to seek reimbursement from the Department, including services provided, under program-specific rules or contracts with the Department or with a county or PHP.

(41) "Quality Improvement" means the effort to improve the level of performance of key processes in health services or health care. A quality improvement program measures the level of current performance of the processes, finds ways to improve the performance and implements new and better methods for the processes. Quality improvement includes the goals of quality assurance, quality control, quality planning, and quality management in health care where "quality of care is the degree to which health services for individuals and populations increase the likelihood of desired health outcomes and are consistent with current professional knowledge."

(42) "Quality Improvement Organization (QIO)" means an entity which 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."

(43) "Remittance Advice" means the automated notice a provider receives explaining payments or other claim actions.

(44) "Subrogation" means the right of the state to stand in place of the client in the collection of third party resources, including Medicare.

(45) "Suspension" means a sanction prohibiting a provider's participation in the Department's medical assistance or other programs by deactivation of the assigned provider number for a specified period of time or until the occurrence of a specified event.

(46) "Termination" means a sanction prohibiting a provider's participation in the Department's programs by canceling the assigned provider number and agreement unless:

(a) The exceptions cited in 42 CFR 1001.221 are met; or

(b) Otherwise stated by the Department at the time of termination.

(47) "Third Party Resource (TPR)" means a medical or financial resource, including Medicare, which, by law, is available and applicable to pay for covered services and items for a medical assistance client.

(48) "Usual Charge" means when program-specific or contract reimbursement is based on usual charge, and is 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; or

(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% of the FPL, the fees paid by these individuals and families are not considered in determining the usual charge. Any amounts charged to TPR must be considered.

(49) "Visit Data" means program-specific or contract data collection requirements associated with the delivery of service to clients on the basis of an event such as a visit.

Stat. Auth.: ORS 409.050, 411.060
Stats. Implemented: ORS 414.115, 414.125, 414.135, 414.145
Hist.: DHSD 15-2007, f. 12-31-07, cert. ef. 1-1-08; DHSD 6-2008(Temp), f. & cert. ef. 7-1-08 thru 12-27-08; DHSD 11-2008, f. 12-26-08, cert. ef. 12-27-08

407-120-0310
Provider Requirements

(1) Scope of Rule. All providers seeking reimbursement from the Department, a PHP, or a county pursuant to a county agreement with the Department for the provision of covered services or items to eligible recipients, must comply with these rules, OAR 407-120-0300 to 407-120-0400, and the applicable rules or contracts of the specific programs described below:

(a) Programs administered by DMAP including the OHP and the medical assistance program that reimburses providers for services or items provided to eligible recipients, including but not limited to chapter 410, division 120; chapter 410, division 141; and provider rules in chapter 410 applicable to the provider's service category;

(b) Programs administered by AMH that reimburse providers for services or items provided to eligible AMH recipients; or

(c) Programs administered by SPD that reimburse providers for services or items provided to eligible SPD recipients.

(2) Visit Data. Department programs use visit data to monitor service delivery, planning, and quality improvement activities. Visit data is required to be submitted by a program-specific rule or contract. A provider is required to make accurate, complete, and timely submission of visit data. Visit data is not a HIPAA transaction and does not constitute a claim for reimbursement.

(3) CHIP and Medicaid-Funded Covered Services and Items.

(a) Covered services or items paid for with Medicaid (Title XIX) and CHIP (Title XXI) funds (referred to as the medical assistance program) are also subject to federal and state Medicaid rules and requirements. In interpreting these rules and program-specific rules or contracts, the Department shall construe them as much as possible in a manner that shall comply with federal and state medical assistance program laws and regulations, and the terms and conditions of federal waivers and the state plans

(b) If a provider is reimbursed with medical assistance program funds, the provider must comply with all applicable federal and state laws and regulations pertaining to the provision of Medicaid services under the Medicaid Act, Title XIX, 42 United States Code (USC) 1396 et. seq., and CHIP services under Title XXI, including without limitation:

(A) Maintaining all records necessary to fully disclose the extent of the services provided to individuals receiving medical assistance and furnish such information to any state or federal agency responsible for administration or oversight of the medical assistance program regarding any payments claimed by an individual or institution for providing Medicaid services as the state or federal agency may from time to time request;

(B) Complying with all disclosure requirements of 42 CFR 1002.3(a) and 42 CFR 455 subpart (B);

(C) Maintaining written notices and procedures respecting advance directives in compliance with 42 USC 1396(a)(57) and (w), 42 CFR 431.107(b)(4), and 42 CFR 489 subpart I;

(D) Certifying that the information is true, accurate and complete when submitting claims or PHP encounters for the provision of medical assistance services or items. Submission of a claim or PHP encounter constitutes a representation of the provider's understanding that payment of the claim shall be from federal or state funds, or both, and that any falsification or concealment of a material fact may result in prosecution under federal or state laws.

(c) Hospitals, nursing facilities, home health agencies (including those providing personal care), hospices, and HMOs must comply with the Patient Self-Determination Act as set forth in Section 4751 of OBRA 1991. To comply with the obligation under the above-listed laws to deliver information on the rights of the individual under Oregon law to make health care decisions, the named providers and organizations must give capable individuals over the age of 18 a copy of "Your Right to Make Health Care Decisions in Oregon," copyright 1993, by the Oregon State Bar Health Law Section. Out-of-state providers of these services should comply with Medicare and Medicaid regulations in their state. Submittal to the Department of the appropriate claim form requesting payment for medical services provided to a Medicaid eligible shall be considered representation to the Department of the medical provider's compliance with the above-listed laws.

(d) Payment for any service or item furnished by a provider of CHIP or Medicaid-funded services or items may not be made by or through (directly or by power of attorney) any individual or organization, such as a collection agency or service bureau, that advances money to a provider for accounts receivable that the provider has assigned, sold, or transferred to the individual or organization for an added fee or a deduction of a portion of the accounts receivable.

(e) The Department shall make medical assistance provider payments only to the following:

(A) The provider who actually performed the service or provided the item;

(B) In accordance with a reassignment from the provider to a government agency or reassignment by a court order;

(C) To the employer of the provider, if the provider is required as a condition of employment to turn over his or her fees to the employer, and the employer is enrolled with the Department as a billing provider;

(D) To the facility in which the service is provided, if the provider has a contract under which the facility submits the claim, and the facility is enrolled with the Department as a billing provider;

(E) To a foundation, PHP, clinic, or similar organization operating as an organized health care delivery system, if the provider has a contract under which the organization submits the claim, and the organization is enrolled with the Department as a billing provider; or

(F) To an enrolled billing provider, such as a billing service or an accounting firm that, in connection with the submission of claims, receives or directs payments in the name of the provider, if the billing provider's compensation for this service is:

(i) Related to the cost of processing the billing;

(ii) Not related on percentage or other basis to the amount that is billed or collected and not dependent upon the collection of the payment.

(f) Providers must comply with TPR requirements in program-specific rules or contracts.

(4) Program Integrity. The Department uses several approaches to promote program integrity. These rules describe program integrity actions related to provider payments, including provider reimbursement under program-specific rules, county agreements, and contracts. The program integrity goal is to pay the correct amount to a properly enrolled provider for covered services provided to an eligible client according to the program-specific coverage criteria in effect on the date of service.

(a) Program integrity activities include but are not limited to the following:

(A) Medical or professional review including but not limited to following the evaluation of care in accordance with evidence-based principles, medical error identification, and prior authorization processes, including all actions taken to determine the coverage and appropriateness of services or items in accordance with program-specific rules or contract;

(B) Provider obligations to submit correct claims and PHP encounters;

(C) Onsite visits to verify compliance with standards;

(D) Implementation of HIPAA electronic transaction standards to improve accuracy and timeliness of claims processing and encounter reporting;

(E) Provider credentialing activities;

(F) Accessing federal Department of Health and Human Services (DHHS) database (exclusions);

(G) Quality improvement activities;

(H) Cost report settlement processes;

(I) Audits;

(J) Investigation of false claims, fraud or prohibited kickback relationships; and

(K) Coordination with the Department of Justice Medicaid Fraud Control Unit (MFCU) and other health oversight authorities.

(b) The following individuals may review a request for services or items, or audit a claim or PHP encounter for care, services, or items, before or after payment, for assurance that the specific care, item, or service was provided in accordance with the program-specific and the generally accepted standards of a provider's field of practice or specialty:

(A) Department staff or designee;

(B) Medical utilization and professional review contractor;

(C) Dental utilization and professional review contractor; or

(D) Federal or state oversight authority.

(c) Payment may be denied or subject to recovery if the review or audit determines the care, service, or item was not provided in accordance with provider rules or does not meet the criteria for quality or medical appropriateness of the care, service, or item or payment. Related provider and hospital billings shall also be denied or subject to recovery.

(d) If the Department determines that an overpayment has been made to a provider, the amount of overpayment is subject to recovery.

(e) The Department may communicate with and coordinate any program integrity actions with the MFCU, DHHS, and other federal and state oversight authorities.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 409.050, 411.060
Stats. Implemented: ORS 414.115, 414.125, 414.135, 414.1455
Hist.: DHSD 15-2007, f. 12-31-07, cert. ef. 1-1-08; DHSD 6-2008(Temp), f. & cert. ef. 7-1-08 thru 12-27-08; DHSD 11-2008, f. 12-26-08, cert. ef. 12-27-08

407-120-0320
Provider Enrollment

(1) In some Department program areas, being an enrolled Department provider is a condition of eligibility for a Department contract for certain services or activities. The Department requires billing providers to be enrolled as providers consistent with the provider enrollment processes set forth in this rule. If reimbursement for covered services shall be made under a contract with the Department, the

provider must also meet the Department's contract requirements. Contract requirements are separate from the requirements of these provider enrollment rules. Enrollment as a provider with the Department is not a guarantee that the enrolled provider shall receive any amount of work from the Department, a PHP, or a county.

(2) Relation to Program-Specific or Contract Requirements. Provider enrollment establishes essential Department provider participation requirements for becoming an enrolled Department provider. The details of provider qualification requirements, client eligibility, covered services, how to obtain prior authorization or review (if required), documentation requirements, claims submission, and available electronic access instructions, and other pertinent instructions and requirements are contained in the program-specific rules or contract.

(3) Criteria for Enrollment. Prior to enrollment, providers must:

(a) Meet all program-specific or contract requirements identified in program-specific rules or contracts in addition to those requirements identified in these rules;

(b) Meet Department contracting requirements, as specified by the Department's Office of Contracts and Procurement (OC&P);

(c) Meet Department and federal licensing requirements for the type of service for which the provider is enrolling;

(d) Meet Department and federal certification requirements for the type of service for which the provider is enrolling; and

(e) Obtain a provider number from the Department for the specific service for which the provider is enrolling.

(4) Participation as an Enrolled Provider. Participation with the Department as an enrolled provider is open to qualified providers who:

(a) Meet the qualification requirements established in these rules and program-specific rules or contracts;

(b) Enroll as a Department provider in accordance with these rules;

(c) Provide a covered service or item within their scope of practice and licensure to an eligible Department recipient in accordance with program-specific rules or contracts; and

(d) Accept the reimbursement amounts established with the Department's program-specific fee structures or contracts for the service or item.

(5) Enrollment Process. To be enrolled as a Department provider, an individual or organization must submit a complete and accurate provider enrollment form, available from the Department, including all required documentation, and a signed provider enrollment agreement.

(a) Provider Enrollment Form. The provider enrollment form requests basic demographic information about the provider that shall be permanently associated with the provider or organization until changed on an update form.

(b) Provider and Program Addendum. Each Department program establishes provider-specific qualifications and program criteria that must be provided as part of the provider enrollment form.

(A) The provider must meet applicable licensing and regulatory requirements set forth by federal and state statutes, regulations, and rules, and must comply with all Oregon statutes and regulations applicable to the provider's scope of service as well as the program-specific rules or contract applicable to the provision of covered services. The provider and program addendum shall specify the required documentation of professional qualifications that must be provided with the provider enrollment form.

(B) All providers of services within 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. In addition providers must be registered to do business in Oregon by registering with the Oregon Secretary of State, Corporation Division, if registration is required.

(c) Provider Disclosure Form. All individuals and entities are required to disclose information used by the Department to determine whether an exclusion applies that would prevent the Department from enrolling the provider. Individual performing providers must submit a disclosure statement. All providers that are enrolling as an entity (corporation, non-profit, partnership, sole proprietorship, governmental) must submit a disclosure of ownership and control interest statement. The Department shall not make payment to any individual or entity that has been excluded from participation in federal or state programs or that employs or is managed by excluded individuals or entities.

