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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

Department of Human Services (Department) adopts the Attorney General Model Rules applicable to rulemaking, effective on January 1, 2006, 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

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 of Human Services (Department) will 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(s) at least 28 days before the effective date of the rule.

(2) Pursuant to ORS 183.335(8), the Department will maintain an Interested Parties list for each OAR chapter of rules for which the Department has administrative responsibility, and the Interested Parties lists for subtopics or programs within those OAR 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 (including electronic mail) to the Rules Coordinator for the chapter. The request must include either a mailing address or an electronic mail (email) 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 will 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 may 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 will honor all written requests that notification be sent by mail instead of electronically if a mailing address is provided.

(4) If the Department adopts a temporary rule, the Department will notify:

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

(b) 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;

(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 person, 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, via email, 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

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, or repeal 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, 409.130
Stats. Implemented: ORS 183.325, 409.050, 409.120
Hist.: DHSD 3-2006, f. 5-11-06, cert. ef. 6-1-06

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) Purpose. The purpose of these rules, OAR 407-007-0000 to 407-007-0100, is to provide for the 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) Rule Applicability. These rules do not apply to subject individuals covered under OAR 407-007-0200 to 407-007-0380.

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

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 eligible to work, volunteer, be employed, or otherwise perform in positions covered by these rules.

(2) "Client" means any individual who receives services, care, or funding for care, through the Department.

(3) "Closed Case" means a criminal history check application that has been closed without a final fitness determination.

(4) "Criminal History Check" means obtaining and reviewing criminal history as required by these rules. The result of a criminal history check is a fitness determination or a closed case. The criminal history check includes any or all of the following:

(a) An Oregon criminal history check, in which criminal offender information is obtained from Oregon Department of State Police (OSP) using the Law Enforcement Data System (LEDS). The Oregon criminal history check may also include a review of information from the Oregon Judicial Information Network (OJIN), Oregon Department of Corrections records, Oregon Department of Transportation Drivers and Motor Vehicles Division (DMV), local or regional criminal history information systems, or other official law enforcement agency or court records in Oregon.

(b) A national criminal history check, in which criminal history is obtained from the Federal Bureau of Investigation (FBI) through the use of fingerprint cards and other identifying information.

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

(5) "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 (confinement shall not include the retention by OSP of records of transfer of inmates between penal institutions or other correctional facilities), and release, and includes the OSP Computerized Criminal History System.

(6) "Criminal Records Unit" means the Department's Criminal Records Unit (CRU).

(7) "Denied" means that a subject individual, following a fitness determination including a weighing test, is not eligible to work, volunteer, be employed, or otherwise perform in positions covered by these rules.

(8) "Department" means the Department of Human Services (DHS).

(9) "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, or temporary hire.

(10) "Fitness Determination" means the outcome of an application and preliminary review, or an application and criminal history check including gathering of other information as necessary, in a case that is not closed.

(11) "Good Cause" means a valid and sufficient reason for not complying with time frames set during the criminal history check process or contested case hearing process, and may include an explanation of circumstances beyond an individual's reasonable control.

(12) "Other Criminal History Information" means information obtained and used in the criminal history check process that is not "criminal offender information" from OSP. "Other criminal history information" includes police investigations and records, justice records, court records, sexual offender registration records, warrants, DMV information, information provided on the Department's

criminal history check forms, and any other information from any jurisdiction obtained by or provided to the Department for the purpose of conducting a fitness determination.

(13) "Restricted Approval" 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 care, or the information to which the subject individual has access.

(14) "Subject Individual" means an individual 16 years old or older from whom the Department may require fingerprints for the purpose of conducting a criminal history check. A subject individual includes any of the following:

(a) An employee of the Department.

(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(1)(c).

(d) A volunteer or student over whom the Department has direction and control.

(e) A Department client who is placed in the work experience program at a Department site.

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

(g) Any individual applying for a paid or volunteer position, any employee, any volunteer, any contractor, or any employee of any contractor in any of the following:

(A) A state operated or DHS-contracted secure residential treatment facility;

(B) A state operated rehabilitation facility;

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

(D) Blue Mountain Recovery Center;

(E) Eastern Oregon Training Center; or

(F) Oregon State Hospital.

(15) "Weighing Test" means a process carried out by the Department in which available information is considered to make the outcome of a preliminary or final fitness determination. A weighing test is only conducted when a subject individual has potentially disqualifying crimes or conditions.

Stat. Auth.: ORS 181.534, 181.537, 409.050
Stats. Implemented: ORS 181.534, 181.537
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

407-007-0020
Criminal History Check Required

(1) Who Conducts Criminal History Checks.

(a) The Department. The Department conducts criminal history checks on all subject individuals through LEDS maintained by OSP pursuant to ORS chapter 181 and the rules adopted pursuant thereto (see OAR chapter 257, division 15).

(b) OSP. If a nationwide criminal records check of a subject individual is necessary, OSP shall provide the Department results of a criminal records check conducted pursuant to ORS 181.534, including fingerprint identification, through the FBI.

(2) When Criminal History Check Is Required (New Checks and Re-checks). A subject individual is required to have a check in the following circumstances:

(a) Subject Individuals. An individual becomes a subject individual on or after the effective date of these rules.

(b) Position Change. Except as provided in section (3) of this rule, the individual, whether previously considered a subject individual or not, changes positions, and the position requires a criminal history check. Movement into a position may be due but not limited to promotion, transfer, demotion, re-employment, job rotation, developmental assignment, restoration, bumping, or recall.

(c) Check Required by Regulation or Contract. A criminal history check is required by federal or state laws or regulations, other rules adopted by the Department, or by contract with the Department.

(d) Check Is Justified. The Department has reason to believe that a criminal history check is justified. Examples include but are not limited to any indication of possible criminal behavior or quality assurance monitoring of a previously conducted criminal history check.

(3) When Criminal History Check Is Not Required.

(a) Initial Review. The Department may determine that the completion of a new criminal history check for a Department employee is not required after the completion of the DHS Criminal History Request form when:

(A) The subject individual who has been offered a new position has completed a previous criminal history check with an outcome of approved; and

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

(b) Criteria for Ending Check. The criminal history check process may be ended without a new criminal history check or new fitness determination if the Department determines there is no indication of new potentially disqualifying crimes or conditions, and at least one of the following is true:

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

(B) The Department determines that the new position requires the same or less responsibility or access in the duties as described in OAR 407-007-0060(1)(c).

(4) Reporting Criminal Activity Required. All subject individuals 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
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

407-007-0030
Criminal History Check Process

(1) Department Access. Only Department employees may be authorized and approved to receive and evaluate criminal offender information and other criminal history information pursuant to OAR 407-007-0230 to 407-007-0240. These employees are called authorized designees or contact persons. Only authorized designees may conduct fitness determinations.

(2) Forms Required. The subject individual shall use the Department's form to request the criminal history check. The DHS Criminal History Request form shall include the following:

(a) Identifying Information. Indication of what identifying information and other information the subject individual is required to provide in order to begin the criminal history check process, including but not limited to name, aliases, date of birth, address, recent residency information, drivers license, disclosure of criminal history, and disclosure of other information to be considered in the event of a weighing test.

(b) Notice Regarding Social Security number. A notice regarding disclosure of Social Security number indicating that:

(A) The subject individual's disclosure is voluntary; and

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

(c) Fingerprinting. A notice that the subject individual is subject to fingerprinting and a criminal history check; and

(d) Change of Address. Direction to the subject individual to provide the Department with any change of address.

(3) Positive Identification. The Department shall verify the identity of a subject individual which may include but is not limited to asking the subject individual for government-issued photo identification (example: drivers' license) and confirming the information on the photo identification with the subject individual, the information written on the DHS Criminal History Request form, and the information written on the fingerprint card if a national criminal history check is conducted.

(4) Oregon Criminal History Check.

(a) Obtaining Information. Using information submitted on the DHS Criminal History Request form, the Department obtains criminal offender information from the LEDS system and requests other criminal history information as needed.

(b) Handling of Information. Criminal offender information obtained through LEDS shall be handled in accordance with applica-

ble OSP requirements in ORS chapter 181 and the rules adopted pursuant thereto (see OAR chapter 257, division 15).

(5) National Criminal History Check.

(a) Fingerprints Required. In addition to an Oregon criminal history check, a fingerprint-based national criminal history check is required by the Department under any of the following circumstances:

(A) The subject individual has out of state residency evidenced by the subject individual's possession of an out of state drivers' license or living outside Oregon for 60 or more consecutive days during the previous three years.

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

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

(D) The subject individual is subject to these rules due to employment or position at Oregon State Institutions under OAR 407-007-0010(14)(g).

(E) The subject individual is assigned duties involving any aspect of a criminal history check process or is a hearings representative in criminal history check contested cases.

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

(b) Fingerprints May Be Required. In addition to an Oregon criminal history check, the Department may require a fingerprint-based national criminal history check if the Department has reason to believe that fingerprints are needed to make a final fitness determination.

(c) Processing of Fingerprint Card. The subject individual shall complete and submit a fingerprint card when requested by the Department.

(A) The subject individual shall use a fingerprint card (Example: FBI Form FD 258) provided by the Department. The Department shall give the subject individual notice regarding the Social Security number as set forth in OAR 407-007-0030.

(B) The subject individual shall submit the card within 21 days of the request to the Department's Criminal Records Unit.

(i) If the card is not received within 21 days, the Department will close the application, making it a closed case.

(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.

(6) State-Specific Criminal History Check. The Department may also conduct a state-specific criminal history check in lieu of or in addition to a national criminal history check. Reasons for a state-specific criminal history check include but are not limited to:

(a) Out-of-State History. When the Department has reason to believe that out-of-state criminal history may exist.

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

(c) Incomplete Information. When the national criminal history check results show criminal history without final disposition or complete information about charges.

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

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

(7) Additional Information Required.

(a) Required from Subject Individual. In order to complete a criminal history check and fitness determination, the Department may require, as necessary, additional information from the subject individual such as but not limited to additional criminal, judicial, or other background information; or proof of identity.

(b) Investigatory Interview. If a subject individual 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.

(8) Imminent Danger.

(a) New Criminal History Check. If the Department determines there is indication of criminal behavior by the subject individual that could pose a potential immediate risk to the Department, its clients or vulnerable persons, the Department shall authorize a criminal history check without the completion of a DHS Criminal History Request form.

(b) Opportunity to Disclose. If the Department determines that a fitness determination based on the criminal history check would be adverse to the subject individual, the Department shall provide the subject individual the opportunity to disclose criminal history and other information as indicated in OAR 407-007-0060 before the completion of the fitness determination.

(9) Documentation. Criminal history 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
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

407-007-0040
Potentially Disqualifying Crimes

(1) Felonies and Misdemeanors. A conviction of any of the following crimes is potentially disqualifying. The list includes offenses that are crimes and does not include offenses or convictions that are classified as violations (See ORS 161.505 through 161.565).

(a) Any Federal Crime.

(b) Any U.S. Military Crime.

(c) Felonies and Misdemeanors in Oregon. Any felony or misdemeanor in Oregon Revised Statutes.

(d) Crimes Outside Oregon. Any felony or misdemeanor in a jurisdiction outside Oregon (including known crimes outside the United States) that is the substantial equivalent of any Oregon crime, 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) Repealed Crimes. 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) Evaluation Based on Current Laws. 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) Juvenile Records. Under no circumstances may a subject individual 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) Adult Records. Under no circumstances may a subject individual 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
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

407-007-0050
Other Potentially Disqualifying Conditions

The following are potentially disqualifying conditions:

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

(2) Warrants. The subject individual has an outstanding warrant.

(3) Probation, Parole, or Post-Prison Supervision. The subject individual is currently on probation, parole, or post-prison supervision for any crime, regardless of the original conviction date (or date of guilty or no contest plea if there is no conviction date), as of the date the DHS Criminal History Request form was signed or the date the Department conducted a criminal history check due to imminent danger.

(4) Parole or Probation Violation. The subject individual is found in violation of post-prison supervision, parole, or probation for any crime 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 DHS Criminal History Request form was signed or the date the Department conducted a criminal history check due to imminent danger.

(5) Juvenile Adjudication. Adjudication in a juvenile court, finding that the subject individual was responsible for a potentially disqualifying crime that would result in a conviction if committed by an adult.

(6) Guilty Except for Insanity. A finding of "guilty except for insanity," "guilty except by reason of insanity," "not guilty by reason of insanity," "responsible except for insanity," or similarly worded disposition regarding a potentially disqualifying crime.

(7) Unresolved Arrests, Charges or Indictments. An unresolved arrest, charge, or a pending indictment for a potentially disqualifying crime.

(8) Deferred Sentence or Diversion Program. The subject individual has a deferred sentence, conditional discharge, or is participating in a diversion program for any potentially disqualifying crime.

(9) False Statement. A "false statement" by the subject individual to the Department, including provision of materially false information, false information regarding criminal history, or failure to disclose information regarding criminal history.

Stat. Auth.: ORS 181.534, 181.537, 409.050
Stats. Implemented: ORS 181.534, 181.537
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

407-007-0060
Information Considered

(1) Consideration of Other Information. If the subject individual has potentially disqualifying crimes or conditions, the Department shall consider any information disclosed by the subject individual or otherwise known when making the fitness determination. This information includes but is not limited to:

(a) Potentially Disqualifying Crimes or Conditions. Circumstances regarding the nature of potentially disqualifying crimes and conditions may include but are not limited to:

(A) Age of the subject individual 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 Oregon or federal laws, regulations, or rules covering the position, or the Department, in regard to the potentially disqualifying crimes or conditions.

(b) Other Circumstances. The Department shall also consider other factors when relevant information is 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 history 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) Whether a conviction was set aside and the legal effect of the setting aside the conviction.

(E) Evidence of drug or alcohol issues directly related to criminal activity or potentially disqualifying conditions, including history of use, manufacturing, delivery, treatment, rehabilitation, and relapse.

(F) Evidence of other treatment or rehabilitation related to criminal activity, potentially disqualifying conditions or other factors listed in this rule. This includes but is not limited to assessments, evaluations or risk assessments before or after treatment or rehabilitation.

(G) 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 subject individual appears to accept responsibility for past actions, as determined by the Department.

(H) Changes in circumstances subsequent to the criminal activity or disqualifying conditions.

(I) Information from protective services investigations or abuse and neglect reports pursuant to ORS 409.025 and 409.027.

(J) Education.

(K) Work history (employee or volunteer).

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

(M) Written recommendations from current or past employers.

(N) Indication that criminal history or record has been disclosed to the Department or other employers.

(O) Indication of the subject individual's cooperation, honesty, or the making of a false statement during the criminal history check process.

(c) Relevancy of History to Position. The relevancy of the subject individual's criminal history or potentially disqualifying condition to the paid or volunteer position, or to the environment of the position, shall be considered. Consideration includes the relation between the subject individual'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, drivers' license numbers, residency information, medical information, personal financial information, criminal offender information, or other criminal history information.

(K) Access to medications, chemicals, or hazardous materials or 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 related to 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.

(2) Fitness Determination with Available Information. If the Department requests other information for the purpose of conducting a weighing test, and the subject individual does not respond in a stated time period, the Department shall make a fitness determination based on available information or close the case.

Stat. Auth.: ORS 181.534, 181.537, 409.050
Stats. Implemented: ORS 181.534, 181.537
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

407-007-0070
Fitness Determinations

(1) Preliminary Fitness Determination. A preliminary fitness determination is required to determine if a subject individual may work, volunteer, be employed, or otherwise perform in positions covered by these rules prior to a final fitness determination. The Department may not allow a subject individual to work, volunteer, or otherwise perform in positions covered by these rules prior to the completion of a preliminary fitness determination.

(a) DHS Criminal History Request Form Completed. The subject individual shall complete and submit a DHS Criminal History Request form.

(b) Preliminary Fitness Determination Required. The CRU shall complete a preliminary fitness determination and send notice to the hiring manager.

(c) Preliminary Fitness Determination Outcomes. After review of the DHS Criminal History Request form, the CRU shall make one of the following determinations:

(A) Hired on a Preliminary Basis. A subject individual may be hired or accepted into a position on a preliminary basis and allowed to participate in the training for, orientation to, and work activities of volunteering, employment, or other positions covered by these rules. The term "hired on a preliminary basis" is applicable only during the timeframe prior to a final fitness determination.

(i) If there is no indication of a potentially disqualifying crime or condition on the DHS Criminal History Request form and the Department has no reason to believe the subject individual has potentially disqualifying history, the subject individual may be hired on a preliminary basis.

(ii) When a subject individual discloses convictions or arrests for a potentially disqualifying crime, or any other potentially disqualifying condition, the individual may be hired on a preliminary basis only after the completion of a weighing test. A subject individual may be hired on a preliminary basis only if, based on information available at the time, the Department determines that more likely than not that the subject individual poses no potential threat to the Department, its clients, or vulnerable persons.

(B) No Hiring Allowed. When a subject individual discloses a conviction or arrest for a potentially disqualifying crime or any other potentially disqualifying condition the Department shall conduct a weighing test. The Department may not hire on a preliminary basis if the Department determines that:

(i) The subject individual may pose a potential threat to the Department, its clients, or vulnerable persons;

(ii) There is not enough available information to determine the level of potential threat posed by the subject individual;

(iii) The subject individual has previously been denied under these rules or other Department criminal history check rules; or

(iv) The subject individual is currently involved in contesting a criminal history check under these or other Department criminal history check rules.

(d) Active Supervision While Hired on a Preliminary Basis. A subject individual 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 history check rules.

(A) At all times the individual providing active supervision shall do all of the following:

(i) Be in the same building as the subject individual or, if outdoors be within line of sight or hearing of the subject individual;

(ii) Know where the subject individual is and what the subject individual is doing; and

(iii) Periodically observe the actions of the subject individual.

(B) A subject individual who was approved without restrictions within the previous 24 months through a documented criminal history check pursuant to these rules or other DHS criminal history check 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:

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

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

(ii) If, as determined by 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.

(e) Revocation.

(A) The Department may immediately remove a subject individual hired on a preliminary basis for the following reasons:

(i) There is any indication of falsification of the application.

(ii) The subject individual 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.

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

(B) Revocation pursuant to this section is not subject to hearing or appeal.

(f) Hiring or Placement Not Required. Nothing in this rule is intended to require that a subject individual, who is eligible for being hired on a preliminary basis be allowed to work, volunteer, be employed, or otherwise perform in positions covered by these rules prior to a final fitness determination.

(2) Final Fitness Determination. The Department shall conduct a final fitness determination after all necessary criminal history checks have been completed. The Department may obtain and consider additional information as necessary to complete the final fitness determination.

(a) Final Fitness Determination Outcomes.

(A) Approved. The Department may approve a subject individual if:

(i) The subject individual has no potentially disqualifying crimes or potentially disqualifying conditions; or

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

(B) Approved with Restrictions. The Department may approve a subject individual with restrictions if it determines that more likely than not that the subject individual poses no risk to the Department, its clients, or vulnerable persons, if certain restrictions are placed on the subject individual, such as but not limited to restrictions to one or more specific clients, job duties, or environments. The Department shall complete a new criminal history check and fitness determination on the subject individual before removing a restriction. A fitness determination of approved with restrictions shall only be considered for the following subject individuals:

(i) 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(1)(c).

(ii) A volunteer or student over whom the Department has direction and control.

(iii) A Department client who is placed in a work experience program at a Department site.

(iv) Any individual who is required to complete a criminal history 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) Denied. The Department shall deny a subject individual whom it determines, after a weighing test, more likely than not poses a risk to the Department, its clients, or vulnerable individuals.

(d) Fitness Determination by the CRU. The CRU may assist in or handle final fitness determinations as requested by Department staff.

(3) Closed Case.

(a) Incomplete Application. If the subject individual discontinues the application or fails to cooperate with the criminal history check process, the application is considered incomplete and will be closed. Discontinuance or failure to cooperate includes but is not limited to the following circumstances:

(A) The subject individual refuses to be fingerprinted when required by these rules.

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

(C) The subject individual withdraws the application, leaves the position prior to completion of the check, or cannot be located or contacted by the Department.

(D) The subject individual is determined to be ineligible for the position for reasons other than the criminal history check.

(b) No Hearing Rights. When the application is closed without a final fitness determination, there is no right to contesting the closure.

(4) Notice to Subject Individual. Upon completion of a final fitness determination resulting in denied or approved with restrictions, the Department shall provide written notice to the subject individual.

(a) Notice of Fitness Determination. The notice shall:

(A) Be in a Department approved format;

(B) Include information regarding appeal rights and the notice becoming a final order in the event of a withdrawal or a failure to appear at the hearing; and

(C) Be mailed or hand-delivered to the subject individual as soon as possible, but not later than 14 calendar days after the decision. The effective date of action shall be recorded on the form.

(b) Other Documents. The Department shall also provide employees with all formal disciplinary documents and letters up to and including a letter of dismissal.

(5) Termination Following Denial or Closed Case. When a subject individual is denied or a case is closed, the individual shall not be allowed to work, volunteer, be employed, or otherwise perform in positions covered by these rules. A denial or closed case applies only to the position and application in question.

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

(b) Dismissal of All Other Subject Individuals. For all other subject individuals, a denial or closed case shall result in immediate dismissal.

(6) Documentation. Preliminary and final fitness determinations shall be documented in writing, including any details as needed such as but not limited to the restrictions in a restricted approval, the potentially disqualifying crimes or convictions in a denial, or the reasons for a closed case.

(7) No Binding Precedent. 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.

Stat. Auth.: ORS 181.534, 181.537, 409.050
Stats. Implemented: ORS 181.534, 181.537
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

407-007-0080
Contesting a Final Fitness Determination

(1) Fitness Determinations to Contest. A final fitness determination of denied or approved with restrictions is considered an adverse outcome. A subject individual with an adverse outcome may contest that outcome.

(2) Work Pending Appeal Prohibited. If a subject individual is denied, then the individual may not work, volunteer, be employed, or otherwise perform in positions covered by these rules. A subject individual appealing a restricted approval may only work under the terms of the restriction during the appeal.

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

(4) History Disputed:

(a) Correcting Disputed History. If a subject individual wishes to challenge the accuracy or completeness of criminal offender information provided by OSP, the FBI, or other criminal history information from other agencies reporting information to the Department, the subject individual may appeal to the entity providing the information. Such challenges are not subject to the Department's appeal process.

(b) Disputed and Undisputed History. If a subject individual is disputing some criminal history and challenging a final fitness determination on other undisputed criminal history, no new fitness determination can be completed until the issue of the disputed history is resolved, and documentation of the resolution is provided to the Department.

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

(6) Challenging the Fitness Determination. A subject individual 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 through 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) Appeal. To request a contested case hearing, the subject individual shall complete and sign the DHS Hearing Request form. The form is provided with a notice of fitness determination and is also available by contacting the CRU.

(b) Deadline for Appeal. The completed and signed form must be received by the Department:

(A) For Department employees and individuals offered employment by the Department, not later than 15 calendar days after the effective date of action listed on the notice of the fitness determination.

(B) For all other subject individuals, not later than 45 calendar days after the effective date of action listed on the notice of the fitness determination.

(c) Untimely Appeal. In the event a request for an appeal is not timely, the Department will determine, based on a written statement from the subject individual and available information, if there is good cause to proceed with the appeal.

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

(7) Criminal History Check. The Department may conduct additional criminal history checks during the appeal process to update or verify the subject individual's criminal history.

(8) Contested Case Hearing:

(a) Procedural Documents and Exhibits. The Department shall provide to the administrative law judge and the subject individual a complete copy of available information. The notice of contested case and prehearing summary shall be mailed by certified mail through the U.S. Postal Service. All other documents shall be mailed by regular first class mail.

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

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

(9) Proposed and Final Orders:

(a) Notice of Fitness Determination as Final Order. In the following situations, the notice of fitness determination issued is final as if the subject individual never requested a hearing:

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

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

(b) Informal Disposition. The Department may make an informal disposition based on review of available information and discussion with the subject individual. The Department shall issue a final order and new notice of fitness determination.