(A) Entities must disclose all the information required on the disclosure of ownership and control interest statement. Entities must disclose the following information: name; address; taxpayer identification number of each individual with an ownership or control interest in the disclosing entity or in any subcontractor in which the disclosing entity has a direct or indirect ownership of five percent or more; whether any of the named individuals are related as spouse, parent, child, sibling, or other family member by marriage or otherwise; and the name and taxpayer identification number of any other disclosing entity in which an individual with an ownership or control interest in the disclosing entity also has an ownership or control interest.

(B) A provider must submit, within 35 days of the date of a request by DHHS or the Department, full and complete information about the ownership of any subcontractor with whom the provider had business transactions totaling more than $25,000 during the 12-month period ending on the date of the request; and any significant business transactions between the provider and any wholly owned supplier, or between the provider and any subcontractor, during the five-year period ending on the date of the request.

(C) Before the Department enters into a provider enrollment agreement with a provider, or renews a provider agreement, or at any time upon written request of the Department, the provider must disclose to the Department the identity and taxpayer identification number of any individual who has an ownership or control interest in the provider; or is an agent or managing employee of the provider; or the individual performing provider that has been convicted of a criminal offense related to that individual's involvement in any program under Medicare, Medicaid, or Title XX services program, since the inception of those programs.

(D) The Department may refuse to enter into or may suspend or terminate a provider enrollment agreement if the individual performing provider or any individual who has an ownership or control interest in the entity, or who is an agent or managing employee of the provider, has been sanctioned or convicted of a criminal offense related to that individual's involvement in any program established under Medicare, Medicaid, Children's Health Insurance, Title XX services, or other public assistance program.

(E) The Department may refuse to enter into or may suspend or terminate a provider enrollment agreement, or contract for provider services, if it determines that the provider did not fully and accurately make any disclosure required under section (5)(c) of this rule.

(F) Taxpayer identification numbers, including social security numbers (SSN) and employer identification numbers (EIN), must be provided where indicated on the Disclosure Statement or the Disclosure of Ownership and Control Interest Statement. The Department shall use the taxpayer identification number to confirm whether the individual or entity is subject to exclusion from participation in the Oregon Medicaid program.

(6) Provider Enrollment Agreement. The provider must sign the provider enrollment agreement, and submit it for review to the Department at the time the provider submits the provider enrollment form and related documentation.

(7) Request to Conduct Electronic Transactions. A provider may request to conduct electronic transactions with the Department by enrolling and completing the appropriate authorization forms in accordance with the electronic data transaction rules (OAR 407-120-0100 to 407-120-0200).

(8) Enrollment of Providers. A provider shall be enrolled, assigned, and issued a provider number for use in specific payment or business operations when the provider meets the following:

(a) Provider submission of a complete and signed (when applicable), provider enrollment form, provider enrollment agreement, provider certification and all required documents to the Department program responsible for enrolling the provider. Provider signature must be the provider or an individual with actual authority from the provider to legally bind the provider.

(b) The Department's verification of licensing or certification or other authority to perform the service or provide the item within the lawful scope of practice recognized under Oregon law. The Department may confirm any information on the provider enrollment form or documentation submitted with the provider enrollment form, and may request additional information; and

(c) The Department's acceptance of the provider enrollment form, provider enrollment agreement, and provider certification by the

Department unit responsible for approving the enrollment of the provider.

(9) Claim or Encounter Submission. Submission of a claim or encounter or other reimbursement document constitutes the enrolled provider's agreement that:

(a) The service or item was provided in compliance with all applicable rules and requirements in effect on the date of service;

(b) The provider has created and maintained all records necessary to disclose the extent of services or items provided and provider's compliance with applicable program and financial requirements, and that the provider agrees to make such information available upon request to the Department, the MFCU (for Medicaid-funded services or items), the Oregon Secretary of State, and (for federally-funded services or items) the federal funding authority and the Comptroller General of the United States, or their designees;

(c) The provider understands that payment of the claim or encounter or other reimbursement document shall be from federal or state funds, or a combination of federal and state funds.

(10) Providers Required To Use an NPI. The Department has taken action to ensure compliance with the NPI requirements pursuant to 45 CFR Part 162 when those requirements became effective on May 23, 2007. In the event of a transition period approved by CMS beyond May 23, 2008, the following requirements for contractors, providers, and provider-applicants shall apply:

(a) Providers and contractors that obtain an NPI are required to use their NPI where indicated. In situations where a taxonomy code may be used in conjunction with the NPI, providers must update their records as specified with the Department's provider enrollment unit. Providers applying for enrollment with the Department that have been issued an NPI must include that NPI and any associated taxonomy codes with the provider enrollment form;

(b) A provider enrolled with the Department must bill using the NPI pursuant to 45 CFR part 162.410, in addition to the Department-assigned provider number, where applicable, and continue to bill using the Department assigned provider number until the Department informs the provider that the Department assigned provider number is no longer allowed, or the NPI transition period has ended, whichever occurs first. Failure to use the NPI and Department-assigned provider number as indicated during this transition period may result in delay or rejection of claims and other transactions;

(c) The NPI and applicable taxonomy code combinations shall be cross-referenced to the Department assigned provider number for purposes of processing all applicable electronic transactions as specified in OAR 407-120-0100;

(d) The provider and PHP must cooperate with the Department with reasonable consultation and testing procedures, if any, related to implementation of the use of NPI's; and

(e) Certain provider types are not eligible for an NPI based on federal criteria for obtaining an NPI. Providers not eligible for an NPI must always use their Department provider number on claims, encounters, or other reimbursement documents for that specific provider type.

(11) The effective date of provider enrollment is the date the provider's request is received by the Department if on that date the provider has met all applicable requirements. The effective date may be retroactive for up to one year to encompass dates on which the provider furnished covered services to a medical assistance recipient for which it has not been paid, if the provider met all the applicable requirements on the retroactive effective date.

(12) Provider numbers are specific to the category of service or items authorized by the Department. Issuance of a Department-assigned provider number establishes enrollment of an individual or organization as a provider for the specific category of services covered by the provider and program addendum submitted with the provider enrollment form and enrollment agreement.

(13) Enrolled provides must provide the following updates:

(a) Notify the Department in writing of a material change in any status or condition on any element of their provider enrollment form. Providers must notify the Department in writing within 30 calendar days of the change.

(b) Enrolled providers must notify the Department in writing within 30 calendar days of any changes:

(A) Business affiliation;

(B) Ownership;

(C) NPI;

(D) Associated taxonomy codes;

(E) Federal Tax Identification number;

(F) Ownership and control information; or

(G) Criminal convictions.

(c) These changes may require the submission of a provider enrollment form, provider enrollment agreement, provider certification, or other related documentation.

(d) Claims submitted by, or payments made to, providers who have not timely furnished the notification of changes or have not submitted any of the items that are required due to a change may be denied or recovered.

(e) Notice of bankruptcy proceedings must be immediately provided to the Department in writing.

(14) Tax Reporting and Withholding.

(a) Providers must submit the provider's SSN for individuals or a federal EIN for entities, whichever is required for tax reporting purposes on IRS Form 1099. Billing providers must submit their SSN or EIN and must also submit the SSN or EIN of all performing providers in connection with claims or payments made to or on behalf of the performing provider. Providing this number is mandatory to be eligible to enroll as a provider. The provider's SSN or EIN is required pursuant to 42 CFR 433.37 federal tax laws at 26 USC 6041. SSN's and EIN's provided pursuant to this authority are used for the administration of state, federal, and local tax laws and the administration of this program for internal verification and administrative purposes including but not limited to identifying the provider for payment and collection activities.

(b) The Department must comply with the tax information reporting requirements of section 6041 of the Internal Revenue Code (26 USC 6041). Section 6041 requires the filing of annual information returns showing amounts paid to providers, who are identified by name, address, and SSN or EIN. The Department files its information returns with the Internal Revenue Service (IRS) using Form 1099MISC.

(c) The IRS Code section 3406(a)(1)(B) requires the Department to begin backup withholding when notified by the IRS that a taxpayer identification number reported on an information return is incorrect. If a provider receives notice of backup withholding from the Department, the provider must comply timely with the notice and provide the Department with accurate information. The Department shall comply with IRS requirements for backup withholding.

(d) Failure to notify the Department of a change in EIN or SSN may result in the Department imposing a sanction as specified in OAR 407-120-0360.

(e) If the Department notifies a provider about an error in federal tax identification number, the provider must supply a valid federal tax identification number within 30 calendar days of the date of the Department's notice. Failure to comply with this requirement may result in the Department imposing a sanction as specified in OAR 407-120-0360, for each time the provider submits an inaccurate federal tax identification number, and may require back-up withholding. Federal tax identification number requirements described in this rule refer to any requirements established by the IRS.

(15) Providers of services to clients outside the State of Oregon shall be enrolled as a provider under section (8) of this rule if they comply with the requirements of section (8) and meet the following conditions:

(a) The provider is appropriately licensed or certified and is enrolled in the provider's home state for participation in that state's Medicaid program or, for non-Medicaid services, enrolled or contracted with the state agency in the provider's state to provide the same program-specific service in the provider's state. Disenrollment or sanction from the other state's Medicaid program, or exclusion from any other federal or state health care program or comparable program-specific service delivery system is a basis for denial of enrollment, termination, or suspension from participation as a Department provider;

(b) The Oregon Board of Pharmacy issued a license to provide pharmacy services to a noncontiguous out-of-state pharmacy provider;

(c) The services must be authorized in the manner required for out-of-state services under the program-specific rules or contract for an eligible client;

(d) The services for which the provider bills are covered services under the OHP or other Department program for which covered services are authorized to be provided to the client;

(e) A facility, including but not limited to a hospital, rehabilitative facility, institution for care of individuals with mental retardation, psychiatric hospital, or residential care facility, is enrolled or contracted by the state agency in the state in which the facility is located or is licensed as a facility provider of services by Oregon; or

(f) If the provider is not domiciled in or registered to do business in Oregon, the provider must promptly provide to the Oregon Department of Revenue and the Oregon Secretary of State, Corporation Division all information required by those agencies relative to the provider enrollment form and provider enrollment agreement. The Department shall withhold enrollment and payments until the out-of-state provider has provided documentation of compliance with this requirement to the Department unit responsible for enrollment.

(16) The provider enrollment agreement may be terminated as follows:

(a) Provider Termination Request. The provider may ask the Department to terminate the provider enrollment agreement at any time, subject to any specific provider termination requirements in program-specific rules or contracts.

(A) The request must be in writing, signed by the provider, and mailed or delivered to the Department provider enrollment unit. The notice must specify the Department-assigned provider number, if known.

(B) When accepted, the Department shall assign the provider number a termination status and effective date of the termination status.

(C) Termination of the provider enrollment agreement does not relieve the provider of any obligations for covered services or items provided under these rules, program-specific rules or contracts in effect for dates of services during which the provider enrollment agreement was in effect.

(b) Department Termination. The Department may terminate the provider enrollment agreement immediately upon notice to the provider, or a later date as the Department may establish in the notice, upon the occurrence of any of the following events:

(A) The Department fails to receive funding, appropriations, limitations, or other expenditure authority at levels that the Department or the specific program determines to be sufficient to pay for the services or items covered under the agreement;

(B) Federal or state laws, regulations, or guidelines are modified or interpreted by the Department in a manner that either providing the services or items under the agreement is prohibited or the Department is prohibited from paying for such services or items from the planned funding source;

(C) The Department has issued a final order revoking the Department-assigned provider number based on a sanction under termination terms and conditions established in program-specific rules or contract;

(D) The provider no longer holds a required license, certificate or other authority to qualify as a provider. The termination shall be effective on the date the license, certificate, or other authority is no longer valid; or

(E) The provider fails to submit any claims for reimbursement for an 18-month period. The provider may reapply for enrollment.

(c) In the event of any dispute arising out of the termination of the provider enrollment agreement, the provider's sole monetary remedy is limited to covered services or items the Department determines to be compensable under the provider agreement, a claim for unpaid invoices, hours worked within any limits set forth in the agreement but not yet billed, and Department-authorized expenses incurred prior to termination. Providers are not entitled to recover indirect or consequential damages. Providers are not entitled to attorney fees, costs, or expenses of any kind.

(17) Immediate Suspension. When a provider fails to meet one or more of the requirements governing participation as a Department enrolled provider, the provider's Department- assigned provider number may be immediately suspended, in accordance with OAR 407-120-0360. The provider shall not provide services or items to clients during a period of suspension. The Department shall deny claims for payment or other reimbursement requests for dates of service during a period of suspension.