(c) Dismissal Order:

(A) The subject individual 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 it is received by the Department or the OAH. The subject individual may cancel the withdrawal in writing up to 14 calendar days after the date of withdrawal.

(B) A hearing request is dismissed by the Department when the subject individual 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.

(d) Order After Hearing. 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 the Director's designee shall consider the exceptions and serve a final order, or request a revised proposed and final order from the administrative law judge.

(e) Reconsideration and Rehearing. Dismissal orders due to the subject individual's withdrawal, dismissal orders due to failure to appear, and final orders are subject to reconsideration or rehearing

petitions with 60 calendar days after the 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
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

407-007-0090
Record Keeping, Confidentiality

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

(a) LEDS Access. LEDS reports are confidential and may only be shared with approved Department employees if there is a need to know consistent with these rules.

(b) Subject Individual Access. The LEDS report, and photocopies of the LEDS report, may not be shown or given to the subject individual.

(2) National (FBI) Information. The results of a national criminal history check provided by the FBI, or through OSP, are confidential and may not be disseminated by the Department, with the following exceptions:

(a) Subject Individual Request. If a fingerprint-based criminal history check was conducted on the subject individual, the subject individual shall be provided a copy of the results if requested.

(b) Contested Case Hearing Exhibits. If authorized by the subject individual, the results of the national criminal history check shall be provided as exhibits during the contested case hearing.

(3) Department Forms and Other Documentation. All completed DHS Criminal History Request forms, other criminal history information and other records collected or developed during the criminal history check process shall be kept confidential and disseminated only on a need-to-know basis.

(4) Retention. All criminal history check documents shall be retained and destroyed 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
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

407-007-0100
Variances

(1) Criteria for a Variance. 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.

(2) Variance Application. The program office or work unit requesting a variance shall submit in writing, an application to the Department's Administrative Services Division 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.

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

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

(5) Appeal Application. Appeal of the denial of a variance request shall be made in writing to the Director of the Department, whose decision shall be final.

(6) Duration of Variance. The duration of the variance shall be determined by the Department. All variances shall be reapplied for before the duration of the variance expires.

(7) Implementation. The Department program office or work unit may implement a variance only after written approval from the Department is received.

(8) No Precedent. Granting a variance does not set a precedent for subsequent requests for variances.

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

Stat. Auth.: ORS 181.537, 409.010, 409.050
Stats. Implemented: ORS 181.537
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

407-007-0200
Statement of Purpose and Statutory Authority

(1) Purpose. The purpose of these rules is to provide for the reasonable screening of subject individuals in order to determine if they have a history of criminal behavior such that they should not be allowed to oversee, live or work closely with, or provide services to vulnerable people.

(2) Authority. These rules are authorized under ORS 181.537, 409.010, 409.050, 410.020(3)(d), 418.016, 418.640, 441.022, 441.055, 443.730, 443.735(3), 688.655 and 688.660.

(3) When Rules Apply. These rules are to be applied when evaluating criminal history of a subject individual and conducting fitness determinations based upon such history. The fact that a subject individual is approved does not guarantee employment or placement.

Stat. Auth.: ORS 181.537, 409.010, 409.050
Stats. Implemented: ORS 181.537
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

Providers

407-007-0210
Definitions

As used in OAR 407-007-0200 to 407-007-0380, unless the context of the rule requires otherwise, the following definitions apply:

(1) "Adult Foster Home" has the same definition as provided in ORS 443.705.

(2) "Approved" means that a subject individual has completed the criminal history check process, including any required fitness determination, and is eligible to provide care or reside in an environment covered by these rules.

(3) "Authorized Designee" means a person who is designated by an approved qualified entity and authorized by the Department to receive and process criminal history check request forms from subject individuals and criminal history information from the Department. The authorized designee conducts fitness determinations under the authority of the Department.

(4) "Care" means the provision of care, treatment, education, training, instruction, supervision, placement services, transportation, recreation, or support to children, the elderly, or persons with disabilities.

(5) "Client" means any person who receives care, or funding for care, through the Department.

(6) "Contact Person" means a person who is designated by an approved qualified entity to receive and process criminal history check request forms from subject individuals, but who is not authorized to receive criminal history information from the Department. The contact person is not allowed to make final fitness determinations. The contact person is allowed to make the preliminary fitness determinations under the authority of the Department only if there is no indication of potentially disqualifying crimes or conditions.

(7) "Conviction" means that the subject individual was convicted in a court of law, or was adjudicated in a juvenile court and found responsible for the crime. "Conviction" as used in these rules includes a finding of "guilty except by reason of insanity," "guilty except for insanity," "not guilty by reason of insanity," or similarly worded findings. Entering a plea of "guilty" or "no contest" is also considered a conviction for the purpose of these rules unless a subsequent court decision has dismissed the charges.

(8) "Criminal History Check Rules" or "These Rules" means OAR 407-007-0200 to 407-007-0380.

(9) "Criminal History Check" or "CHC" means the Oregon Criminal History Check and when required, a National Criminal History Check and/or a State-Specific Criminal History Check, and the processes and procedures required by these rules.

(10) "Criminal History Information" means criminal justice records, fingerprints, court records, sexual offender registration records, warrants, DMV information, information provided on the Department's criminal history check forms, and any other information obtained by or provided to the Department pursuant to these rules for the purpose of conducting a fitness determination. "Criminal history information" does not include violations or infractions (See ORS 161.505 to 161.585).

(11) "Denied" means that a subject individual following a fitness determination, including a weighing test, has been found to be not eligible to hold the position, be employed, certified, licensed, registered, or otherwise authorized by the Department to provide care or to reside in an environment covered by these rules.

(12) "Department" means the Oregon Department of Human Services (DHS) or any subdivision thereof.

(13) "Employer," if the qualified entity is a corporation, means the corporation or parent corporation.

(14) "Facility" means any entity that is licensed or certified by the Department and which provides care.

(15) "Homecare Worker" or "Home Care Worker" means a provider who is enrolled in the Department's client-employed provider program and who provides either hourly or live-in services, as defined in ORS 410.600.

(16) "Independent Provider" means a person who meets the qualifications described in OAR 411-305-0020, 411-330-0020, or 411-340-0020.

(17) "National Criminal History Check" means obtaining and reviewing criminal history outside Oregon's borders. This information may be obtained from the Federal Bureau of Investigation (FBI) through the use of fingerprint cards and from other criminal information resources.

(18) "Oregon Criminal History Check" means obtaining and reviewing information from the Oregon State Police's Law Enforcement Data System (LEDS). The Oregon Criminal History Check may also include a review of information from the Oregon Judicial Information Network (OJIN), Oregon Department of Corrections records, Motor Vehicles Division, local or regional criminal history information systems, or other official law enforcement agency or court records in Oregon.

(19) "Personal Care Services Provider" means a person who is directly employed by a client of the Department to provide assistance with activities of daily living and other activities as described in OAR chapter 411, division 34.

(20) "Potentially Disqualifying Crime" means a crime listed in OAR 407-007-0280.

(21) "Probationary Status" means a condition in which a subject individual may be allowed by the authorized designee to work, volunteer, be trained or reside in an environment covered by these rules following submission of a completed DHS Criminal History Request form. The term "probationary status" is applicable only during the timeframe prior to a final fitness determination.

(22) "Qualified Entity" means the Department; local government agency; community mental health or developmental disability program, local health department; or an individual or 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.

(23) "Qualified Vendor" means a supplier of criminal history information who is approved by the Department of Human Services as having access to substantially the same criminal offender information as the Law Enforcement Data System.

(24) "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 first cousin.

(25) "Service Provider" means a person or entity that is licensed, certified, registered, or otherwise regulated or authorized for payment by the Department and that provides care.

(26) "State-Specific Criminal History Check" means obtaining and reviewing information from law enforcement agencies, courts, or other criminal history information resources located in a state or jurisdiction outside Oregon.

(27) "Subject Individual" means a person who is required to complete a criminal history check pursuant to these rules.

(a) "Subject individual" includes:

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

(B) An employee or volunteer who provides care within any entity or agency licensed, certified, registered, or otherwise regulated by the Department.

(C) A direct care staff person secured through the services of a personnel services or staffing agency who works in any long term care facility licensed by the Department pursuant to ORS chapter 441.

(D) Except as provided in paragraphs (27)(b)(C) and (D) of this rule, a person who lives in a facility that is licensed, certified, registered, or otherwise regulated by the Department to provide care.

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

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

(G) A child care provider reimbursed through the Department's child care program, and employees and other persons in child care facilities that are exempt from certification or registration by the Child Care Division of the Employment Department. This includes all persons 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. (REF: OAR chapter 461, division 165.)

(H) A contact person or authorized designee as defined in OAR 407-007-0210.

(I) A person providing training to staff within a long term care facility.

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

(K) Notwithstanding subsection (27)(b) of this rule, any person who is required to complete a criminal history check pursuant to a contract or written agreement with the Department or by other Oregon Administrative Rules of the Department, if the requirement is within the statutory authority granted to the Department. Specific statutory and rule authority must be specified in the contract.

(b) "Subject Individual" does not include:

(A) Any person under 16 years of age.

(B) A person receiving training in a DHS-licensed facility as a 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. Facilities must ensure that all such students have passed a substantially equivalent background check process through the training program or are:

(i) Actively supervised at all times as defined in OAR 407-007-0310, and

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

(C) Residents of facilities licensed, certified or registered by the Department who are receiving care or treatment, unless specific, written permission to conduct a criminal history check is received from the Department. The only circumstance in which the Department will 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 subsection (27)(a) of this rule.

(D) Persons who live in or visit relative adult foster homes. This exemption does not apply to the licensee.

(E) Individuals working in child care facilities certified or registered by the Employment Department.

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

(G) Individuals employed by a business that provide appliance repair or structural repair to clients and the general public, and who

are temporarily providing such services in an environment regulated by the Department. This exclusion does not apply to a business that receives funds from the Department for care provided by an employee of the business.

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

(I) 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, in-home care agencies as defined on ORS 443.305, and home health agencies as defined in ORS 443.005.

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

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

(L) People working in restaurants or at public swimming pools.

(M) Hemodialysis technicians.

(N) Individuals employed by alcohol and drug programs that are 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 history checks in accordance with these rules.

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

(P) Persons being certified by the Department as interpreters pursuant to ORS 409.623. This paragraph is not intended to exempt a Department-certified interpreter from a criminal history check when being considered for a specific position.

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

(R) Foster and adoptive parents providing care for children pursuant to ORS chapter 418.

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

(T) A person employed by an entity that provides services solely contracted under ORS 414.022.

(28) "Weighing Test" means a process carried out by one or more authorized designees in which known negative and positive information is considered to determine if a subject individual is approved or denied (see OAR 407-007-0320(5)(c)).

Stat. Auth.: ORS 181.537, 409.010 & 409.050
Stats. Implemented: ORS 181.537
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

407-007-0220
Criminal History Check Required

(1) Who Conducts Check. The Department, or a qualified entity authorized by the Department, conducts criminal history checks on all subject individuals.

(2) When Check is Required (New Checks and Re-checks). A subject individual is required to have a check in the following circumstances:

(a) A person who becomes a subject individual on or after the effective date of these rules is required to have a criminal history check in accordance with these rules.

(b) The subject individual changes employers. If the subject individual's employer merges with another agency or changes names, this would not be considered a change of employers.

(c) The subject individual changes positions, licenses, certifications or registrations. NOTE: "Licenses," "certifications" and "registrations" refers only to licenses, certifications and registration issued by the Department.

(d) A check is required by federal or state laws or regulations, other rules adopted by the Department, or by contract or written agreement with the Department.

(e) The Department or the authorized designee has reason, such as any indication of possible criminal behavior, to believe that a check is justified.

(3) When a Check is Not Required. A new check is not required only under the following circumstances:

(a) A personal care services provider, respite care provider or an independent provider who is paid with funds received from the Department changes clients or adds another client, and the prior, documented criminal history check conducted within the previous twenty-four (24) months through the Department has been approved without a restriction as described in OAR 407-007-0320(5)(c)(C).

(b) The subject individual is a child care provider as described in OAR 461-165-0180 who changes clients or begins providing services to another client.

(c) There is no change of employer, there are no new potentially disqualifying crimes or conditions, and at least one of the following is true:

(A) The previous fitness determination identified no potentially disqualifying history and the authorized designee determines that the previous fitness determination is sufficient for the new position.

(B) The authorized designee determines that the new position requires the same or less contact with vulnerable persons, personal information, financial information, or client funds.

Stat. Auth.: ORS 181.537, 409.010 & 409.050
Stats. Implemented: ORS 181.537
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

407-007-0230
Qualified Entity

(1) Approval Required. A qualified entity must be approved in writing by the Department pursuant to these rules in order to appoint an authorized designee or contact person. Unless specifically indicated in these rules, all qualified entities discussed are considered approved.

(2) Appointment of Authorized Designees and Contact People. Unless indicated under section (3) of this rule, all qualified entities are responsible for ensuring the completion of criminal history checks for subject individuals who are the qualified entity's employees, volunteers, or other subject individuals under the direction or control of the qualified entity. Qualified entities approved by the Department must appoint authorized designees or contact persons within 30 days of Department approval.

(a) Unless indicated under section (3) of this rule, all qualified entities must appoint one or more authorized designees, or have a written agreement with another qualified entity to handle the responsibilities of an authorized designee.

(b) All qualified entities may also appoint one or more contact persons, or have a written agreement with another qualified entity to handle the responsibilities of a contact person.

(3) The Department Acts as Authorized Designee. The Department will handle the responsibilities of an authorized designee listed in OAR 407-007-0240(3)(c)(A) through 407-007-0240(3)(c)(C) in the following circumstances:

(a) Private qualified entity with fewer than 10 employees. These entities are not eligible to appoint authorized designees.

(A) The private qualified entity with fewer than 10 employees may use another qualified entity to handle the responsibilities of a authorized designee instead of using the Department. If another qualified entity is used, there must be a written agreement between the two qualified entities and the Department must be notified.

(B) The private qualified entity with fewer than 10 employees must appoint one or more contact persons, or must have a written agreement with another qualified entity to handle the responsibilities of a contact person and the Department must be notified.

(b) Qualified entities with subject individuals not under the direction and control of the qualified entity but who provide care under programs administered by the qualified entity.

(A) For these subject individuals, the qualified entity must appoint one or more contact persons, or use an authorized designee or contact person appointed under section (2) of this rule to handle the responsibilities of a contact person.

(B) Notwithstanding section (3)(b), the qualified entity will appoint an authorized designee for these subject individuals if the qualified entity chooses to do so, or is required to do so under other DHS program administrative rules or contract with DHS. The qualified entity must notify the Department of which programs are affected and which qualified entity will handle the responsibilities of authorized designee for each program.

(4) Revocation of Approval. Approval of the qualified entity may be revoked by the Department if the Department determines that the qualified entity, or a contact person or authorized designee appointed by the qualified entity, has failed to comply with these rules.

(5) Managing CHC Process. The qualified entity will appoint authorized designees and contact persons as needed to remain in compliance with these rules.

(6) Training and Technical Assistance. The Department will provide qualified entities with periodic training and on-going technical assistance for contact persons and authorized designees.

Stat. Auth.: ORS 181.537, 409.010, 409.050
Stats. Implemented: ORS 181.537
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

407-007-0240
Contact Person and Authorized Designee

(1) Requirements. All requirements in this section must be completed within a 90-day time period. To be approved by the Department, all contact persons and authorized designees must:

(a) Be appointed by a qualified entity, and apply to and be registered by the Department. The application must be in writing on a form provided by the Department.

(b) Complete both an Oregon and a national criminal history check in accordance with these rules and must have:

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

(B) No convictions for any other crime in the past fifteen years, and

(C) No outstanding warrants, registration as a sex offender in Oregon or any other jurisdiction, or any other condition identified in OAR 407-007-0290.

(c) Complete a training program and successfully pass any testing as required by the Department.

(2) Denial of Contact Person or Authorized Designee Status. A person's status as a contact person or authorized designee will be denied if the person does not meet the qualifications to be a contact person or authorized designee as listed in this rule. Once denied, the person can no longer perform the duties of a contact person or authorized designee for the qualified entity.

(a) If the Department denies the person to be an authorized designee or contact person, the qualified entity may request an exception under this rule in writing. If an exception is requested, the Department will review the qualified entity's exception request, the person's application, criminal history, and any supplemental information as listed in OAR 407-007-0300, to determine if the appointment of the person would pose a significant risk to the physical, emotional or financial well-being of children, the elderly or persons with disabilities.

(b) Denial or termination of contact person or authorized designee status under OAR 407-007-0240(4)(a) is not subject to hearing rights under these rules unless the denial or termination results in loss of employment or position. Persons losing employment or position have the same hearing rights as other subject individuals under these rules.

(3) Responsibilities.

(a) A contact person must:

(A) Ensure that adequate measures are taken to protect the confidentiality of the records required by these rules.

(B) Take reasonable measures to verify the identity of a subject individual. When the application is submitted in person, these measures include asking the subject individual for government-issued photo identification (example: driver's license) and confirming information written on the DHS Criminal History Request form with information on the photo identification.

(C) Ensure that when a subject individual must be on probationary status, the need for active supervision pursuant to OAR 407-007-0310 is understood by each person responsible for ensuring that active supervision is provided.

(D) Ensure that the subject individual receives a timely, written notice of the final fitness determination. When the decision results in denial or a restriction, the notice must include information regarding how to appeal the decision.

(E) Monitor status of criminal history check applications and investigate any delays in processing.

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

(b) The contact person may review the DHS Criminal History Request form completed by the subject individual to determine if the subject individual has any potentially disqualifying history.

(A) The contact person may allow a subject individual to work or function on probationary status only after the contact person has reviewed the DHS Criminal History Request form and determined there is no indication that the subject individual has any potentially disqualifying history or condition.

(B) The contact person must not allow a subject individual who discloses any potentially disqualifying history to work or function on probationary status.

(c) An authorized designee has all the responsibilities of a contact person as listed in (3)(a)(A) through (3)(a)(F) of this rule, and in addition must:

(A) Review the DHS Criminal History Request form completed by the subject individual (if not already done so by a contact person) and conduct a preliminary fitness determination under the authority of the Department in accordance with OAR 407-007-0320 prior to forwarding the DHS Criminal History Request form to the Department to determine eligibility for probationary status.

(B) Conduct a final fitness determination under the authority of the Department in accordance with OAR 407-007-0320.

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

(4) Conflict of Interest (Authorized Designee). An authorized designee must not have access to LEDS information, or make a fitness determination, if there is a conflict of interest between the authorized designee and the subject individual.

(a) A conflict of interest exists when one or more of the following circumstances is true:

(A) The authorized designee is related to the subject individual.

(B) The authorized designee has a close personal or financial relationship, other than an employee-employer relationship, with the subject individual.

(b) When there is a conflict of interest, and the qualified entity has no other authorized designees available to conduct the fitness determination, the qualified entity must submit the application to the Department and the Department will complete the determination.

(5) Termination of Contact Person or Authorized Designee Status.

(a) When the authorized designee's or contact person's position with the qualified entity ends, or when the qualified entity terminates the appointment, the Department's registration of a contact person or authorized designee is revoked. The qualified entity must notify the Department immediately upon the termination of the appointment.

(b) The Department or the qualified entity must suspend or revoke the appointment if a contact person or authorized designee fails to comply with the rules of the Department or fails to continue to meet the qualifications for the position of authorized designee or contact person, as applicable. After suspending or revoking the appointment, the qualified entity taking the action must notify the Department's Criminal Records Unit in writing immediately. If the Department takes the action, it must notify the qualified entity in writing immediately.

(6) Not Transferable. If the person holding the status of a contact person or authorized designee leaves employment of the qualified entity for any reason, the person will no longer be considered a contact person or authorized designee. If the person finds employment with another qualified entity, a new appointment, application and registration must be conducted under these rules.

(7) Review of Appointment. The Department will develop a procedure to review and update appointments of contact persons and authorized designees, up to and including a new application and criminal history check, to assure that all requirements of this rule are met:

(a) Every three years; or

(b) If the Department has reason to believe the person no longer meets the qualifications to be a contact person or authorized designee, such as but not limited to, indication of criminal behavior.

Stat. Auth.: ORS 181.537, 409.010 & 409.050
Stats. Implemented: ORS 181.537
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

407-007-0250
Oregon Criminal History Check Process

(1) Forms Required. A qualified entity, authorized designee and subject individual must use the Department's form to request the criminal history check. The Department will make the DHS Criminal History Request form and other forms required under these rules available for use or reproduction to all qualified entities.

(2) Processing.

(a) The Department obtains criminal history information from the Oregon State Police Law Enforcement Data System and from what other sources of criminal, judicial and motor vehicle information as the Department determines necessary to complete the check.

(b) Only an approved qualified entity, working through an authorized designee, may:

(A) Receive and evaluate Oregon criminal history information from the Department as allowed by applicable statutes.

(B) Conduct fitness determinations.

(c) The Department or the authorized designee may require that a subject individual obtain and provide additional criminal, judicial or other background information.

(d) Criminal history information obtained from the Law Enforcement Data System must be handled in accordance with applicable Oregon State Police requirements in ORS chapter 181 and the rules adopted pursuant thereto. (NOTE: See OAR chapter 257, division 15)

(3) Additional Information Required. In order to conduct an Oregon check and fitness determination, the Department may require additional information from the subject individual as necessary, such as but not limited to proof of identity; or additional criminal, judicial, or other background information.

(4) Imminent Danger.

(a) If the Department determines there is indication of criminal behavior that could pose a potential immediate risk to vulnerable persons, the Department will authorize a new criminal history check without the completion of a new DHS Criminal History Request form. This applies to a subject individual who:

(A) Has been previously approved under these rules or prior DHS criminal history check rules.

(B) Has been previously approved with restrictions under these rules or prior DHS criminal history check rules, or

(C) Has a criminal history check pending a final fitness determination or the outcome of an appeal under these rules.

(b) If the Department determines that a fitness determination based on the new criminal history check would be adverse to the subject individual, the Department will provide the subject individual the opportunity to disclose criminal history and other information as indicated in OAR 407-007-0300 before completing the fitness determination.

Stat. Auth.: ORS 181.537, 409.010 & 409.050
Stats. Implemented: ORS 181.537
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

407-007-0260
State-Specific Criminal History Check Process

(1) State-Specific Check. Notwithstanding the provisions of OAR 407-007-0270, the Department may conduct a state-specific criminal history check in lieu of a national check when the Department has reason to believe that out-of-state history may exist and that a nationwide criminal history check is not warranted.

(2) Supplement to National Check. The Department may conduct a state-specific check in addition to a national check in order to clarify incomplete or conflicting information.

(3) Additional Information Required. In order to conduct a state-specific check and complete a fitness determination, the Department or the authorized designee may require additional information from the subject individual as necessary, such as but not limited to proof of identity; residential history; names used while living at each residence; or additional criminal, judicial, or other background information

(4) Imminent Danger.

(a) If the Department determines there is indication of criminal behavior that could pose a potential immediate risk to vulnerable persons, the Department will authorize a new criminal history check without the completion of a new DHS Criminal History Request form. This applies to a subject individual who:

(A) Has been previously approved under these rules or prior DHS criminal history check rules.

(B) Has been previously approved with restrictions under these rules or prior DHS criminal history check rules, or

(C) Has a criminal history check pending a final fitness determination or the outcome of an appeal under these rules.

(b) If the Department determines that a fitness determination based on the new criminal history check would be adverse to the subject individual, the Department will provide the subject individual the opportunity to disclose criminal history and other information as indicated in OAR 407-007-0300 before completing the fitness determination.

(5) Department Makes Final Fitness Determination. When a subject individual has a potentially disqualifying national criminal history or discloses out of state criminal history, the Department makes the final fitness determination.