(18) The provision of program-specific or contract covered services or items to eligible clients is voluntary on the part of the provider. Providers are not required to serve all clients seeking service. If a provider undertakes to provide a covered service or item to an eligible client, the provider must comply with these rules, program-specific rules or contract.

(a) The provider performs all services, or provides all items, as an independent contractor. The provider is not an officer, employee, or agent of the Department.

(b) The provider must provide employment-related benefits and deductions for its employees that are required by law. The provider is solely responsible for its acts or omissions, including the acts or omissions of its own officers, employees, or agents. The Department's responsibility is limited to its authorization and payment obligations for covered services or items provided in accordance with these rules.

(19) For Medicaid services, a provider may not deny services to any eligible client because of the client's inability to pay the cost sharing amount imposed by the applicable program-specific or provider-specific rules or contract. A client's inability to pay does not eliminate the client's liability for the cost sharing charge.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 409.050, 411.060
Stats. Implemented: ORS 414.115, 414.125, 414.135, 414.145
Hist.: DHSD 15-2007, f. 12-31-07, cert. ef. 1-1-08; DHSD 6-2008(Temp), f. & cert. ef. 7-1-08 thru 12-27-08; DHSD 11-2008, f. 12-26-08, cert. ef. 12-27-08

407-120-0325
Compliance with Federal and State Statutes

(1) When a provider submits a claim for services or supplies provided to a Department client, the Department shall consider the submission as the provider's representation to the Department of the provider's compliance with the applicable sections of the federal and state statutes and rules referenced in this rule, and other program rules or contract requirements of the specific program under which the claim is submitted:

(a) 45 CFR Part 84 which implements Title V, Section 504 of the Rehabilitation Act of 1973;

(b) 42 CFR Part 493 Laboratory Requirements and ORS chapter 438 (Clinical Laboratories).

(c) The provider must comply and, as indicated, require all subcontractors to comply with the following federal and state requirements to the extent that they are applicable to the items and services governed by these rules, unless exempt under 45 CFR Part 87 for Faith-Based Organizations (Federal Register, July 16, 2004, Volume 69, #136), or other federal provisions. For purposes of these rules, all references to federal and state laws are references to federal and state laws as they may be amended from time to time that are in effect on the date of provider's service:

(A) The provider must comply and require all subcontractors to comply with all federal laws, regulations, executive orders applicable to the items and services provided under these rules. Without limiting the generality of the foregoing, the provider expressly agrees to comply and require all subcontractors to comply with the following laws, regulations and executive orders to the extent they are applicable to the items and services provided under these rules:

(i) Title VI and VII of the Civil Rights Act of 1964, as amended;

(ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended;

(iii) The Americans with Disabilities Act of 1990, as amended;

(iv) Executive Order 11246, as amended;

(v) The Health Insurance Portability and Accountability Act of 1996;

(vi) The Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended;

(vii) The Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (viii) all regulations and administrative rules established pursuant to the foregoing laws;

(viii) All other applicable requirements of federal civil rights and rehabilitation statutes, rules, and regulations;

(ix) All federal law governing operation of community mental health programs, including without limitation, all federal laws requiring reporting of client abuse. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the items and services governed by these rules and required by law to be so incorporated. No federal funds may be used to provide services in violation of 42 USC 14402.

(B) Any provider that receives or makes annual payments under Medicaid of at least $5,000,000, as a condition of receiving such payments, shall:

(i) Establish written policies for all employees of the entity (including management), and of any contractor, subcontractor, or agent of the entity, that provide detailed information about the False Claims Act established under 31 USC 3729 through 3733, administrative remedies for false claims and statements established under 31 USC 38, any Oregon state laws pertaining to civil or criminal penalties for false claims and statements, and whistle blowing protections under such laws, with respect to the role of such laws in preventing and detecting fraud, waste, and abuse in Federal health care programs (as defined in 42 USC 1320a-7b(f));

(ii) Include as part of written policies, detailed provisions regarding the entity's policies and procedures for detecting and preventing fraud, waste, and abuse; and

(iii) Include in any employee handbook for the entity, a specific discussion of the laws described in sub-paragraph (i), the rights of the employees to be protected as whistleblowers.

(C) If the items and services governed under these rules exceed $10,000, the provider must comply and require all subcontractors to comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in U.S Department of Labor regulations (41 CFR part 60);

(D) If the items and services governed under these rules exceed $100,000, and are paid in any part with federal funds, the provider must comply and require all subcontractors to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 7606), the Federal Water Pollution Control Act as amended (commonly known as the Clean Water Act—33 U.S.C. 1251 to 1387), specifically including, but not limited to, Section 508 (33 U.S.C. 1368). Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 32), which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations must be reported to the Department, DHHS, and the appropriate Regional Office of the Environmental Protection Agency. The provider must include and require all subcontractors to include in all contracts with subcontractors receiving more than $100,000, language requiring the subcontractor to comply with the federal laws identified in this section;

(E) The provider must comply and require all subcontractors to comply with applicable mandatory standards and policies relating to energy efficiency that are contained in the Oregon energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. 6201 et seq. (Pub. L. 94-163);

(F) The provider must provide written certification indicating that:

(i) No federal appropriated funds have been paid or shall be paid, by or on behalf of the provider, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement;

(ii) If any funds other than federal appropriated funds have been paid or shall be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the provider must complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions;

(iii) The provider must require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients and subcontractors must certify and disclose accordingly;

(iv) This certification is a material representation of fact upon which reliance was placed when this provider agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this provider agreement imposed by 31 USC 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

(G) If the items and services funded in whole or in part with financial assistance provided under these rules are covered by HIPAA or the federal regulations implementing HIPAA, the provider agrees to deliver the goods and services in compliance with HIPAA. The provider must comply and require all subcontractors to comply with the following:

(i) Individually identifiable health information about specific individuals is confidential. Individually identifiable health information relating to specific individuals may be exchanged between the provider and the Department for purposes directly related to the provision to clients of services that are funded in whole or in part under these rules. The provider must not use or disclose any individually identifiable health information about specific individuals in a manner that would violate Department privacy rules, (OAR 410-014-0000 et. seq.), or the Department's Notice of Privacy Practices, if done by the Department;

(ii) Providers who engage in EDI transactions with the Department in connection with claims or encounter data, eligibility or enrollment information, authorizations or other electronic transactions must execute an EDI trading partner agreement with the Department and must comply with the Department's electronic data transmission rules (OAR 407-120-0100 to 407-120-0200);

(iii) If a provider reasonably believes that the provider's or the Department's data transactions system or other application of HIPAA privacy or security compliance policy may result in a violation of HIPAA requirements, the provider must promptly consult the Department's privacy officer. The provider or the Department may initiate a request to test HIPAA transactions, subject to available resources and the Department's testing schedule.

(H) The provider must comply and require all subcontractors to comply with all mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 USC 6901 et. seq.). Section 6002 of that Act (codified at 42 USC 6962) requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency. Current guidelines are set forth in 40 CFR Parts 247;

(I) The provider must comply and require all subcontractors to comply with the applicable audit requirements and responsibilities set forth in the Office of Management and Budget Circular A-133 entitled "Audits of States, Local Governments and Non-Profit Organizations;"

(J) The provider must not permit any person or entity to be a subcontractor if the person or entity is listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal Procurement or Nonprocurement Programs" in accordance with Executive Orders No. 12,549 and No. 12,689, "Debarment and Suspension". (See 45 CFR part 76). This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and providers and subcontractors declared ineligible under statutory authority other than Executive Order No. 12549. Subcontractors with awards that exceed the simplified acquisition threshold must provide the required certification regarding their exclusion status and that of their principals prior to award;

(K) The provider must comply and require all subcontractors to comply with the following provisions to maintain a drug-free workplace:

(i) Certify that it shall provide a drug-free workplace by publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance, except as may be present in lawfully prescribed or over-the-counter medications, is prohibited in the provider's workplace or while providing services to Department clients. The provider's notice must specify the actions that shall be taken by the provider against its employees for violation of such prohibitions;

(ii) Establish a drug-free awareness program to inform its employees about the dangers of drug abuse in the workplace, the provider's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations;

(iii) Provide each employee to be engaged in the performance of services under these rules a copy of the statement required in paragraph (J)(i) above;

(iv) Notify each employee in the statement required by paragraph (J)(i) that, as a condition of employment to provide services under these rules, the employee shall abide by the terms of the statement and notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(v) Notify the Department within ten days after receiving notice under subparagraph (J)(iv) from an employee or otherwise receiving actual notice of such conviction;

(vi) Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is convicted as required by Section 5154 of the Drug-Free Workplace Act of 1988;

(vii) Make a good-faith effort to continue a drug-free workplace through implementation of subparagraphs (J)(i) through (J)(vi);

(viii) Require any subcontractor to comply with subparagraphs (J)(i) through (J)(vii);

(ix) The provider, the provider's employees, officers, agents, or subcontractors shall not provide any service required under these rules while under the influence of drugs. For purposes of this provision, "under the influence" means observed abnormal behavior or impairments in mental or physical performance leading a reasonable person to believe the provider or provider's employee, officer, agent, or subcontractor has used a controlled substance, prescription, or non-prescription medication that impairs the provider or provider's employee, officer, agent, or subcontractor's performance of essential job function or creates a direct threat to Department clients or others. Examples of abnormal behavior 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, difficulty walking or performing job activities;

(x) Violation of any provision of this subsection may result in termination of the provider agreement.

(L) The provider must comply and require all sub-contractors to comply with the Pro-Children Act of 1994 (codified at 20 USC section 6081 et. seq.);

(M) A provider reimbursed or seeking reimbursement with Medicaid funds must comply with all applicable federal and state laws and regulations pertaining to the provision of Medicaid services under the Medicaid Act, Title XIX, 42 USC Section 1396 et. seq., including without limitation:

(i) Maintain necessary records to fully disclose the extent of the services provided to individuals receiving Medicaid assistance and must furnish the information to any state or federal agency responsible for administering the Medicaid program regarding any payments claimed by the provider or institution for providing Medicaid services as the state or federal agency may from time to time request. 42 USC Section 1396a(a)(27); 42 CFR 431.107(b)(1) & (2);

(ii) Comply with all disclosure requirements of 42 CFR 1002.3(a) and 42 CFR 455 Subpart (B);

(iii) Maintain written notices and procedures respecting advance directives in compliance with 42 USC Section 1396(a)(57) and (w), 42 CFR 431.107(b)(4), and 42 CFR 489 subpart I;

(iv) Certify when submitting any claim for the provision of Medicaid services that the information submitted is true, accurate and complete. The provider must acknowledge provider's understanding that payment of the claim shall be from federal and state funds and that any falsification or concealment of a material fact may be prosecuted under federal and state laws.

(N) Providers must comply with the obligations intended for contractors under ORS 279B.220, 279B.225, 279B.230 and 279B.235 (if applicable), Providers shall, to the maximum extent economically feasible in the performance of covered services, use recycled paper (as defined in ORS 279A.010(1)(ee)), recycled PETE products (as defined in ORS 279A.010(1)(ff)), and other recycled plastic resin products and recycled products (as "recycled product" is defined in ORS 279A.010(1)(gg)).

(O) Providers must comply with all federal, state and local tax laws, including Social Security payment requirements, applicable to payments made by the Department to the provider.

(2) Hospitals, nursing facilities, home health agencies (including those providing personal care), hospices, and health maintenance organizations shall comply with the Patient Self-Determination Act as set forth in Section 4751 of OBRA 1991. To comply with the obligation under the above listed laws to deliver information on the rights of the individual under Oregon law to make health care decisions, the named providers and organizations must provide capable individuals over the age of 18 a copy of "Your Right to Make Health Care Decisions in Oregon," copyright 1993, by the Oregon State Bar Health Law Section. Out-of-state providers of these services must comply with Medicare and Medicaid regulations in their state. Submittal to the Department of the appropriate billing form requesting payment for medical services provided to a Medicaid eligible client shall be deemed representation to the Department of the medical provider's compliance with the above-listed laws.

(3) Providers described in ORS chapter 419B are required to report suspected child abuse to their local Children, Adults and Families Division office or police, in the manner described in ORS chapter 419.

(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.

[Publication: Publication referenced are available from the agency.]
Stat. Auth.: ORS 409.050, 411.060
Stats. Implemented: ORS 414.115, 414.125, 414.135, 414.145
Hist.: DHSD 6-2008(Temp), f. & cert. ef. 7-1-08 thru 12-27-08; DHSD 11-2008, f. 12-26-08, cert. ef. 12-27-08

407-120-0330
Billing Procedures

(1) These rules only apply to covered services and items provided to clients that are paid for by the Department based on a Department fee schedule or other reimbursement method (often referred to as fee-for-service), or for services that are paid for by the Department at the request of a county for county-authorized services, in accordance with program-specific rules or contract.

(a) If a client's service or item is paid for by a PHP, the provider must comply with the billing and procedures related to claim submission established under contract with that PHP, or the rules applicable to non-participating providers if the provider is not under contract with that PHP.

(b) If the client is enrolled in a PHP, but the client is permitted by a contract or program-specific rules to obtain covered services reimbursed by the Department (such as family planning services that may be obtained from any provider), the provider must comply with the billing and claim procedures established under these rules.

(2) All Department-assigned provider numbers are issued at enrollment and are directly associated with the provider as defined in OAR 407-120-0320(12) and have the following uses:

(a) Log-on identification for the Department web portal;

(b) Claim submission in the approved paper formats; and

(c) For electronic claims submission including the web portal for atypical providers pursuant to 45 CFR 160 and 162 where an NPI is not mandated. Use of the Department-assigned provider number shall be considered authorized by the provider and the Department shall hold the provider accountable for its use.

(3) Except as provided in section (4) below, an enrolled provider may not seek payment for any covered services from:

(a) A client for covered benefits; or

(b) A financially responsible relative or representative of that client.

(4) Providers may seek payment from an eligible client or client representative as follows:

(a) From any applicable coinsurance, co-payments, deductibles, or other client financial obligation to the extent and as expressly authorized by program-specific rules or contract;

(b) From a client who failed to inform the provider of Department program eligibility, of OHP or PHP enrollment, or of other third party insurance coverage at the time the service was provided or subsequent to the provision of the service or item. In this case, the provider could not bill the Department, the PHP, or third party payer for any reason,

including but not limited to timeliness of claims and lack of prior authorization. The provider must document attempts to obtain information on eligibility or enrollment;

(c) The client became eligible for Department benefits retroactively but did not meet other established criteria described in the applicable program-specific rules or contracts.

(d) The provider can document that a TPR made payments directly to the client for services provided that are subject to recovery by the provider in accordance with program-specific rules or contract;

(e) The service or item is not covered under the client's benefit package. The provider must document that prior to the delivery of services or items, the provider informed the client the service or item would not be covered by the Department;

(f) The client requested continuation of benefits during the administrative hearing process and the final decision was not in favor of the client. The client shall be responsible for any charges since the effective date of the initial notice of denial; or

(g) In exceptional circumstances, a client may request continuation of a covered service while asserting the right to privately pay for that service. Under this circumstance, a provider may bill the client for a covered service only if the client is informed in advance of receiving the specific service of all of the following:

(A) The requested service is a covered service and the provider would be paid in full for the covered service if the claim is submitted to the Department or the client's PHP;

(B) The estimated cost of the covered service, including all related charges, that the Department or PHP would pay, and for which the client is billed cannot be an amount greater than the maximum Department or PHP reimbursable rate or PHP rate;

(C) The provider cannot require the client to enter into a voluntary payment agreement for any amount for the covered service; and

(D) The provider must be able to document, in writing, signed by the client or the client's representative, that the client was provided the information described above; was provided an opportunity to ask questions, obtain additional information, and consult with the client's caseworker or client representative; and the client agreed to be responsible for payment by signing an agreement incorporating all of the information described above. The provider must provide a copy of the signed agreement to the client. The provider must not submit a claim for payment for the service or item to the Department or to the client's PHP that is subject to such an agreement.

(5) Reimbursement for Non-Covered Services.

(a) A provider may bill a client for services that are not covered by the Department or a PHP, except as provided in these rules. The client must be informed in advance of receiving the specific service that it is not covered, the estimated cost of the service, and that the client or client's representative is financially responsible for payment for the specific service. Providers must provide written documentation, signed by the client, or the client's representative, dated prior to the delivery of services or item indicating that the client was provided this information and that the client knowingly and voluntarily agreed to be responsible for payment.

(b) Providers must not bill or accept payment from the Department or a PHP for a covered service when a non-covered service has been provided and additional payment is sought or accepted from the client. Examples include but are not limited to charging the client an additional payment to obtain a gold crown (not covered) instead of the stainless steel crown (covered) or charging an additional client payment to obtain eyeglass frames not on the covered list of frames. This practice is called buying-up, which is not permitted, and a provider may be sanctioned for this practice regardless of whether a client waiver is documented.

(c) Providers must not bill clients or the Department for a client's missed appointment.

(d) Providers must not bill clients or the Department for services or items provided free of charge. This limitation does not apply to established sliding fee schedules where the client is subject to the same standards as other members of the public or clients of the provider.

(e) Providers must not bill clients for services or items that have been denied due to provider error such as required documentation not submitted or prior authorization not obtained.

(6) Providers must verify that the individual receiving covered services is, in fact, an eligible client on the date of service for the service provided and that the services is covered in the client's benefit package.

(a) Providers are responsible for costs incurred for failing to confirm eligibility or that services are covered.

(b) Providers must confirm the Department's client eligibility and benefit package coverage using the web portal, or the Department telephone eligibility system, and by other methods specified in program-specific or contract instructions.

Stat. Auth.: ORS 409.050, 411.060
Stats. Implemented: ORS 414.115, 414.125, 414.135, 414.145
Hist.: DHSD 15-2007, f. 12-31-07, cert. ef. 1-1-08; DHSD 6-2008(Temp), f. & cert. ef. 7-1-08 thru 12-27-08; DHSD 11-2008, f. 12-26-08, cert. ef. 12-27-08

407-120-0340
Claim and PHP Encounter Submission

(1) Claim and PHP Encounter Submission. All claims must be submitted using one of the following methods:

(a) Paper forms, using the appropriate form as described in the program-specific rules or contract;

(b) Electronically using the web portal accessed by provider-specific PIN and password. Initial activation by provider of Department-assigned provider number and PIN for web portal access invokes provider's agreement to meet all of the standards for HIPAA privacy, security, and transactions and codes sets standards as defined in 45 CFR 162;

(c) Electronically in a manner authorized by the Department's EDT rules (OAR 407-120-0100 to 407-120-0200); or

(d) Electronically, for PHP encounters, in the manner required by the PHP contract with the Department and authorized by the Department's EDT rules.

(2) Claims must not be submitted prior to delivery of service unless otherwise authorized by program-specific rules or contracts. A claim for an item must not be submitted prior to dispensing, shipping, or mailing the item unless otherwise specified in the Department's program-specific rules or contracts.

(3) Claims and PHP encounters must be submitted in compliance HIPAA transaction and code set rules. The HIPAA transaction and code set rules, 45 CFR 162, apply to all electronic transactions for which DHHS has adopted a standard.

(a) The Department may deny or reject electronic transactions that fail to comply with the federal standard.

(b) The Department is required to comply with the HIPAA code set requirements in 45 CFR 162.1000 through 162.1011, regardless of whether a request is made verbally, or a claim is submitted on paper or electronically, and with regard to the electronic claims and encounter remittance advice information, including the web portal. Compliance with the code set requirements includes the codes and the descriptors of the codes established by the official entity that maintains the code set. These federal code set requirements are mandatory and the Department has no authority to delay or alter their application or effective dates as established by DHHS.

(A) The issuance of a federal code does not mean that the Department covers the item or service described by the federal code. In the event of a variation between a Department-listed code and a national code, the provider should seek clarification from the Department program. The Department shall apply the national code in effect on the date of request or date of service and the Department-listed code may be used for the limited purpose of describing the Department's intent in identifying whether the applicable national code represents a Department covered service or item.

(B) For purposes of maintaining HIPAA code set compliance, the Department adopts by reference the required use of the version of all national code set revisions, deletions, and additions in accordance with the HIPAA transaction and code set rules in effect on the date of this rule. This code set adoption may not be construed as Department coverage or that the existence of a particular national code constitutes a determination by the Department that the particular code is a covered service or item. If the provider is unable to identify an appropriate procedure code to use on the claim or PHP encounter, the provider should contact the Department for assistance in identifying an appropriate procedure code reference in but not limited to the following:

(i) Current Procedural Terminology, Fourth Edition (CPT-4), (American Medical Association);

(ii) Current Dental Terminology (CDT), (American Dental Association);

(iii) Diagnosis Related Group (DRG), (DHHS);

(iv) Health Care Financing Administration Common Procedural Coding System (HCPCS), (DHHS);

(v) National Drug Codes (NDC), (DHHS); or

(vi) HIPAA related codes, DHHS, claims adjustment reason, claim status, taxonomy codes, and decision reason available at the Washington Publishing Company web site: http://www.wpc.edi.com/content/view/180/223.

(C) For electronic claims and PHP encounters, the appropriate HIPAA claim adjustment reason code for third party payer, including Medicare, explanation of payment must be used.

(c) Diagnosis Code Requirement.

(A) For claims and PHP encounters that require the listing of a diagnosis code as the basis for the service provided, the code listed on the claim must be the code that most accurately describes the client's condition and the service or item provided.

(B) A primary diagnosis code is required on all claims, using the HIPAA nationally required diagnosis code set including the code and the descriptor of the code by the official entity that maintains the code set, unless the requirement for a primary diagnosis code is specifically excluded in the Department's program-specific rules or contract. All diagnosis codes are required to the highest degree of specificity. Providers must use the ICD-9-CM diagnosis coding system when a diagnosis is required unless otherwise specified in the appropriate program-specific rules or contract.

(C) Hospitals must follow national coding guidelines and must bill using the 5th digit, in accordance with methodology used in the Medicare Diagnosis Related Groups.

(d) Providers are required to provide and identify the following procedures codes.

(A) The appropriate procedure code on claims and PHP encounters as instructed in the appropriate Department program-specific rules or contract and must use the appropriate HIPAA procedure code set, set forth in 45 CFR 162.1000 through 162.1011, which best describes the specific service or item provided.

(B) Where there is one CPT, CDT, or HCPCS code that according to those coding guidelines or standards, describes an array of services, the provider must use that code rather than itemizing the services under multiple codes. Providers must not "unbundle" services in order to increase payment or to mischaracterize the service.

(4) Prohibition of False Claims. No provider or its contracted agent (including billing service or billing agent) shall submit or cause to be submitted to the Department:

(a) Any false claim for payment or false PHP encounter;

(b) Any claim or PHP encounter altered in such a way as to result in a duplicate payment for a service that has already been paid;

(c) Any claim or PHP encounter upon which payment has been made or is expected to be made by another source unless the amount paid or to be paid by the other party is clearly entered on the claim form or PHP encounter format; or

(d) Any claim or PHP encounter for providing services or items that have not been provided.

(5) Third Party Resources.

(a) A provider shall not refuse to furnish covered services or items to an eligible client because of a third party's potential liability for the service or item.

(b) Providers must take all reasonable measures to ensure that the Department shall be the payer of last resort, consistent with program-specific rules or contracts. If available, private insurance, Medicare, or worker's compensation must be billed before the provider submits a claim for payment to the Department, county, or PHP. For services provided to a Medicare and Medicaid dual eligible client, Medicare is the primary payer and the provider must first pursue Medicare payment (including appeals) prior to submitting a claim for payment to the Department, county, or PHP. For services not covered by Medicare or other third party resource, the provider must follow the program-specific rules or contracts for appropriate billing procedures.

(c) When another party may be liable for paying the expenses of a client's injury or illness, the provider must follow program-specific rules or contract addressing billing procedures.

(6) Full Use of Alternate Community Resources.

(a) The Department shall generally make payment only when other resources are not available for the client's needs. Full use must be made of reasonable alternate resources in the local community; and

(b) Providers must not accept reimbursement from more than one resource for the same service or item, except as allowed in program-specific or contract TPR requirements.

(7) Timely Submission of Claim or Encounter Data.

(a) Subsection (a) through (c) below apply only to the submission of claims data or other reimbursement document to the Department, including provider reimbursement by the Department pursuant to an agreement with a county. Unless requirements for timely filing provided for in program-specific rules or applicable contracts are more specific than the timely filing standard established in this rule, all claims for services or items must be submitted no later than 12 months from the date of service.