Stat. Auth.: ORS 181.537, 409.010 & 409.050
Stats. Implemented: ORS 181.537
Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0260, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07

407-007-0270
National Criminal History Check Process

(1) National Criminal History Check. In addition to an Oregon check (OAR 407-007-0250), a national criminal history check may be required by the Department under any of the following circumstances:

(a) Out-of-State Residency. The subject individual has lived outside Oregon for 60 or more consecutive days during the previous three (3) years with the following exceptions:

(A) Child Care Providers (18 months). The subject individual is a child care provider or other person included in OAR 407-007-0210(27)(a)(H) who has lived outside Oregon for 60 or more consecutive days during the previous eighteen months.

(B) Child Welfare System (5 years). The subject individual is working for private, licensed child caring agencies and system of care contractors providing child care pursuant to ORS chapter 418 and has lived outside Oregon for 60 or more consecutive days during the previous five years.

(b) Criminal History Outside Oregon. The LEDS check, or any other information obtained by the Department, indicates there may be criminal history outside of Oregon, or the subject individual self-discloses criminal history outside of Oregon.

(c) Identity or History Questioned. The social security number appears not to be valid or is not provided to the Department on the DHS Criminal History Request form, the subject individual has no Oregon driver's license or Oregon identification card, or the Department has other reason to question the identity or history of the subject individual.

(2) Fingerprinting a Juvenile. Consent of the parent or guardian is required to obtain fingerprints from a child under the age of 18 years.

(3) Processing. The subject individual must complete and submit a fingerprint card when requested by the Department.

(a) Fingerprint Cards. The subject individual must use a fingerprint card (Example: FBI Form FD 258) provided by the Department.

(b) Time Frame for Return. The card must be submitted within 21 days of the request to the Department's Criminal Records Unit to avoid closure of application pursuant to OAR 407-007-0320(5)(e).

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

(4) Additional Information Required. In order to conduct a national check and complete a fitness determination, the Department or the authorized designee may require additional information from the subject individual as necessary, such as but not limited to proof of identity; residential history; names used while living at each residence; or additional criminal, judicial, or other background information.

(5) Department Makes Final Fitness Determination. When a subject individual has a potentially disqualifying national criminal history

or discloses potentially disqualifying out of state criminal history, the Department makes the final fitness determination.

Stat. Auth.: ORS 181.537, 409.010 & 409.050
Stats. Implemented: ORS 181.537
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 410-007-0270, 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

407-007-0280
Potentially Disqualifying Crimes

A conviction of any of the following crimes is potentially disqualifying. The lists include offenses that are crimes and are not intended to include offenses that are classified as violations (See ORS 161.505 through 161.565).

(1) Permanent Review. The crimes listed in this section are 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 162.325, Hindering prosecution;
(d) ORS 163.005, Criminal homicide;
(e) ORS 163.095, Aggravated murder;
(f) ORS 163.115, Murder;
(g) ORS 163.118, Manslaughter I;
(h) ORS 163.125, Manslaughter II;
(i) ORS 163.145, Criminally negligent homicide;
(j) ORS 163.160, Assault IV;
(k) ORS 163.165, Assault III;
(l) ORS 163.175, Assault II;
(m) ORS 163.185, Assault I;
(n) ORS 163.187, Strangulation;
(o) ORS 163.200, Criminal mistreatment II;
(p) ORS 163.205, Criminal mistreatment I;
(q) ORS 163-205, Female genital mutilation;
(r) ORS 163.208, Assault of Public Safety Officer;
(s) ORS 163.213, Unlawful use of an electrical stun gun, tear gas, or mace I;
(t) ORS 163.225, Kidnapping II;
(u) ORS 163.235, Kidnapping I;
(v) ORS 163.257, Custodial interference I;
(w) ORS 163.355, Rape III;
(x) ORS 163.365, Rape II;
(y) ORS 163.375, Rape I;
(z) ORS 163.385, Sodomy III;
(aa) ORS 163.395, Sodomy II;
(bb) ORS 163.405, Sodomy I;
(cc) ORS 163.408, Unlawful Sexual penetration II;
(dd) ORS 163.411, Unlawful Sexual penetration I;
(ee) ORS 163.415, Sexual abuse III;
(ff) ORS 163.425, Sexual abuse II;
(gg) ORS 163.427, Sexual abuse I;
(hh) ORS 163.515, Bigamy;
(ii) ORS 163.525, Incest;
(jj) ORS 163.535, Abandonment of a child;
(kk) ORS 163.537, Buying or selling a person under 18 years of age;
(ll) ORS 163.545, Child neglect II;
(mm) ORS 163.547, Child neglect I;
(nn) ORS 163.555, Criminal nonsupport;
(oo) ORS 163.575, Endangering the welfare of a minor;
(pp) ORS 163.670, Using child in display of sexually explicit conduct;
(qq) ORS 163.673, Dealing sexual condition of children;
(rr) ORS 163.675, Sale sexual condition of children;
(ss) ORS 163.680, Paying for sexual view of children;
(tt) ORS 163.684, Encouraging child sexual abuse I;
(uu) ORS 163.686, Encouraging child sexual abuse II;
(vv) ORS 163.687, Encouraging child sexual abuse III;
(ww) ORS 163.688, Possession of materials depicting sexually explicit conduct of a child I;
(xx) ORS 163.689, Possession of materials depicting sexually explicit conduct of a child II;
(yy) ORS 163.693, Failure to report child pornography;
(zz) ORS 163.732, Stalking;
(aaa) ORS 164.057, Aggravated theft I;
(bbb) ORS 164.075, Theft by extortion;
(ccc) ORS 164.125, Theft of services;
(ddd) ORS 164.225, Burglary I;
(eee) ORS 164.325, Arson I;
(fff) ORS 164.395, Robbery III;
(ggg) ORS 164.405, Robbery II;
(hhh) ORS 164.415, Robbery I;
(iii) ORS 165.581, Cellular counterfeiting I;
(jjj) ORS 166.005, Treason;
(kkk) ORS 166.015, Riot;
(lll) ORS 166.085, Abuse of corpse II;
(mmm) ORS 166.087, Abuse of corpse I;
(nnn) ORS 166.155, Intimidation II;
(ooo) ORS 166.165, Intimidation I;
(ppp) ORS 166.220, Unlawful use of weapon;
(qqq) ORS 166.270, Possession of weapons by certain felons;
(rrr) ORS 166.272, Unlawful possession of machine guns, certain short-barreled firearms and firearm silencers;
(sss) ORS 166.275, Possession of weapons by inmates of institutions;
(ttt) ORS 166.429, Firearms used in felony;
(uuu) ORS 166.720, Racketeering activity unlawful;
(vvv) ORS 167.012, Promoting prostitution;
(www) ORS 167.017, Compelling prostitution;
(xxx) ORS 167.062, Sadomasochistic abuse or sexual conduct in live show;
(yyy) ORS 167.065, Furnishing obscene materials to minors;
(zzz) ORS 167.070, Sending obscene materials to minors;
(aaaa) ORS 167.075, Exhibiting an obscene performance to a minor;
(bbbb) ORS 167.080, Displaying obscene materials to minors;
(cccc) ORS 167.087, Disseminating obscene material;
(dddd) ORS 167.262, Adult using minor in commission of controlled substance offense;
(eeee) ORS 167.315, Animal abuse II;
(ffff) ORS 167.320, Animal abuse I;
(gggg) ORS 167.322, Aggravated animal abuse I;
(hhhh) ORS 167.333, Sexual assault of animal;
(iiii) ORS 181.599, Failure to report as sex offender;
(jjjj) ORS 475.525, Sale of drug paraphernalia prohibited;
(kkkk) ORS 475.805, Providing hypodermic device to minor prohibited;
(llll) ORS 475.967, Possession of precursor substance with intent to manufacture controlled substance;
(mmmm) ORS 475.986, Application of controlled substance to the body of another person;
(nnnn) ORS 475.992, Prohibited acts generally (regarding drug crimes);
(oooo) ORS 475.993, Prohibited acts for registrants (with the State Board of Pharmacy; regarding felony crimes);
(pppp) ORS 475.995, Distribution to minors;
(qqqq) ORS 475.999, Penalty for manufacture or delivery of controlled substance within 1000 feet of school;
(rrrr) ORS 677.080, Prohibited acts (regarding the practice of medicine);
(ssss) Any federal crime.
(tttt) Any unclassified felony defined in Oregon Revised Statutes not listed elsewhere in this rule.
(uuuu) Any other felony in Oregon Revised Statutes not listed elsewhere in this rule that is serious and indicates behavior that poses a threat or jeopardizes the safety of vulnerable persons, as determined by the authorized designee.
(vvvv) 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.
(wwww) Any crime in any other jurisdiction that is the substantial equivalent of any of the Oregon crimes listed in this section (section (1)) as determined by the authorized designee.
(xxxx) 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 this section (section (1)) as determined by the authorized designee.

(yyyy) A new crime, adopted by the Legislature following the most recent amendment of these rules, that is the substantial equivalent of any of the crimes listed in this section (section (1)) as determined by the authorized designee.

(2) Ten-Year Review. The crimes listed in this section are crimes that require that a fitness determination be completed if the date of conviction is within ten years of the date the DHS Criminal History Request form was signed.