(b) A denied claim submitted within 12 months of the date of service may be resubmitted (with resubmission documentation, as indicated within the program-specific rules or contracts) within 18 months of the date of service. These claims must be submitted to the Department in writing. The provider must present documentation acceptable to the Department verifying the claim was originally submitted within 12 months of the date of service, unless otherwise stated in program-specific rules or contracts. Acceptable documentation is:

(A) A remittance advice or other claim denial documentation from the Department to the provider showing the claim was submitted before the claim was one year old; or

(B) A copy of a billing record or ledger showing dates of submission to the Department.

(c) Exceptions to the 12-month requirement that may be submitted to the Department are as follows:

(A) When the Department confirms the Department or the client's branch office has made an error that caused the provider not to be able to bill within 12 months of the date of service;

(B) When a court or an administrative law judge in a final order has ordered the Department to make payment;

(C) When the Department determines a client is retroactively eligible for Department program coverage and more than 12 months have passed between the date of service and the determination of the client's eligibility, to the extent authorized in the program-specific rules or contracts.

(d) PHP encounter data must be submitted in accordance with 45 CFR part 162.1001 and 162.1102 and the time periods established in the PHP contract with the Department.

Stat. Auth.: ORS 409.050, 411.060
Stats. Implemented: ORS 414.115, 414.125, 414.135, 414.145
Hist.: DHSD 15-2007, f. 12-31-07, cert. ef. 1-1-08; DHSD 6-2008(Temp), f. & cert. ef. 7-1-08 thru 12-27-08; DHSD 11-2008, f. 12-26-08, cert. ef. 12-27-08

407-120-0350
Payments and Overpayments

(1) Authorization of Payment.

(a) Some services or items covered by the Department require authorization before a service, item, or level of care can be provided or before payment shall be made. Providers must check the appropriate program-specific rules or contracts for information on services or items requiring prior authorization and the process to follow to obtain authorization.

(b) Documentation submitted when requesting authorization must support the program-specific or contract justification for the service, item, or level of care. A request is considered complete if it contains all necessary documentation and meets any other requirements as described in the appropriate program-specific rules or contract.

(c) The authorizing program shall authorize the covered level of care, type of service, or item that meets the client's program-eligible need. The authorizing program shall only authorize services which meet the program-specific or contract coverage criteria and for which the required documentation has been submitted. The authorizing program may request additional information from the provider to determine the appropriateness of authorizing the service, item, or level of care within the scope of program coverage.

(d) Authorizing programs shall not authorize services or make payment for authorized services under the following circumstances:

(A) The client was not eligible at the time services were provided. The provider must check the client's eligibility each time services are provided;

(B) The provider cannot produce appropriate documentation to support that the level of care, type of service, or item meets the

program-specific or contract criteria, or the appropriate documentation was not submitted to the authorizing program;

(C) The delivery of the service, item, or level of care has not been adequately documented as described in OAR 407-120-0370. Requirements for financial, clinical and other records, and the documentation in the provider's files is not adequate to determine the type, medical appropriateness, or quantity of services, or items provided or the required documentation is not in the provider's files;

(D) The services or items identified in the claim are not consistent with the information submitted when authorization was requested or the services or items provided are retrospectively determined not to be authorized under the program-specific or contract criteria;

(E) The services or items identified in the claim are not consistent with those which were provided;

(F) The services or items were not provided within the timeframe specified on the authorization of services document; or

(G) The services or items were not authorized or provided in compliance with the program-specific rules or contracts.

(e) Payment made for services or items described in subsections (d)(A) through (G) of this rule shall be recovered.

(f) Retroactive Department Client Eligibility.

(A) When a client is determined to be retroactively eligible for a Department program, or is retroactively disenrolled from a PHP or services provided after the client was disenrolled from a PHP, authorization for payment may be given if the following conditions are met:

(i) The client was eligible on the date of service and the program-specific rules or contract authorize the Department to reimburse the provider for services provided to clients made retroactively eligible;

(ii) The services or items provided to the client meet all other program-specific or contract criteria and Oregon Administrative Rules;

(iii) The request for authorization is received by the appropriate Department branch or program office within 90 days of the date of service; and

(iv) The provider is enrolled with the Department on the date of service, or becomes enrolled with the Department no later than the date of service as provided in OAR 407-120-0320(11).

(B) Requests for authorization received after 90 days from date of service require all the documentation required in subsection (f)(A)(i), (ii) and (iv) and documentation from the provider stating why the authorization could not have been obtained within 90 days of the date of service.

(g) Service authorization is valid for the time period specified on the authorization notice, but shall not exceed 12 months, unless the client's benefit package no longer covers the service, in which case the authorization terminates on the date coverage ended.

(h) Service authorization for clients with other insurance or for Medicare beneficiaries is governed by program-specific rules or contracts.

(2) Payments.

(a) This rule only applies to covered services and items provided to eligible clients within the program-specific or contract covered services or items in effect on the date of service that are paid for by the Department based on program-specific or contract fee schedules or other reimbursement methods, or for services that are paid for by the Department at the request of a county for county-authorized services in accordance with program-specific or provider-specific rules or contracts.

(b) If the client's service or item is paid for by a PHP, the provider must comply with the payment requirements established under contract with that PHP, and in accordance with OAR 410-120 and 410-141, applicable to non-participating providers.

(c) The Department shall pay for services or items based on the reimbursement rates and methods specified in the applicable program-specific rules or contract. Provider reimbursement on behalf of a county must include county service authorization information.

(d) Providers must accept, as payment in full, the amounts paid by the Department in accordance with the fee schedule or reimbursement method specified in the program-specific rules or contract, plus any deductible, co-payment, or coinsurance required to be paid by the client. Payment in full includes:

(A) Zero payments for claims where a third party or other resource has paid an amount equivalent to or exceeding the Department's allowable payment; or

(B) Denials of payment for failure to submit a claim in a timely manner, failure to obtain payment authorization in a timely and appropriate manner, or failure to follow other required procedures identified in the program-specific rules or contracts.

(e) The Department shall not make payments for duplicate services or items. The Department shall not make a separate payment or co-payment to a provider for services included in the provider's all-inclusive rate if the provider has been or shall be reimbursed by other resources for the service or item.

(f) Prepayment and Post-Payment Review. Payment by the Department does not limit the Department or any state or federal oversight entity from reviewing or auditing a claim before or after the payment. Payment may be denied or subject to recovery if medical, clinical, program-specific or contract review, audit, or other post-payment review determines the service or item was not provided in accordance with applicable rules or contracts or does not meet the program-specific or contract criteria for quality of care, or appropriateness of the care, or authorized basis for payment.

(3) Recovery of Overpayments to Providers — Recoupments and Refunds

(a) The Department may deny payment or may deem payments subject to recovery as an overpayment if a review or audit determines the item or service was not provided in accordance with the Department's rules, terms of contract, or does not meet the criteria for quality of care, or appropriateness of the care or payment. Related provider billings shall also be denied or subject to recovery.

(b) If a provider determines that a submitted claim or encounter is incorrect, the provider must submit an individual adjustment request and refund the amount of the overpayment, if any, or adjust the claim or encounter, consistent with the requirements in program-specific rules or contracts.

(c) The Department may determine, as a result of review or other information, that a payment should be denied or that an overpayment has been made to a provider, which indicates that a provider may have submitted claims or encounters, or received payment to which the provider is not properly entitled. Such payment denial or overpayment determinations may be based on but not limited to the following:

(A) The Department paid the provider an amount in excess of the amount authorized under a contract, state plan or Department rule;

(B) A third party paid the provider for services, or portion thereof, previously paid by the Department;

(C) The Department paid the provider for services, items, or drugs that the provider did not perform or provide;

(D) The Department paid for claims submitted by a data processing agent for whom a written provider or billing agent or billing service agreement was not on file at the time of submission;

(E) The Department paid for services and later determined they were not part of the client's program-specific or contract-covered services;

(F) Coding, data processing submission, or data entry errors;

(G) Medical, dental, or professional review determines the service or item was not provided in accordance with the Department's rules or contract or does not meet the program-specific or contract criteria for coverage, quality of care, or appropriateness of the care or payment;

(H) The Department paid the provider for services, items, or drugs when the provider did not comply with the Department's rules and requirements for reimbursement; or

(I) The provider submitted inaccurate, incomplete or false encounter data to the Department.

(d) Prior to identifying an overpayment, the Department may contact the provider requesting preliminary information and additional documentation. The provider must provide the requested documentation within the specified time frame.

(e) When an overpayment is identified, the Department shall notify the provider in writing as to the nature of the discrepancy, the method of computing the overpayment, and any further action that the Department may take on the matter. The notice may require the provider to submit applicable documentation for review prior to requesting an appeal from the Department, and may impose reasonable time limits for when documentation must be provided for Department consideration. The notice shall inform the provider of the process for appealing the overpayment determination.

(f) The Department may recover overpayments made to a provider by direct reimbursement, offset, civil action, or other legal action:

(A) The provider must make a direct reimbursement to the Department within 30 calendar days from the date of the notice of the overpayment, unless other regulations apply.

(B) The Department may grant the provider an additional period of time to reimburse the Department upon written request made within 30 calendar days from the date of the notice of overpayment. The provider must include a statement of the facts and reasons sufficient to show that repayment of the overpayment amount should be delayed pending appeal because:

(i) The provider shall suffer irreparable injury if the overpayment notice is not delayed;

(ii) There is a reason to believe that the overpayment is incorrect or is less than the amount in the notice, and the provider has timely filed an appeal of the overpayment, or that the provider accepts the amount of the overpayment but is requesting to make repayment over a period of time;

(iii) A proposed method for assuring that the amount of the overpayment can be repaid when due with interest including but not limited to a bond, irrevocable letter of credit, or other undertaking, or a repayment plan for making payments, including interest, over a period of time;

(iv) Granting the delay shall not result in substantial public harm; and

(v) Affidavits containing evidence relied upon in support of the request for stay.

(C) The Department may consider all information in the record of the overpayment determination, including provider cooperation with timely provision of documentation, in addition to the information supplied in provider's request. If provider requests a repayment plan, the Department may require conditions acceptable to the Department before agreeing to a repayment plan. The Department must issue an order granting or denying a repayment delay request within 30 calendar days after receiving it;

(D) A request for hearing or administrative review does not change the date the repayment of the overpayment is due; and

(E) The Department may withhold payment on pending claims and on subsequently received claims for the amount of the overpayment when overpayments are not paid as a result of subsection (B)(i);

(f) In addition to any overpayment, the Department may impose a sanction on the provider in connection with the actions that resulted in the overpayment. The Department may, at its discretion, combine a notice of sanction with a notice of overpayment.

(g) Voluntary submission of an adjustment claim or encounter transaction or an individual adjustment request or overpayment amount after notice from the Department does not prevent the Department from issuing a notice of sanction The Department may take such voluntary payment into account in determining the sanction.

Stat. Auth.: ORS 409.050, 411.060
Stats. Implemented: ORS 414.115, 414.125, 414.135, 414.145
Hist.: DHSD 15-2007, f. 12-31-07, cert. ef. 1-1-08; DHSD 6-2008(Temp), f. & cert. ef. 7-1-08 thru 12-27-08; DHSD 11-2008, f. 12-26-08, cert. ef. 12-27-08

407-120-0360
Consequences of Non-Compliance and Provider Sanctions

(1) There are two classes of provider sanctions, mandatory and discretionary, that may be imposed for non-compliance with the provider enrollment agreement.

(2) Except as otherwise provided, the Department shall impose provider sanctions at the direction of the assistant director of the Department's division whose budget includes payment for the services involved.

(3) Mandatory Sanctions. The Department shall impose mandatory sanctions and suspend the provider from participation in the Department's programs:

(a) When a provider has been convicted (as that term is defined in 42 CFR part 1001.2) 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 other disqualifying criminal conviction pursuant to program-specific rules or contract;

(b) When a provider is excluded from participation in federal or state health care programs by the Office of the Inspector General of DHHS or from the Medicare (Title XVIII) program of the Social Security Act as determined by the Secretary of DHHS. The provider shall be excluded and suspended from participation with the Department for the duration of exclusion or suspension from the Medicare program or by the Office of the Inspector General; or

(c) If the provider fails to disclose ownership or control information required under 42 CFR part 455.104 that is required to be reported at the time the provider submits a provider enrollment form or when there is a material change in the information that must be reported, or information related to business transactions required to be provided under 42 CFR part 455.105 upon request of federal or state authorities.

(4) Discretionary Sanctions. When the Department determines the provider fails to meet one or more of the Department's requirements governing participation in its programs the Department may impose discretionary sanctions. Conditions that may result in a discretionary sanction include, but are not limited to when a provider has:

(a) Been convicted of fraud related to any federal, state, or locally financed health care program or committed fraud, received kickbacks, or committed other acts that are subject to criminal or civil penalties under the Medicare or Medicaid statutes;

(b) Been convicted of interfering with the investigation of health care fraud;

(c) Been convicted of unlawfully manufacturing, distributing, prescribing, or dispensing a controlled substance or other potentially disqualifying crime, as determined under program-specific rules or contracts;

(d) By actions of any state licensing authority for reasons relating to the provider's professional competence, professional conduct, or financial integrity either:

(A) Had his or her professional license suspended or revoked, or otherwise lost such license; or

(B) Surrendered his or her license while a formal disciplinary proceeding is pending before the relevant licensing authority.

(e) Been suspended or excluded from participation in any federal or state program for reasons related to professional competence, professional performance, or other reason;

(f) Billed excessive charges including but not limited to charging in excess of the usual charge, furnished items or services in excess of the client's needs or in excess of those services ordered by a provider, or in excess of generally accepted standards or quality that fail to meet professionally recognized standards;

(g) Failed to furnish necessary covered services as required by law or contract with the Department if the failure has adversely affected or has a substantial likelihood of adversely affecting the client;

(h) Failed to disclose required ownership information;

(i) Failed to supply requested information on subcontractors and suppliers of goods or services;

(j) Failed to supply requested payment information;

(k) Failed to grant access or to furnish as requested, records, or grant access to facilities upon request of the Department or the MFCU conducting their regulatory or statutory functions;

(l) In the case of a hospital, failed to take corrective action as required by the Department, based on information supplied by the QIO to prevent or correct inappropriate admissions or practice patterns, within the time specified by the Department;

(m) In the case of a licensed facility, failed to take corrective action under the license as required by the Department within the time specified by the Department;

(n) Defaulted on repayment of federal or state government scholarship obligations or loans in connection with the provider's health profession education;

(A) Providers must have made a reasonable effort to secure payment;

(B) The Department must take into account access of beneficiaries to services; and

(C) Shall not exclude a community's sole physician or source of essential specialized services;

(o) Repeatedly submitted a claim with required data missing or incorrect:

(A) When the missing or incorrect data has allowed the provider to:

(i) Obtain greater payment than is appropriate;

(ii) Circumvent prior authorization requirements;

(iii) Charge more than the provider's usual charge to the general public;

(iv) Receive payments for services provided to individuals who were not eligible; or

(v) Establish multiple claims using procedure codes that overstate or misrepresent the level, amount, or type of services or items provided.

(B) Does not comply with the requirements of OAR 410-120-1280.

(p) Failed to develop, maintain, and retain, in accordance with relevant rules and standards, adequate clinical or other records that document the client's eligibility and coverage, authorization (if required by program-specific rules or contracts), appropriateness, nature, and extent of the services or items provided;

(q) Failed 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;

(r) Failed to develop, maintain, and retain adequate financial or other records that support information submitted on a cost report;

(s) Failed to follow generally accepted accounting principles or accounting standards or cost principles required by federal or state laws, rules, or regulations;

(t) Submitted claims or written orders contrary to generally accepted standards of professional practice;

(u) Submitted claims for services that exceed the requested or agreed upon amount by the OHP client, the client representative, or requested by another qualified provider;

(v) Breached the terms of the provider contract or agreement;

(w) Failed to comply with the terms of the provider certifications on the claim form;

(x) Rebated or accepted a fee or portion of a fee for a client referral; or collected a portion of a service fee from the client and billed the Department for the same service;

(y) Submitted false or fraudulent information when applying for a Department-assigned provider number, or failed to disclose information requested on the provider enrollment form;

(z) Failed to correct deficiencies in operations after receiving written notice of the deficiencies from the Department;

(aa) Submitted any claim for payment for which the Department has already made payment or any other source unless the amount of the payment from the other source is clearly identified;

(bb) Threatened, intimidated, or harassed clients, client representatives, or client relatives in an attempt to influence payment rates or affect the outcome of disputes between the provider and the Department;

(cc) Failed to properly account for a client's personal incidental funds including but not limited to using a client's personal incidental funds for payment of services which are included in a medical facility's all-inclusive rates;

(dd) Provided or billed for services provided by ineligible or unsupervised staff;

(ee) Participated in collusion that resulted in an inappropriate money flow between the parties involved;

(ff) Refused or failed to repay, in accordance with an accepted schedule, an overpayment established by the Department;

(gg) Failed to report to Department payments received from any other source after the Department has made payment for the service; or

(hh) Collected or made repeated attempts to collect payment from clients for services covered by the Department, under OAR 410-120-1280.

(5) A provider who has been excluded, suspended, or terminated from participation in a federal or state medical program, such as Medicare or Medicaid, or whose license to practice has been suspended or revoked by a state licensing board, must not submit claims for payment, either personally or through claims submitted by any billing agent or service, billing provider or other provider, for any services or supplies provided under the medical assistance programs, except those services or supplies provided prior to the date of exclusion, suspension or termination.

(6) Providers must not submit claims for payment to the Department for any services or supplies provided by an individual or provider entity that has been excluded, suspended, or terminated from participation in a federal or state 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 exclusion, suspension or termination.

(7) When the provisions of sections (5) or (6) are violated, the Department may suspend or terminate the billing provider or any provider who is responsible for the violation.

(8) Sanction Types and Conditions.

(a) A mandatory sanction imposed by the Department pursuant to section (3) may result in any of the following:

(A) The provider shall either be terminated or suspended from participation in the Department's programs. No payments of Title XIX, Title XXI or other federal or state funds shall be made for services provided after the date of termination. Termination is permanent unless:

(i) The exceptions cited in 42CFR part 1001.221 are met; or

(ii) Otherwise stated by the Department at the time of termination.

(B) No payments of Title XIX, Title XXI, or other federal or state funds shall be made for services provided during the suspension. The provider number shall be reactivated automatically after the suspension period has elapsed if the conditions that caused the suspension have been resolved. The minimum duration of a suspension shall be determined by the DHHS Secretary, under the provisions of 42 CFR parts 420, 455, 1001, or 1002. The Department may suspend a provider from participation in the medical assistance programs longer than the minimum suspension determined by the DHHS secretary.

(b) The Department may impose the following discretionary sanctions on a provider pursuant to OAR 410-120-1400(4):

(A) The provider may be terminated from participation in the Department's programs. No payments of Title XIX, Title XXI or other federal or state funds shall be made for services provided after the date of termination. Termination is permanent unless:

(i) The exceptions cited in 42 CFR part 1001.221 are met; or

(ii) Otherwise stated by the Department at the time of termination.

(B) The provider may be suspended from participation in the Department's programs for a specified length of time, or until specified conditions for reinstatement are met and approved by the Department. No payments of Title XIX, Title XXI, or other federal or state funds shall be made for services provided during the suspension. The provider number shall be reactivated automatically after the suspension period has elapsed if the conditions that caused the suspension have been resolved.

(C) The Department may withhold payments to a provider;

(D) The provider may be required to attend provider education sessions at the expense of the sanctioned provider;

(E) The Department may require that payment for certain services are made only after the Department has reviewed documentation supporting the services;

(F) The Department may require repayment of amounts paid or provide for reduction of any amount otherwise due the provider; and

(G) Any other sanctions reasonably designed to remedy or compel future compliances with federal, state, or Department regulations.

(c) The Department shall consider the following factors in determining the sanction to be imposed. Factors include but are not limited to:

(A) Seriousness of the offense;

(B) Extent of violations by the provider;

(C) History of prior violations by the provider;

(D) Prior imposition of sanctions;

(E) Prior provider education;

(F) Provider willingness to comply with program rules;

(G) Actions taken or recommended by licensing boards or a QIO;

(H) Adverse impact on the availability of program-specific or contract covered services or the health of clients living in the provider's service area; and

(I) Potential financial sanctions related to the non-compliance may be imposed in an amount that is reasonable in light of the anticipated or actual harm caused by the non-compliance, the difficulties of proof of loss, and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy.

(d) When a provider fails to meet one or more of the requirements identified in OAR 407-120-0300 through 407-120-0400, the Department, in its sole discretion, may immediately suspend the provider's Department assigned billing number and any electronic system access

code to prevent public harm or inappropriate expenditure of public funds.

(A) The provider subject to immediate suspension is entitled to a contested case hearing pursuant to ORS 183 to determine whether the provider's Department assigned number and electronic system access code may be revoked; and

(B) The notice requirements described in section (5) of this rule do not preclude immediate suspension, in the Department's sole discretion, to prevent public harm or inappropriate expenditure of public funds. Suspension may be invoked immediately while the notice and contested case hearing rights are exercised.

(e) If the Department sanctions a provider, the Department shall notify the provider by certified mail or personal delivery service of the intent to sanction. The notice of immediate or proposed sanction shall identify:

(A) The factual basis used to determine the alleged deficiencies and a reference to the particular sections of the statutes and rules involved;

(B) Explanation of actions expected of the provider;

(C) Explanation of the Department's intended action;

(D) The provider's right to dispute the Department's allegations and submit evidence to support the provider's position;

(E) The provider's right to appeal the Department's proposed actions pursuant to ORS 183;

(F) A statement of the authority and jurisdiction under which the appeal may be requested and description of the procedure and time to request an appeal; and

(G) A statement indicating whether and under what circumstances an order by default may be entered.

(f) If the Department decides to sanction a provider, the Department shall notify the provider in writing at least 15 days before the effective date of action, except in the case of immediate suspension to avoid public harm or inappropriate expenditure of funds.

(g) The provider may appeal the Department's immediate or proposed sanction or other actions the Department intends to take. The provider must appeal this action separately from any appeal of audit findings and overpayments. These include but are not limited to the following:

(A) Termination or suspension from participation in the Medicaid-funded medical assistance programs;

(B) Termination or suspension from participation in the Department's state-funded programs; or

(C) Revocation of the provider's Department assigned provider number.

(h) Other provisions:

(A) When a provider has been sanctioned, all other provider entities in which the provider has ownership of five percent or greater, or control of, may also be sanctioned;

(B) When a provider has been sanctioned, the Department may notify the applicable professional society, board of registration or licensure, federal or state agencies, OHP, PHP's and the National Practitioner Data Base of the findings and the sanctions imposed;

(C) At the discretion of the Department, providers who have previously been sanctioned or suspended may or may not be re-enrolled as Department providers;

(D) Nothing in this rule prevents the Department from simultaneously seeking monetary recovery and imposing sanctions against the provider;

(E) Following a contested case hearing in which a provider has been found to violate ORS 411.675, the provider shall be liable to the Department for treble the amount of payments received as a result of each violation.

Stat. Auth.: ORS 409.050, 411.060
Stats. Implemented: ORS 414.115, 414.125, 414.135, 414.145
Hist.: DHSD 15-2007, f. 12-31-07, cert. ef. 1-1-08; DHSD 6-2008(Temp), f. & cert. ef. 7-1-08 thru 12-27-08; DHSD 11-2008, f. 12-26-08, cert. ef. 12-27-08

407-120-0370
Requirements for Financial, Clinical, and Other Records

(1) The Department shall analyze and monitor the operation of its programs and audit and verify the accuracy and appropriateness of payment, utilization of services, or items.

(2) The Department shall comply with client coverage criteria and requirements for the level of care or service or item authorized or reimbursed by the Department and the quality of covered services or items and service or item delivery, and access to covered services or items.

(3) The provider and the provider's designated billing service or other entity responsible for the maintenance of financial, service delivery, and other records must:

(a) Develop and maintain adequate financial and service delivery records and other documentation which supports the specific care, items, or services for which payment has been requested. The Department shall not make payment for services that are not adequately documented. The following documentation must be completed before the service is billed to the Department:

(A) All records documenting the specific service provided, the number of services or items comprising the service provided, the extent of the service provided, the dates on which the service was provided, and identification of the individual who provided the service. Patient account and financial records must also include documentation of charges, identify other payment resources pursued, indicate the date and amount of all debit or credit billing actions, and support the appropriateness of the amount billed and paid. For cost reimbursed services, the provider must maintain adequate records to thoroughly and accurately explain how the amounts reported on the cost statement were determined.

(B) Service delivery, clinical records, and visit data, including records of all therapeutic services, must document the basis for service delivery and record visit data if required under program-specific rules or contracts. A client's clinical record must be annotated each time a service is provided and signed or initialed by the individual providing the service or must clearly identify the individual providing the service. Information contained in the record must be sufficient in quality and quantity to meet the professional standards applicable to the provider or practitioner and any additional standards for documentation found in this rule, program-specific rules, and any pertinent contracts.