(a) ORS 162.015, Bribe giving;
(b) ORS 162.025, Bribe receiving;
(c) ORS 162.065, Perjury;
(d) ORS 162.075, False swearing;
(e) ORS 162.117, Public investment fraud;
(f) ORS 162.145, Escape III;
(g) ORS 162.175, Unauthorized departure;
(h) ORS 162.185, Supplying contraband;
(i) ORS 162.195, Failure to appear II;
(j) ORS 162.205, Failure to appear I;
(k) ORS 162.247, Interfering with a peace officer;
(l) ORS 162.265, Bribing a witness;
(m) ORS 162.275, Bribe receiving by a witness;
(n) ORS 162.285, Tampering with a witness;
(o) ORS 162.295, Tampering with physical evidence;
(p) ORS 162.305, Tampering with public records;
(q) ORS 162.335, Compounding;
(r) ORS 162.355, Simulating legal process;
(s) ORS 162.365, Criminal impersonation;
(t) ORS 162.367, Criminal impersonation of peace officer;
(u) ORS 162.369, Possession of false law enforcement identification card;
(v) ORS 162.375, Initiating a false report;
(w) ORS 162.385, Giving false information to police officer for a citation;
(x) ORS 162.405, Official misconduct II;
(y) ORS 162.415, Official misconduct I;
(z) ORS 162.425, Misuse of confidential information;
(aa) ORS 163.190, Menacing;
(bb) ORS 163.195, Recklessly endangering another person;
(cc) ORS 163.212, Unlawful use of an electrical stun gun, tear gas, or mace II;
(dd) ORS 163.245, Custodial interference II;
(ee) ORS 163.275, Coercion;
(ff) ORS 163.435, Contributing to the sexual delinquency of a minor;
(gg) ORS 163.445, Sexual misconduct;
(hh) ORS 163.465, Public indecency;
(ii) ORS 163.467, Private indecency;
(jj) ORS 163.700, Invasion of personal privacy;
(kk) ORS 163.750, Violating court's stalking protective order;
(ll) ORS 164.043, Theft III;
(mm) ORS 164.045, Theft II;
(nn) ORS 164.055, Theft I;
(oo) ORS 164.085, Theft by deception;
(pp) ORS 164.095, Theft by receiving;
(qq) ORS 164.135, Unauthorized use of a vehicle;
(rr) ORS 164.140, Criminal possession of rented or leased personal property;
(ss) ORS 164.162, Mail theft or receipt of stolen mail;
(tt) ORS 164.215, Burglary II;
(uu) ORS 164.235, Possession of burglar's tools;
(vv) ORS 164.255, Criminal trespass I;
(ww) ORS 164.265, Criminal trespass while in possession of firearm;
(xx) ORS 164.272, Unlawful entry into motor vehicle;
(yy) ORS 164.315, Arson II;
(zz) ORS 164.335, Reckless burning;
(aaa) ORS 164.354, Criminal Mischief II;
(bbb) ORS 164.365, Criminal Mischief I;
(ccc) ORS 164.369, Interfering with police animal;
(ddd) ORS 164.377, Computer crime;
(eee) ORS 165.007, Forgery II;
(fff) ORS 165.013, Forgery I;
(ggg) ORS 165.017, Criminal possession of a forged instrument II;
(hhh) ORS 165.022, Criminal possession of a forged instrument I;
(iii) ORS 165.032, Criminal possession of a forgery device;
(jjj) ORS 165.037, Criminal simulation;
(kkk) ORS 165.042, Fraudulently obtaining a signature;
(lll) ORS 165.055, Fraudulent use of a credit card;
(mmm) ORS 165.065, Negotiating a bad check;
(nnn) ORS 165.070, Possessing fraudulent communications device;
(ooo) ORS 165.074, Unlawful factoring of credit card transaction;
(ppp) ORS 165.080, Falsifying business records;
(qqq) ORS 165.085, Sports bribery;
(rrr) ORS 165.090, Sports bribe receiving;
(sss) ORS 165.095, Misapplication of entrusted property;
(ttt) ORS 165.100, Issuing a false financial statement;
(uuu) ORS 165.102, Obtaining execution of documents by deception;
(vvv) ORS 165.540, Obtaining contents of communication;
(www) ORS 165.543, Interception of communications;
(xxx) ORS 165.570, Improper use of 9-1-1 emergency reporting system;
(yyy) ORS 165.572, Interference with making a report;
(zzz) ORS 165.577, Cellular counterfeiting III;
(aaaa) ORS 165.579, Cellular counterfeiting II;
(bbbb) ORS 165.692, Making false claim for health care payment;
(cccc) ORS 165.800, Identity theft;
(dddd) ORS 166.025, Disorderly conduct;
(eeee) ORS 166.065, Harassment;
(ffff) ORS 166.076, Abuse of a memorial to the dead;
(gggg) ORS 166.115, Interfering with public transportation;
(hhhh) ORS 166.180, Negligently wounding another;
(iiii) ORS 166.190, Pointing firearm at another;
(jjjj) ORS 166.240, Carrying of concealed weapon;
(kkkk) ORS 166.250, Unlawful possession of firearms;
(llll) ORS 166.370, Possession of firearm or dangerous weapon in public building or court facility; exceptions; discharging firearm at school;
(mmmm) ORS 166.382, Possession of destructive device prohibited;
(nnnn) ORS 166.384, Unlawful manufacture of destructive device;
(oooo) ORS 166.470, Limitations and conditions for sales of firearms;
(pppp) ORS 166.480, Sale or gift of explosives to children;
(qqqq) ORS 166.649, Throwing an object off an overpass II;
(rrrr) ORS 166.651, Throwing an object off an overpass I;
(ssss) ORS 166.660, Unlawful paramilitary activity;
(tttt) ORS 167.007, Prostitution;
(uuuu) ORS 167.090, Publicly displaying nudity or sex for advertising purposes;
(vvvv) ORS 167.212, Tampering with drug records;
(wwww) ORS 167.222, Frequenting a place where controlled substances are used;
(xxxx) ORS 167.325, Animal neglect II;
(yyyy) ORS 167.330, Animal neglect I;
(zzzz) ORS 167.355, Involvement in animal fighting;
(aaaaa) ORS 167.365, Dogfighting;
(bbbbb) ORS 167.370, Participation in dogfighting;
(ccccc) ORS 167.820, Concealing the birth of an infant;
(ddddd) ORS 411.630, Unlawfully obtaining public assistance;
(eeeee) ORS 411.675, Submitting wrongful claim or payment (e.g., public assistance);
(fffff) ORS 411.840, Unlawfully obtaining or disposing of food stamp benefits;
(ggggg) ORS 417.990, Penalty for placement of children in violation of compact;
(hhhhh) ORS 418.130, Unauthorized use and custody of records of temporary assistance for needy families program;
(iiiii) ORS 418.140, Sharing assistance prohibited;
(jjjjj) ORS 418.250, Supervision of child-caring agencies;
(kkkkk) ORS 418.327, Licensing of certain schools and organizations offering residential programs;

(llllll) ORS 433.010, Spreading disease (willfully) prohibited;

(mmmmm) ORS 471.410, Providing liquor to person under 21 or to intoxicated person; allowing consumption by minor on property;

(nnnnn) ORS 475.950, Failure to report precursor substance;

(ooooo) ORS 475.955, Failure to report missing precursor substances;

(ppppp) ORS 475.960, Illegally selling drug equipment;

(qqqqq) ORS 475.965, Providing false information on precursor substances report;

(rrrrr) ORS 474.991, Unlawful delivery of imitation controlled substance;

(sssss) ORS 475.992, Prohibited acts generally (regarding misdemeanor drug crimes);

(ttttt) ORS 475.993, Prohibited acts for registrants (with the State Board of Pharmacy; regarding misdemeanor crimes);

(uuuuu) ORS 475.994, Prohibited acts involving records and fraud;

(vvvvv) ORS 475.996, Commercial drug offense;

(wwwww) ORS 657A.280, Failure to certify child care facility

(xxxxx) ORS 803.230, Forging, altering or unlawfully producing or using title or registration

(yyyyy) ORS 807.620, Giving false information to police officer

(zzzzz) ORS 811.140, Reckless driving

(aaaaaa) ORS 811.540, Fleeing or attempting to elude police officer;

(bbbbbb) ORS 811.700, Failure to perform duties of driver when property is damaged;

(cccccc) ORS 811.705, Failure to perform duties of driver to injured persons;

(dddddd) ORS 819.300, Possession of a stolen vehicle;

(eeeeee) ORS 830-475, Failure to perform the duties of an operator (boat);

(ffffff) Any unclassified misdemeanor defined in Oregon Revised Statutes not listed elsewhere in this rule.

(gggggg) Any other misdemeanor in Oregon Revised Statutes not listed elsewhere in this rule that is serious and indicates behavior that poses a threat or jeopardizes the safety of vulnerable persons, as determined by the authorized designee.

(hhhhhh) 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.

(iiiiii) Any crime in any other jurisdiction which is the substantial equivalent of any of the Oregon crimes listed in this section (section (2)) as determined by the authorized designee.

(jjjjjj) Any crime which is no longer codified in Oregon, but which is the substantial equivalent of any of the crimes listed in this section (section (2)) as determined by the authorized designee.

(kkkkkk) A new crime, adopted by the Legislature following the most recent amendment of these rules, which is the substantial equivalent of any of the crimes listed in this section (section (2)) as determined by the authorized designee.

(3) Five-Year Review. The crimes listed in this section are crimes which require that a fitness determination be completed if the date of conviction is within five years of the date the DHS Criminal History Request form was signed.

(a) ORS 162.085, Unsworn falsification;

(b) ORS 162.235, Obstructing governmental or judicial administration;

(c) ORS 162.315, Resisting arrest;

(d) ORS 164.245, Criminal trespass II;

(e) ORS 164.345, Criminal mischief III;

(f) ORS 165.555, Unlawful telephone solicitation of contributions for charitable purposes;

(g) ORS 166.075, Abuse of venerated objects;

(h) ORS 166.090, Telephonic harassment;

(i) ORS 166.095, Misconduct with emergency telephone calls;

(j) ORS 167.340, Animal abandonment;

(k) ORS 418.630, Operate uncertified foster home;

(l) ORS 811.182, Criminal driving while suspended or revoked;

(m) ORS 813.010, Driving under the influence of intoxicants (DUII);

(n) ORS 830.325, Operating boat while under influence of intoxicating liquor or controlled substance;

(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 this section (section (3)) as determined by the authorized designee.

(q) A combination of any three crimes not listed in these rules which were committed on three different dates within the previous five years.

(r) Any crime which is no longer codified in Oregon, but which is the substantial equivalent of any of the crimes listed in this section (section (3)) as determined by the authorized designee.

(s) A new crime, adopted by the Legislature following the most recent amendment of these rules, which is the substantial equivalent of any of the crimes listed in this section (section (3)) as determined by the authorized designee.

(4) Evaluation Based on Oregon Laws. Evaluations of crimes shall 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) Expunged Juvenile Record. Under no circumstances shall a subject individual be denied under these rules because of the existence or contents of a juvenile record that has been expunged pursuant to ORS 419A.260 through 419A.262.

Stat. Auth.: ORS 181.537, 409.010 & 409.050
Stats. Implemented: ORS 181.537
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

407-007-0290
Other Potentially Disqualifying Conditions

The following are potentially disqualifying conditions:

(1) False Statement. A "false statement" by the subject individual to the qualified entity, authorized designee or Department, including provision of materially false information, false information regarding criminal history, or failure to disclose information regarding criminal history.

(2) Sex Offender. The subject individual is a registered sex offender in Oregon or any other jurisdiction.

(3) Warrants. An outstanding warrant against the subject individual for any crime in any jurisdiction.

(4) Deferred Sentence, Diversion Program, Parole or Probation. The subject individual has a deferred sentence, conditional discharge, is participating in a diversion program, or has not completed a required diversion program or any condition of post-prison supervision, parole or probation, for any potentially disqualifying crime listed in OAR 407-007-0280.

(5) Parole or Probation Violation. A post-prison supervision, parole or probation violation during the previous five years for any potentially disqualifying crime listed in OAR 407-007-0280.

(6) Unresolved Arrests, Charges or Indictments. An unresolved arrest, charge, or a pending indictment, for a potentially disqualifying crime. (Example: An unresolved arrest for a ten-year review crime during the previous ten years).

Stat. Auth.: ORS 181.537, 409.010 & 409.050
Stats. Implemented: ORS 181.537
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

407-007-0300
Other Information Considered

(1) Consideration of Other Information. When other information is disclosed by the subject individual, or is otherwise known by the authorized designee, the authorized designee must consider such information in addition to potentially disqualifying crimes and conditions when making the fitness determination, including but not limited to:

(a) Potentially disqualifying crimes or conditions. Circumstances regarding the nature of potentially disqualifying crimes and conditions. These may include, but are not limited to:

(A) Age of the subject individual at time of the crime.

(B) Domestic relationships or situations, when applicable.

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

(D) Facts that support the conviction, pending indictment, the making of a false statement, or other potentially disqualifying condition.

(E) Consideration of Oregon or federal laws, regulations, or rules covering the position, facility, employer, qualified entity or service provider, in regard to the potentially disqualifying crimes or conditions.

(b) Other Circumstances. The authorized designee must also consider factors when relevant information is provided by the Department or the subject individual including, but not limited to:

(A) Other information related to criminal activity including charges, arrests, and convictions.

(B) Periods of incarceration of the subject individual.

(C) Passage of time since commission of the crime.

(D) Parole or probation status.

(E) Evidence of drug or alcohol issues, including history of use, manufacturing, delivery, treatment, and rehabilitation.

(F) Evidence of other treatment or rehabilitation related to criminal activity or other factors listed in this rule.

(G) Likelihood of repetition of criminal behavior, including, but not limited to, the subject individual's acknowledgment and honesty relative to past behavior, patterns of criminal activity, and whether the subject individual appears to accept responsibility for past actions, as determined by the authorized designee.

(H) Changes in circumstances subsequent to the criminal activity or disqualifying condition.

(I) Information from Department protective services investigations and other investigations.

(J) Education.

(K) Work history (employee or volunteer).

(L) Written recommendations from current or past employer(s), including DHS client employers.

(M) Indication that criminal history or protective services history has been disclosed to employer, DHS client, or qualified entity.

(N) Indication of the subject individual's cooperation and honesty during the criminal history check process as described in these rules.

(c) Relevancy of History to Position. The relevancy of the subject individual's criminal history to the paid or volunteer position, or to the environment in which the subject individual will reside or work, must be considered.

(2) Fitness Information with Available Information. If the authorized designee requests other information for the purpose of conducting a weighing test under OAR 407-007-0320(5)(c), and the subject individual does not respond in a stated time period, the authorized designee will make a fitness determination based on the potentially disqualifying crimes or conditions, and the available information.

Stat. Auth.: ORS 181.537, 409.010 & 409.050
Stats. Implemented: ORS 181.537
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

407-007-0310
Probationary Status

A subject individual may work, volunteer, reside, or be trained in a facility or other environment identified in these rules prior to a final fitness determination only under the following conditions and will be considered to be on probationary status:

(1) DHS Criminal History Request Form Completed. A DHS Criminal History Request form must have been completed by the subject individual and reviewed by the contact person or authorized designee.