(C) All information about a client obtained by the provider or its officers, employees, or agents in the performance of covered services, including information obtained in the course of determining eligibility, seeking authorization, and providing services, is confidential. The client information must be used and disclosed only to the extent necessary to perform these functions.

(b) Implement policies and procedures to ensure confidentiality and security of the client's information. These procedures must ensure the provider may release such information in accordance with program-specific federal and state statutes or contract, which may include but is not limited to, ORS 179.505 to 179.507, 411.320, 433.045, 42 CFR part 2, 42 CFR part 431 subpart F, 45 CFR 205.50, and ORS 433.045(3) with respect to HIV test information.

(c) Ensure the use of electronic record-keeping systems does not alter the requirements of this rule.

(A) A provider's electronic record-keeping system includes electronic transactions governed by HIPAA transaction and code set requirements and records, documents, documentation, and information include all information, whether maintained or stored in electronic media, including electronic record-keeping systems, and information stored or backed up in an electronic medium.

(B) If a provider maintains financial or clinical records electronically, the provider must be able to provide the Department with hard-copy versions. The provider must also be able to provide an auditable means of demonstrating the date the record was created and the identity of the creator of a record, the date the record was modified, what was changed in the record and the identity of any individual who has modified the record. The provider must supply the information to individuals authorized to review the provider's records under subsection (e) of this rule.

(C) Providers may comply with the documentation review requirements in this rule by providing the electronic record in an electronic format acceptable to an authorized reviewer. The authorized reviewer must agree to receive the documentation electronically.

(d) Retain service delivery, visit, and clinical records for seven years and all other records described in this rule, program-specific rules and contract for at least five years from the date of service.

(e) Furnish requested documentation (including electronically recorded information or information stored or backed up in an electronic medium) immediately or within the time-frame specified in the written request received from the Department, the Oregon Secretary

of State, DHHS or other federal funding agency, Office of Inspector General, the Comptroller General of the United States (for federally funded programs), MFCU (for Medicaid-funded services or items), or the client representative. Copies of the documents may be furnished unless the originals are requested. At their discretion, official representatives of the Department, Medicaid Fraud Unit, DHHS, or other authorized reviewers may review and copy the original documentation in the provider's place of business. Upon written request of the provider, the program or the unit, may, at its sole discretion, modify or extend the time for provision of such records if, in the opinion of the program or unit good cause for such extension is shown. Factors used in determining if good cause exists include:

(A) Whether the written request was made prior to the deadline for production;

(B) If the written request is made after the deadline for production, the amount of time lapsed since that deadline;

(C) The efforts already made to comply with the request;

(D) The reasons the deadline cannot be met;

(E) The degree of control that the provider had over its ability to produce the records prior to the deadline; and

(F) Other extenuating factors.

(f) Access to records, inclusive of clinical charts and financial records does not require authorization or release from the client, unless otherwise required by more restrictive state and federal regulations if the purpose of such access is:

(A) To perform billing review activities;

(B) To perform utilization review activities;

(C) To review quality, quantity, medical appropriateness of care, items, and services provided;

(D) To facilitate service authorization and related services;

(E) To investigate a client's hearing request;

(F) To facilitate investigation by the MFCU or DHHS; or

(G) To review records necessary to the operation of the program.

(g) Failure to comply with requests for documents within the specified time-frame means that the records subject to the request may be deemed by the Department not to exist for purposes of verifying appropriateness of payment, clinical appropriateness, the quality of care, and the access to care in an audit or overpayment determination, and subjects the provider to possible denial or recovery of payments made by the Department or to sanctions.

Stat. Auth.: ORS 409.050, 411.060
Stats. Implemented: ORS 414.115, 414.125, 414.135, 414.145
Hist.: DHSD 15-2007, f. 12-31-07, cert. ef. 1-1-08; DHSD 6-2008(Temp), f. & cert. ef. 7-1-08 thru 12-27-08; DHSD 11-2008, f. 12-26-08, cert. ef. 12-27-08

407-120-0380
Fraud and Abuse

(1) Providers shall promptly refer all suspected fraud and abuse, including fraud or abuse by its employees or in Department administration, to the MFCU, or to the Department's audit unit.

(2) Providers must permit the MFCU and the Department to inspect, copy, evaluate, or audit books, records, documents, files, accounts, and facilities, without charge, as required to investigate allegations or incidents of fraud or abuse.

(3) Providers aware of suspected fraud or abuse by a client must report the incident to the Department's fraud unit.

(4) The Department may share information for health oversight purposes with the MFCU and other federal or state health oversight authorities.

(5) The Department may take actions necessary to investigate and respond to substantiated allegations of fraud and abuse including but not limited to suspending or terminating the provider from participation in the Department's programs, withholding payments or seeking recovery of payments made to the provider, or imposing other sanctions provided under state law or regulations. Such actions by the Department may be reported to CMS or other federal or state entities as appropriate.

Stat. Auth.: ORS 409.050, 411.060
Stats. Implemented: ORS 414.115, 414.125, 414.135, 414.145
Hist.: DHSD 15-2007, f. 12-31-07, cert. ef. 1-1-08; DHSD 6-2008(Temp), f. & cert. ef. 7-1-08 thru 12-27-08; DHSD 11-2008, f. 12-26-08, cert. ef. 12-27-08

407-120-0400
MMIS Replacement Communication Plan

(1) The purpose of this rule is to describe the Department's plan for communicating instructions and guidance related to the Department's implementation of the replacement MMIS that began on December 9, 2008. System issues are anticipated to be identified for a period of time during and after implementation. This rule is adopted to be effective retroactively to December 9, 2008 for the purpose of providing continuity of all MMIS communication efforts throughout the transition implementation process and regular operations following the transition. By adopting this communication plan in rule, the Department seeks to assure that eligible Department clients receive all necessary and appropriate services, and that Department providers and PHPs are correctly reimbursed for covered services provided to eligible clients.

(2) To the extent necessary to accomplish the purposes of this rule, the Department shall provide guidance and instructions related to MMIS for providers and PHPs using its web site and MMIS provider announcements.

(a) In cases of limitations or system errors in the replacement MMIS, the Department shall provide update information and important action required in concert with, or in place of, normal established procedures.

(b) In other cases, the Department shall provide instructions and guidance about the use of revised or improved functionality that is available through the replacement MMIS, such as the use of the web portal.

(3) Providers and PHPs must follow all applicable instructions given on the Department's web page and any provider announcements for the dates specifically noted in the communications, or if a date is not specified, until further instructions are provided. Department web site information and links to specific topics may be accessed at: http://www.oregon.gov/DHS/healthplan/tools_prov/main.shtml.

(4) This rule does not amend existing rules or contracts that require providers or PHPs to confirm eligibility, respond to requests for prior authorization, submit claims or encounter data, or comply with any other rule or contract that imposes obligations on a provider or PHP as a condition of receiving reimbursement for services. This rule is intended to provide assurance to providers and PHPs that the MMIS-related processes for meeting those obligations are being addressed by the Department by providing guidance and instruction related to the provider's or PHP's interface with MMIS processes, and by identifying the resources providers and PHPs may use to obtain information during this time of transition to the replacement MMIS and during regular MMIS operations.

(5) The Department shall work with providers and PHPs by providing instructions and guidance to assure that service delivery and reimbursement disruptions related to transition to the replacement MMIS are minimized. Providers and PHPs must appropriately document all eligibility, services, authorization, claims, and payment information during the transition time, and their efforts to comply with instructions and guidance provided by the Department, so that reimbursement may be correctly provided.

(6) Providers and PHPs must immediately communicate to the Department any issues they encounter that are not addressed in the Department's instructions or guidance in seeking eligibility information or activities related to reimbursement for services through MMIS, errors discovered in the correct amount of any reimbursement received for those services, or in applying the instruction or guidance to resolve an issue.

(7) After the transition period is complete, the Department shall continue to implement this communication plan as long as necessary during regular MMIS operations in order to assist providers and PHPs with technical and system requirements of the replacement MMIS.

Stat. Auth.: ORS 409.050 & 414.065
Stats. Implemented: ORS 414.065
Hist.: DHSD 1-2009(Temp), f. & cert. ef. 1-12-09 thru 7-10-09; DHSD 4-2009, f. 7-1-09, cert. ef. 7-10-09

Provider and Contractor Audits, Appeals and Post Payment Recoveries

407-120-1505
Provider and Contractor Audits, Appeals, and Post Payment Recoveries

(1) Providers or entities under contract with the Department of Human Services (Department) or the Oregon Healthy Authority (Authority) (hereafter referred to as "provider") receiving payments from the Department or Authority are subject to audit or other post

payment review procedures (hereafter referred to as "audit") for all payments applicable to items or services furnished or supplied by the provider to or on behalf of Department or Authority clients.

(a) Audit rules and procedures ensure proper payments were made based on requirements applicable to covered services, ensure program integrity of the Department or Authority programs and services as outlined in OAR 407-120-0310, and establish authority for the Office of Payment, Accuracy and Recovery (OPAR), Provider Audit Unit (PAU) to recover overpayments and discover possible instances of fraud, waste, and abuse.

(b) The Department and Authority share duties and functions related to audits and have the authority to determine which of the two agencies is authorized to fulfill a particular function. References in this rule to one agency should be construed to include, as the context requires, either or both agencies.

(2) The Department may employ internal staff, consultants, or contractors, or cooperate with federal or state oversight authorities or other designees to conduct an audit or perform other audit procedures. The Department shall assign a contractor or one or more individuals to conduct the audit (hereafter referred to as "auditor").

(3) The auditor or PAU management shall determine the scope, time period, objective, and subject matter covered by the audit.

(4) The authority for access to records is found in OAR 407-120-0370 and 410-120-1360 and other terms of agreements or contracts authorizing access to records for audit purposes.

(5) The auditor may conduct an on-site field audit, examine and copy records at the provider's expense, interview employees, and conduct such field work as the auditor determines shall provide sufficient and competent evidential basis for drawing conclusions about the audit subject matter.

(6) The auditor may conduct a desk audit of records requested by the auditor and supplied by the provider, at the provider's expense, or other source as necessary for the auditor to determine sufficient and competent evidential basis for drawing conclusions about the audit subject matter.

(7) The auditor may consider other audits of the provider including but not limited to reviews conducted by the appropriate federal authority and the provider's independent audit of the provider's financial statements, which may include those performed by internal auditors, audit organizations, or contractors established by the federal or state government for the auditing of the Department or Authority programs.

(a) The auditor may consider other indicators or issues related to program integrity activities. The auditor may also consider past or present program integrity activities listed in OAR 407-120-0310 that have identified same or similar instances of non-compliance.

(b) The auditor shall determine the scope of other audit work and evaluate the reliability of its relationship to the scope and objective of the audit being conducted in determining the weight to be given to the other audit work.

(8) PAU may use a random sampling method such as that detailed in the paper entitled "Development of a Sample Design for the Post-Payment Review of Medical Assistance Payments," written by Lyle Calvin, Ph.D., (Calvin Paper). The Department adopts by reference but is not limited to following the method of random sampling and calculation of overpayment described in the Calvin Paper:

(a) In determining whether to use an overpayment calculation method set forth in section (8) of this rule, the auditor or PAU management may consider:

(A) The provider's overall error rate identified in the audit;

(B) If past audits have identified the same or similar instances of non-compliance;

(C) The severity of the errors established in the audit; or

(D) Any adverse impact on the health of the Department or Authority's clients and their access to services in the provider's service area.

(b) If the auditor determines an overpayment amount by a random sampling and overpayment calculation method set forth in section (8) of this rule, the provider may request a 100 percent audit of all billings from the same time period of the audit submitted to the Department or Authority for items or services furnished or supplied to or on behalf of Department or Authority clients. If a 100 percent audit is requested:

(A) Payment and arrangement for a 100 percent audit shall be paid by the provider requesting the audit;

(B) The audit must be conducted by an independent auditor or other individual whose qualifications the Department has determined, in writing, to be acceptable, who is knowledgeable with the Oregon Administrative rules covering the payments in question, who must waive any privilege to PAU in relation to the work papers and work product of the independent auditor;

(C) The 100 percent audit must be completed within 90 calendar days of the provider's request to use such audit in lieu of the Department's random sample;

(D) The provider must waive all rights to appeal the factual findings of the independent auditor; and

(E) The independent auditor must produce a final audit report or similar document detailing the findings of the 100 percent audit, including the overpayment assessment and recommendations to the provider and PAU. The independent auditor's work papers must be made available to the Department auditor upon request.

(9) The auditor shall prepare a preliminary audit report or similar document and deliver the preliminary audit report to the provider in person, or by registered or certified mail. The preliminary audit report shall inform the provider of the opportunity to provide additional documentation to the auditor about the information within the scope of the preliminary audit report.

(a) Refusing to accept the registered or certified mail or in-person delivery shall not stop the audit process from proceeding forward.

(b) The provider shall have a 30 calendar day review and comment period from the mailing date of the preliminary audit report to respond to the auditor or request an informal meeting with the auditor. The meeting to review the report shall be held within 45 days from the date of the preliminary audit report.

(c) The provider may request, in writing to the auditor, a 15-day extension from the preliminary audit report response due date for the purpose of submitting additional documentation The extension must be authorized in writing by the auditor or PAU management. An additional 15-day extension, requested in writing, may be granted at the discretion of PAU management.

(10) The auditor shall prepare a final audit report or similar document which is also the Department or Authority's final order, and deliver the final audit report in person, or by registered or certified mail. The audit record that forms the basis for the final audit report shall be closed on the date of the final audit report. The final audit report shall include but is not limited to an overpayment assessment, findings, recommendations, and sanctions.

(a) The overpayment assessment stated in the final audit report shall include but is not limited to the amount of overpayment PAU is authorized to recover and:

(A) Is not limited to amounts determined by criminal or civil proceedings;

(B) Shall include interest to be charged at allowable state rates; and

(C) May include triple damages as described in section (18) of this rule.

(b) Refusing to accept the registered or certified mail or in-person delivery shall not stop the audit process from proceeding.

(c) If the provider disagrees with the final audit report or the overpayment amount, the provider must appeal the decision within 30 calendar days from the mailing date of the final audit report by submitting a written request for either an administrative review or a contested case hearing to the OPAR Administrator. The written request for appeal must outline in detail the areas of disagreement.

(A) The OPAR Administrator or designee (hereafter referred to as "Administrator") shall determine which appeals may be suitable for review as administrative review or contested case hearing, taking into consideration issues presented in the request for review and the purposes served by administrative review in section (12) or contested case hearing in section (13) of this rule.

(B) If the Administrator decides the determinations of the final audit report or the content of appeal is appropriate for a contested case hearing or denies a request for an administrative review on the basis the appeal should be heard as a contested case hearing, the Administrator shall notify the provider and refer the appeal directly to the Office of Administrative Hearings (OAH) for a contested case hearing pursuant to these rules.

(11) If a provider fails to request an appeal within the time frame specified in section (10) of this rule the final audit report, overpayment amount, and all recommendations and sanctions shall become final. Appeal requests submitted to PAU must:

(a) Be in writing to the Administrator.

(A) The appeal request is not required to follow a specific format as long as it provides clear written expression from the provider expressing disagreement with the final audit report findings.

(B) The request must specify issues or decisions being appealed and the specific reason for the appeal on each finding or decision. The request must provide specifics for each claim such as procedure code, diagnosis code, reason for denial, administrative rules, or other authority applicable to the issue, and why the provider disagrees with the decision. If this information is not included in the appeal request in a manner that reasonably permits the Administrator to understand the decision being appealed or the basis for the appeal, the request shall be returned to the provider and the provider shall be required to resubmit the appeal within 10 working days from the date PAU returned the appeal to the provider.

(b) Be received by the Administrator within 30 calendar days from the mailing date of the final audit report.

(A) Late requests require written supporting documentation explaining reason for a late request. The Administrator shall determine whether failure to file a timely request was caused by circumstances beyond the control of the provider and enter an order accordingly. The Administrator may conduct further inquiry as deemed appropriate. In determining timelines of filing a request for review, the amount of time the Administrator determines accounts for circumstances beyond the control of the provider is not counted.

(B) The untimely request may be referred to the OAH for a hearing on the question of timeliness.

(12) Administrative review allows opportunity for the Administrator to review a decision affecting the provider. Appeals are limited to legal or policy issues where there is a stipulation of factual matters to be heard.

(a) Administrative review meetings shall be:

(A) Scheduled within 45 calendar days of receipt of the written request by the Administrator;

(i) The Administrator shall prove written notice to the provider of the date, time, and place of the meeting.

(ii) If the Administrator decides a preliminary meeting between the provider and PAU staff may assist the administrative review, the Administrator shall provide written notice to the provider of the date, time, and place the preliminary meeting is scheduled.

(B) Held in Salem, unless otherwise stipulated to by all parties and PAU;

(C) Conducted by the Administrator;

(D) Department or Authority staff shall not be available for cross-examination;

(E) Department or Authority staff may attend and participate in the meeting; and

(F) The provider is not required to be represented by legal counsel and shall be given ample opportunity to present relevant information from the existing case record.

(b) If a provider fails to appear at the administrative review meeting, the final audit report, all findings including the overpayment, and recommendations and sanctions as specified in the report shall become final. In addition, the provider may not appeal the final audit report.

(c) The results of the meeting shall be sent to the provider, in writing, by registered or certified mail within 30 calendar days of the conclusion of the administrative review proceedings. The result of the administrative review is final.

(d) All administrative review decisions are subject to procedures established in OAR 137-004-0080 to 137-004-0092 and judicial review under ORS 183.484 in the Circuit Court.

(13) The contested case hearing process is conducted in accordance with ORS 183.411 to 183.497 and the Attorney General's Uniform and Model Rules of Procedure for the Office of Administrative Hearings, OAR 137-003-0501 to 137-003-0700.

(a) If the Administrator decides a contested case pre-hearing conference between the provider and PAU staff shall assist the contested case hearing, the Administrator shall notify the provider of the time and place of contested case pre-hearing conference without the presence of an administrative law judge. The purpose of the pre-hearing conference is to:

(A) Provide an opportunity to settle the matter or discuss Model Rules of Procedure for contested case hearings listed in OAR 137-003-0575. Any agreement reached in a pre-hearing conference shall be submitted to the administrative law judge in writing or presented orally on the record at the contested case hearing;

(B) Provide an opportunity for the provider and PAU to review the information, correct any misunderstanding of facts, and understand the reason for the action that is the subject of the contested case hearing; or

(C) Determine if the parties wish to have witness subpoenas issued when the contested case hearing is conducted.

(b) Prior to the date of the contested case hearing, the provider may request an additional pre-hearing conference with PAU representatives. The request shall be made in writing to the Administrator. An additional pre-hearing conference may be granted at the sole discretion of the Administrator if the additional pre-hearing conference is determined to facilitate the contested case hearing process or resolution of disputed issues.

(c) The contested case hearing shall be held in Salem, unless otherwise stipulated to by all parties and PAU.

(d) The OAH shall serve a proposed order on behalf of PAU unless PAU notifies the parties that PAU shall issue the final order. The proposed order shall become the final order if no exceptions are filed within the time specified in this rule.

(e) The provider may file exceptions or written argument to the proposed order to be considered by PAU. The exceptions must be in writing and received by OPAR within 10 calendar days after the date the proposed order is issued. No additional evidence may be submitted. After receiving the exceptions or argument, PAU may adopt the proposed order as the final order, amend the order, or prepare a new order.

(f) A provider may withdraw a contested case hearing request at any time. The OAH shall send a final order confirming the withdrawal to the provider.

(14) If neither the provider nor the provider's legal representative appears at the contested case hearing, PAU may elect one of the following options in its sole discretion:

(a) The contested case hearing request may be dismissed by order. PAU may cancel the dismissal order upon request of the party on a showing that the party was unable to attend the hearing and unable to request a postponement for reasons beyond the provider's control.

(b) PAU may enter a final order by default. Entry of a final order by default may be made when PAU determines that the issuance of a final order with findings is appropriate as a basis of sanction authority or to establish a basis for future sanction authority or other reason consistent with the administration of the Department or Authority programs. The designated record, for purposes of a default order, shall be the record as designated in the notice issued to the provider. If not so designated, the designated record shall consist of the files and records held by PAU in the contested case hearing packet prepared by PAU.

(15) Final orders are effective immediately upon being signed or as otherwise provided in the order.

(a) Final orders resulting from a provider's withdrawal of a contested case hearing request is effective the date the provider's request is received by PAU or the OAH, whichever is sooner.

(b) When the provider fails to appear for the contested case hearing, the effective date of the dismissal order or the final order by default is the date of the scheduled contested case hearing.

(16) The burden of presenting evidence to support a fact or position rests on the proponent of the fact or position. Pursuant to OAR 410-120-1360, payment on a claim shall only be made for services that are adequately documented and billed in accordance with OAR 410-120-1280 and 407-120-0330 and include all applicable administrative rules and applicable contract terms related to covered services for the client's benefit package, and the establishment of conditions under which services, supplies or items are covered, including but not limited to the Prioritized List, diagnosis and procedure coding, medical appropriateness, and other applicable standards.

(17) The Administrator, in consultation with appropriate Department or Authority authorities, may grant the provider the relief sought at any time.

(18) Overpayments must be paid within 30 calendar days from the mailing date of the final audit report. The provider may submit a request to the auditor or PAU management for a payment plan to satisfy this requirement. The auditor and PAU management may not waive this overpayment requirement.

(a) A request for an administrative review or contested case hearing shall not change the date the overpayment is due or a payment plan is to commence, unless otherwise stipulated in writing by the Administrator.

(b) PAU management may extend the reimbursement period or accept an offer of payment terms. PAU must make any change in the reimbursement period or terms in writing.

(A) The request for a payment plan must be made in writing to PAU management. The auditor or PAU management shall notify the provider, in writing, of the decision regarding acceptance or denial of the request.

(B) If the payment plan is agreeable to all parties, the auditor or PAU management shall ensure the payment plan is in writing and signed by all parties. A payment plan shall include charging interest at the allowable state rate.

(c) If the provider refuses to reimburse the overpayment or does not adhere to an agreed upon payment schedule, PAU may:

(A) Recoup, in any manner available to PAU, future provider payments up to the amount of the overpayment;

(B) Pursue civil action to recover the overpayment; or

(C) Recommend suspension or termination of the provider's enrollment in the Oregon Medicaid Program.

(d) As a result of a contested case hearing or an administrative review, the amount of the overpayment may be reduced in part or in full.

(e) PAU may at any time change the amount of the overpayment in accordance with this rule. The provider shall be notified of any changes in writing by certified or registered mail. PAU shall refund the provider any monies paid to PAU in excess of the overpayment.

(f) If a provider is terminated from participation in Department or Authority programs or sanctioned for any reason, PAU may pursue civil action to recover any amounts due and payable.

(g) If the auditor, in the course of an audit, discovers the provider has continued in the same or similar improper billing practices as established or upheld if appealed, in a previously published final audit report by PAU, or has been warned in writing by the Department or Authority, PAU, or the Department of Justice about improper billing practices, the provider shall be liable to PAU for up to triple the amount of the current final audit report establishing the overpayment received by the provider as a result of such violation.

(19) Providers who conduct electronic data transactions with the Department or Authority must adhere to requirements of OAR 407-120-0100 to 407-120-0200. This rule only applies to services or items paid for by the Department or Authority. If the provider maintains financial or clinical records electronically, the provider must ensure the use of electronic record keeping systems does not alter the requirements of OAR 407-120-0370.

(a) The provider's electronic record keeping system includes electronic transactions governed by HIPAA transaction and code set requirements and records, documents, and documentation, whether maintained or stored in electronic media, including electronic record-keeping systems and information stored or backed up in an electronic medium.

(b) If the provider maintains financial or clinical records electronically, the provider must be able to provide PAU with hard copy versions, if requested. The provider must also be able to provide an auditable means of demonstrating the date the record was created, the identity of the creator of a record, the date the record was modified, what was modified in the record, and the identity of any individual who has modified the record. The provider must supply the information to individuals authorized to review the provider's records pursuant to OAR 407-120-0370(3)(e).

(c) If the provider maintains records electronically or permits the use of electronic signatures, the provider must document any aspect of the provision of services. The provider must maintain appropriate safeguards to assure the authenticity of the electronic records and signatures. The provider may not challenge the authenticity or admissibility of the electronic signature or documents in any audit, review, hearing, or other legal proceeding.

(d) Providers must comply with the documentation review requirements in OAR 407-120-0370 by providing the electronic record in an electronic format acceptable to an authorized reviewer. The authorized reviewer must agree to receive the documentation electronically.

Stat. Auth.: ORS 409.050, 411.060 & 413.032
Stats. Implemented: ORS 409.010, 409.180, 414.025, & 414.065
Hist.: OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; Renumbered from 410-120-1505 by DHSD 9-2010, f. & cert. ef. 9-1-10