(2) Preliminary Fitness Determination Required. A preliminary fitness determination must have been completed pursuant to OAR 407-007-0320.

(3) Active Supervision. A subject individual who is on probationary status must be actively supervised at all times by someone who completes a history check and is approved pursuant to these rules.

(a) Duties. The person providing active supervision at all times must meet all of the following conditions:

(A) Be in the same building as the subject individual or be within line-of-sight, except as provided in subsection (5)(b) of this rule,

(B) Know where the person on probationary status is and what the person is doing, and

(C) Periodically observe the actions of the person on probationary status.

(b) Supervision by Exempt Person. A client of the Department, an adult client's related adult family member, or a child's parent or guardian, may provide active supervision if authorized in section (5)(b) or (5)(c) of this rule without a history check.

(c) Exemption from Active Supervision. A subject individual who was approved without restrictions within the previous 24 months through a documented criminal history check pursuant to these rules or prior DHS criminal history check rules may function on probationary status without active supervision. The qualified entity must maintain the documentation.

NOTE: Time frame (24 months) is based on length of time between date of previous approval and date starting new position. This exemption is not allowed:

(A) If the subject individual discloses criminal history that occurred within the previous 24 months.

(B) If the subject individual is currently involved in an appeal under these rules.

(C) If, as determined by the authorized designee 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.

(4) Status Prior to Final Fitness Determination. Nothing in this rule is intended to require that a subject individual who is eligible for probationary status be allowed to work, volunteer, reside, or be trained in a facility prior to a final fitness determination.

(5) Criteria for Specific Provider Types.

(a) Adult Foster Homes (AFH).

(A) Before a new license or a license renewal is issued, the AFH provider and all subject individuals living or working in the AFH must complete the final fitness determination and be approved by the Department.

(B) Substitute caregivers in AFHs must complete the Oregon criminal history check and, when required, have submitted fingerprint cards, before being allowed to work in an AFH. An expedited review process is available when requested by an AFH because of an immediate staffing need.

(b) Child Care Providers. Responsibility for providing active supervision in the case of child care providers is with the child's parent or guardian, but the supervision is not required to be performed by someone in the building.

(c) Homecare Worker, Personal Care Services Provider and Independent Provider.

(A) A homecare worker, personal care services provider, or independent provider may be actively supervised by the client if the client makes an informed decision to employ the provider.

(B) The Department may allow a homecare worker, personal care services provider, Department volunteer or an independent provider to be actively supervised by someone related to the client.

(d) Child Foster Care. Probationary status is not allowed in child foster care.

(6) Termination of Probationary Status.

(a) Probationary status may be terminated by the qualified entity or the Department immediately for the following reasons:

(A) There is any indication of falsification of application.

(B) The criminal history check reveals a conviction for any potentially disqualifying crime not disclosed by the subject individual.

(C) The LEDS check identifies the subject individual as a "multi-state offender" and the subject individual did not disclose an out-of-state conviction or arrest.

(D) The subject individual failed to disclose an arrest that did not result in a conviction.

(E) The qualified entity or Department determines that probationary status is not appropriate, based on the application, criminal history, position duties, or Oregon Administrative Rules regarding the program.

(b) Termination of probationary status is not subject to appeal under these rules.

Stat. Auth.: ORS 181.537, 409.010 & 409.050
Stats. Implemented: ORS 181.537
Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0310, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07

407-007-0320
Fitness Determinations

(1) Fitness Determination Before Work or Placement. The qualified entity must not allow a subject individual to be certified or licensed, or to work, volunteer, reside or be trained in a facility or other environment, prior to a fitness determination.

(2) Termination Following Denial. When a subject individual is denied, the individual must not be allowed to provide care, work, volunteer, reside or be trained in an environment covered by these rules and must be terminated immediately. A denial applies only to the position and application in question.

(3) Preliminary Fitness Determination. A preliminary fitness determination must be completed prior to allowing a subject individual to be on probationary status. The preliminary fitness determination must be made by an authorized designee, or when allowed by subsection (3)(a) of this rule, by a contact person. A person on probationary status must meet all the criteria in either subsection (a) or (b) as listed below:

(a) No Indication of Potentially Disqualifying Crime. If there is no indication of a potentially disqualifying crime or condition on the DHS Criminal History Request form and the authorized designee or contact person has no reason to believe the subject individual has potentially disqualifying history, the subject individual may be placed on probationary status.

(b) Self-Disclosed Criminal History. When a subject individual discloses a conviction or arrest for a potentially disqualifying crime, or any other potentially disqualifying condition, the individual may be on probationary status only after a preliminary fitness determination using a weighing test is completed by an authorized designee. An authorized designee may complete a preliminary fitness determination regardless of whether the disclosed information occurred in Oregon or outside Oregon.

(4) Final Fitness Determination. Upon receipt of the criminal history, the authorized designee must complete the fitness determination on a timely basis. The fitness determination must be completed within 21 days after receiving the history.

(a) The deadline may be extended by the authorized designee when a criminal history check generates a need to obtain or consider additional information.

(b) The deadline may be extended by the authorized designee when the decision is based on a pending charge for a potentially disqualifying crime.

(5) Potential Outcomes.

(a) Probationary Status. A subject individual may be placed on probationary status following a preliminary fitness determination as described in section (3) of this rule.

(b) Automatic Approval. A subject individual is approved in a final fitness determination without a weighing test if after all required criminal history information is received the subject individual meets all of the following conditions:

(A) No potentially disqualifying crimes, warrants, sex offender registration, or probation or parole status,

(B) No unresolved arrests for potentially disqualifying crimes within the previous five years; and

(C) No discrepancies, and no failure to disclose conviction history or out-of-state arrests.

(c) Weighing Test. Only authorized designees may conduct and participate in a weighing test. The weighing test must be used to assess fitness unless the subject individual receives automatic approval pursuant to subsection (5)(b) of this rule or the application is closed pursuant to subsection (5)(e) of this rule. In the weighing test, the authorized designee must consider the criminal history disclosed by the subject individual and other information as described in OAR 407-007-0280, 407-007-0290 and 407-007-0300 in order to assess fitness. When the weighing test is used in a final fitness determination, criminal history discovered during the criminal history check must also be considered. The authorized designee may rely on official written communications and records from law enforcement agencies and judicial systems, and on criminal history provided by the subject individual. Possible outcomes of a weighing test are as follows:

(A) Probationary Status. In a weighing test for a preliminary fitness determination, the outcome is either to allow, or to disallow, probationary status. Probationary status is not a possible outcome in a final fitness determination.

(B) Approval. A subject individual may be approved by one or more authorized designees after a weighing test.

(C) Restricted Approval. If the subject individual has potentially disqualifying history, the authorized designee:

(i) May restrict the approval to specific client(s), job duties, or environment(s).

(ii) Must complete a new criminal history check and fitness determination on the subject individual before removing a restriction.

(D) Denial. A subject individual who, following such consideration, is determined to pose a significant risk to physical, emotional or financial well-being of children, the elderly or persons with disabilities, must be denied by the authorized designee.

(i) Volunteered History. A subject individual may be denied following a weighing test based upon potentially disqualifying history disclosed by the subject individual without conducting an Oregon, state-specific, or national criminal history check.

(ii) Discovered History. A subject individual may be denied following a weighing test based upon potentially disqualifying history discovered by the authorized designee or the Department following an Oregon, state-specific, or national criminal history check.

(d) Fitness Determination by the Department. In addition to situations in which the Department will act as authorized designee as listed in OAR 407-007-0230(3), the Department will conduct the fitness determination in the following circumstances:

(A) A qualified entity must request that the Department conduct the fitness determination when the qualified entity is temporarily unable to provide an authorized designee qualified to conduct a fitness determination as required under OAR 407-007-0230.

(B) If the Department has reason to believe a fitness determination has not been conducted in compliance with these rules, the Department may repeat the criminal history check and conduct a fitness determination.

(C) The Department may review fitness determinations made by local authorized designees and make a new fitness determination at its discretion.

(D) If a national or state-specific check identifies potentially disqualifying history, the final fitness determination must be made by the Department. When the Department obtains criminal history information through the Federal Bureau of Investigation that is not in itself potentially disqualifying, but which is related to potentially disqualifying Oregon history, the Department may assess fitness.

NOTE: The Department may not disseminate information obtained through the Federal Bureau of Investigation.

(e) Closed Case.

(A) If the subject individual discontinues the application or fails to cooperate with the criminal history check process then the application is considered incomplete. Discontinuance or failure to cooperate includes, but is not limited to, the following circumstances, and will result in a closed case:

(i) The subject individual refuses to be fingerprinted when required by these rules.

(ii) The subject individual fails to respond within a stated period of time to a request from the authorized designee or the Department for corrections to the application, fingerprints, any other information necessary to conduct a criminal history check under these rules, or any information described in OAR 407-007-0300.

(iii) The subject individual withdraws the application, leaves the position prior to completion of the check, or cannot be located or contacted by the authorized designee.

(iv) The subject individual is determined to not be eligible for the position for reasons other than the criminal history check.

(B) The incomplete application is closed without a final fitness determination and there is no right to a contested case hearing.

(6) Independent Choices. Clients receiving services through the DHS Independent Choices program (OAR chapter 411, division 36) are not bound by the fitness determination conducted under these rules when selecting care providers.

(7) Notice to Subject Individual. Upon completion of a final fitness determination resulting in a denial or restricted approval, the authorized designee must provide written notice to the subject individual. The notice must be:

(a) In a format approved by the Department, and

(b) Mailed or hand-delivered to the subject individual as soon as possible, but in no case later than fourteen days after the decision. The date of the decision must be recorded on the form.

(8) Documentation. Preliminary and final fitness determinations must be documented in writing.

Stat. Auth.: ORS 181.537, 409.010 & 409.050
Stats. Implemented: ORS 181.537
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

407-007-0330
Contesting a Fitness Determination

(1) Work Pending Appeal Prohibited. If a subject individual is denied, then that person may not hold the position, provide services or be employed, licensed, certified, or registered.

(2) History Disputed.

(a) Correcting Disputed History. If a subject individual wishes to challenge the accuracy or completeness of information provided by the Oregon State Police, the Federal Bureau of Investigation, or other agencies reporting information to the Department, the subject individual may appeal to the entity providing the information. Such challenges are not subject to the Department's appeal process described in this rule.

(b) Request for Re-Evaluation Following Correction. If the subject individual successfully contests the accuracy or completeness of information provided by the Oregon State Police, the Federal Bureau of Investigation, or other agency reporting information to the Department, the Department will conduct a new criminal history check and re-evaluate the criminal history upon submission of a new criminal history request form.

(3) Challenging the Fitness Determination. If a subject individual wishes to dispute an adverse fitness determination, the subject individual may appeal the determination by requesting a contested case hearing. The subject individual must be notified of the opportunity for appeal on a form available from the Department.

(a) Appeal. In order to request a contested case hearing, the subject individual or the subject individual's legal representative must complete and sign the hearing request form. The form is available by contacting the DHS Criminal Records Unit.

(b) Deadline for Appeal. The completed and signed form must be received by the Department not later than 45 days after the notice of the fitness determination is signed.

(c) Extension of Deadline. The Department may extend the time to appeal if the Department determines the delay was caused by factors beyond reasonable control of the subject individual.

(d) Hearing on Timeliness. The Department may refer an untimely request to the Office of Administrative Hearings for a hearing on the issue of timeliness.

(4) Informal Administrative Review. When a subject individual is denied and the subject individual, or the subject individual's legal representative, requests a contested case hearing, the Department may conduct an informal administrative review before referring the appeal to the Office of Administrative Hearings.

(a) Participation by Subject Individual. The subject individual and, if applicable, the subject individual's legal representative, may participate in the informal administrative review.

(A) Participation may include but is not limited to:

(i) Providing fingerprint cards, if not previously provided, for the purpose of a national check pursuant to OAR 407-007-0270 or to confirm identity.

(ii) Providing additional information or additional documents.

(iii) Participating in a telephone conference.

(B) Failure to participate in the informal administrative review by the subject individual or the subject individual's representative may result in termination of hearing rights. The Department will review a request to reinstate hearing rights if received in writing by the Department within 14 days.

(b) Criminal history check.

(A) If the denial was based on disclosed criminal history, the Department will conduct a criminal history check during the informal administrative review.

(B) The Department may conduct additional criminal history checks during the informal administrative review to update or verify the subject individual's criminal history.

(c) Weighing Test Always Applied. The Department will use the weighing test as described in these rules during the administrative review.

(d) Content of Administrative Review. The Department representative, the authorized designee, the subject individual and the subject individual's legal representative may discuss any of the matters listed in OAR 137-003-0575(3). The administrative review may also be used to:

(A) Inform the subject individual of the rules that serve as the basis for the denial.

(B) Ensure the subject individual understands the reason for the denial.

(C) Give the subject individual an opportunity to review the information that is the basis for the denial, except as prohibited by state or federal law (see OAR 407-007-0340(2)).

(D) Give the Department and subject individual an opportunity to research or provide additional information to consider as listed in OAR 407-007-0300.

(E) Give the Department and the subject individual the opportunity to correct any misunderstanding of the facts.

(F) Provide an opportunity for the Department and the subject individual to resolve the situation, including developing an agreement whereby the subject individual may be approved with restrictions.

(G) Determine if the subject individual wishes to have any witness subpoenas issued should a formal hearing be necessary.

(e) Decision Following Administrative Review. Upon completion of the informal review, the subject individual or the subject individual's legal representative is advised by the Department in writing of the finding within 14 days.

(f) Hearing Following Administrative Review. If the informal administrative review reverses the denial, no hearing will be held and the appeal will not be forwarded to the Office of Administrative Hearings. If the informal administrative review upholds the denial, the appeal will be referred to the Office of Administrative Hearings and a hearing is held unless the subject individual or the subject individual's legal representative withdraws the request for a contested case hearing or the Department reverses the denial before the hearing is held.

(5) Contested Case Hearing.

(a) Format. The hearing is conducted in accordance with Attorney General's Uniform and Model Rules of Procedure, "Hearing Panel Rules," OAR 137-003-0501, and the rules that follow.

(b) Department Representation. Employees of the Department may, in accordance with ORS 183.452, be authorized by the Department's Director to represent the Department for the contested case hearing. Authorization from the Office of Attorney General is also required. The Department retains the right to be represented by the Attorney General.

(c) Exhibits. The administrative law judge must be provided a complete copy of the criminal history check information as follows:

(A) In the case of federal criminal history and criminal history from jurisdictions outside Oregon, the subject individual must obtain copies of the FBI criminal history report, or a copy of the state criminal history report from each state in which there was criminal or arrest history recorded. The subject individual or the subject individual's legal representative must provide copies of such documentation to the administrative law judge at least seven days prior to the scheduled hearing. The Department may also provide out-of-state information received from other official sources.

(B) In the case of Oregon criminal history, the Department may provide a copy of the LEDS print-out, OJIN records, or other court records to the administrative law judge, unless to do so would result in ex parte communication.

(C) Criminal history information and correspondence regarding the subject individual's criminal history check are prima facie evidence if certified by the Department representative as a true copy.

(d) Role of Administrative Law Judge. The Office of Administrative Hearings and the administrative law judge perform the following duties in the hearing process:

(A) Provide the subject individual or the subject individual's legal representative with all of the information required under ORS 183.413(2) in writing before the hearing;

(B) Conduct the hearing;

(C) Issue a dismissal by order when neither the subject individual nor the subject individual's representative appears at the hearing; and

(D) Issue a proposed order.

(e) Public Attendance. The informal conference and hearing are not open to the public.

(f) Coordination with Licensure or Certification Hearing. A hearing pursuant to these rules may be conducted in conjunction with a licensure or certification hearing for the subject individual.

(6) Withdrawal. The subject individual or the subject individual's legal representative may withdraw a hearing request orally or in writing at any time. The withdrawal is effective the date it is received by the Department or the Office of Administrative Hearings. A dismissal order will be issued by the Department or the Office of Administrative Hearings. The subject individual may cancel the withdrawal up to 14 days after the date the order is served.

(7) Proposed and Final Order.

(a) Informal Disposition. When an appeal is resolved before being referred to the Office of Administrative Hearings due to an administrative review or withdrawal, the Department will serve a final order confirming the resolution.

(b) Failure to Appear. A hearing request is dismissed by order when neither the subject individual nor the subject individual's legal representative appears at the time and place specified for the hearing. The order is effective on the date scheduled for the hearing and is served by the Office of Administrative Hearings. The Department will cancel the dismissal order on request of the subject individual or the subject individual's legal representative on a showing that the subject individual and the subject individual's legal representative were unable to attend the hearing and unable to request a postponement for reasons beyond their control.

(c) Proposed Order. After a hearing, the administrative law judge issues a proposed order. If no written exceptions are received by the Department within 14 days after the service of the proposed order, the proposed order becomes the final order.

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

(e) Results to qualified entity. The Department may provide the qualified entity with the results of the appeal after the informal administrative review or contested case hearing.

Stat. Auth.: ORS 181.537, 409.010 & 409.050
Stats. Implemented: ORS 181.537, 183.341
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

407-007-0340
Record Keeping, Confidentiality

(1) LEDS Reports.

(a) Confidentiality. All LEDS reports are confidential and must be maintained by the authorized designee in accordance with applicable Oregon State Police requirements in ORS chapter 181 and the rules adopted pursuant thereto. (NOTE: See OAR chapter 257, division 15).

(A) Authorized Designee Access. LEDS reports are confidential and may only be shared with another authorized designee if there is a need to know consistent with these rules.

(B) Subject Individual Access. The subject individual may not inspect or receive copies of the LEDS report. NOTE: Photocopies of the LEDS report should not be made under any circumstances.

(b) Retention. LEDS reports must be retained and destroyed in accordance with records retention schedules published by Oregon State Archives.

(2) National (FBI) Information.

(a) Confidentiality and Dissemination. National criminal information provided by the FBI is confidential and may not be disseminated by the Department with following exceptions:

(A) If a fingerprint-based criminal history check was conducted on the subject individual, the subject individual will be provided a copy of the records if requested.

(B) If requested by the subject individual, the state and national criminal offender information shall be provided as exhibits during the contested case hearing.

(b) Retention. FBI reports must be retained and destroyed in accordance with records retention schedules published by Oregon State Archives and in accordance with federal law.

(3) DHS Forms and Other Documentation.

(a) Confidentiality. All completed DHS Criminal History Request forms must be kept confidential and disseminated only on a need-to-know basis.

(b) Retention.

(A) DHS forms and other records documenting the criminal history check and used in the fitness determination must be retained and destroyed in accordance with records retention schedules published by Oregon State Archives.

(B) Documentation must be retained by the qualified entity to demonstrate that the fitness determination was completed pursuant to these rules.

(4) DHS Criminal History Database. The Department maintains a database regarding criminal history checks.

(a) Data. The Department will develop a system that maintains information regarding criminal history checks and minimizes the administrative burden that these rules impose upon subject individuals and providers.

(b) Confidentiality. Records maintained under section (4) of this rule are confidential and are not disseminated by the Department except for the purpose of this section and in accordance with the rules of the Department and the Department of State Police (Oregon State Police).

(c) Retention. Information maintained in the database must be retained and destroyed in accordance with records retention schedules published by Oregon State Archives and in accordance with federal law.

Stat. Auth.: ORS 181.537, 409.010 & 409.050
Stats. Implemented: ORS 181.537
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

407-007-0350
Immunity from Liability

The qualified entity has immunity from any civil liability that might otherwise be incurred or imposed for determining, in accordance with ORS 181.537(7) that a subject individual is not fit to hold a position, provide services, or be employed, licensed, certified or registered. A qualified entity and an employer or employer's agent who in good faith comply with ORS 181.537(7) and with the decision of the qualified entity are not liable for the failure to hire a prospective employee or the decision to discharge an employee on the basis of the qualified entity's decision. No employee of the state, a business or an organization 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(7).

Stat. Auth.: ORS 181.537, 409.010 & 409.050
Stats. Implemented: ORS 181.537
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

407-007-0360
Alternate Qualified Vendors

(1) Alternate Vendors Allowed. The criminal history check required by these rules may be conducted by an alternate qualified vendor of criminal history information if the vendor is approved by the Department of Human Services to provide such information pursuant to ORS 181.537.

(2) Access to Information. In order to be approved by the Department, the vendor must demonstrate to the satisfaction of the Department that it has access to substantially the same information that is available to the Department, including, but not limited to the Law Enforcement Data System, the Oregon Judicial Information Network, and the Federal Bureau of Investigation.

(3) Compliance. The qualified vendor must comply with these rules.

(4) Re-Approval. The period of approval is one year. The alternate qualified vendor may request re-approval 90 days prior to the end of the approval period.

(5) Revocation of Approval. The Department may immediately revoke approval of the vendor if the vendor provides incorrect or incomplete information or fails to adhere to these rules.

(a) A vendor whose approval is revoked may request a contested case hearing in accordance with ORS Chapter 183.

(b) A vendor that has had approval by the Department revoked is not eligible to reapply for 180 days following revocation.

(6) Qualified Entity Serving as Vendor. A qualified entity may serve as a qualified vendor in order to process the qualified entity's own criminal history checks as provided by this rule.

Stat. Auth.: ORS 181.537, 409.010 & 409.050
Stats. Implemented: ORS 181.537
Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0360, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07

407-007-0370
Variances

(1) Criteria for a Variance. The Department may grant a variance to any section of these rules based upon a demonstration by the qualified entity that the variance would not pose a significant risk to physical, emotional or financial well-being of children, the elderly or persons with disabilities.

(2) Variance Application. The qualified entity requesting a variance must submit in writing, an application to the Department 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; and

(d) A plan and timetable for compliance with the section of the rule from which the variance is sought.

(e) An explanation on how the welfare, health, or safety of individuals receiving care will be ensured during the time the variance period is in effect.

(3) Department Review. The Administrator for the Department or designee may approve or deny the request for a variance.

(4) Notification. The Department must notify the qualified entity of the decision. This notice must be sent within 60 calendar days of the receipt of the request by the Department with a copy to other relevant sections of the Department.

(5) Appeal Application. Appeal of the denial of a variance request must be made in writing to the Administrator of the Department, whose decision is final.

(6) Duration of Variance. The duration of the variance must be determined by the Department. All variances must be reapplied for before the duration of the variance expires.

(7) Implementation. The provider may implement a variance only after written approval from the Department is received.

(8) No Precedent. Granting a variance does not set a precedent that must be followed by the Department when evaluating subsequent requests for variances.

Stat. Auth.: ORS 181.537, 409.010 & 409.050
Stats. Implemented: ORS 181.537
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

407-007-0380
Fees

(1) National Check. The fingerprint processing fee for nursing facilities, assisted living facilities, and residential care facilities and adult foster homes licensed under OAR chapter 411 is $12 per check.

(2) Fees Established by Contract. The Department may establish fees by contract or written agreement with a qualified entity. Fees may not exceed the cost of providing the service.

Stat. Auth.: ORS 181.537, 409.010 & 409.050
Stats. Implemented: ORS 181.537
Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0380, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07

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

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 disclosure is necessary to conduct authorized activities of the agency. An employee receiving a confidential mediation communication under this subsection is bound by the same confidentiality requirements as apply to the parties to the mediation.

(h) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.

(i) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.

(j) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.

(k) When a mediation is conducted as part of the negotiation of a collective bargaining agreement, the following mediation communications are not confidential and such communications may be introduced into evidence in a subsequent administrative, judicial or arbitration proceeding:

(A) A request for mediation; or

(B) A communication from the Employment Relations Board Conciliation Service establishing the time and place of mediation; or

(C) A final offer submitted by the parties to the mediator pursuant to ORS 243.712; or

(D) A strike notice submitted to the Employment Relations Board.

(l) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.

(m) Written mediation communications prepared by or for the agency or its attorney are not confidential and may be disclosed and may be introduced as evidence in any subsequent administrative, judicial or arbitration proceeding to the extent the communication does not contain confidential information from the mediator or another party, except for those written mediation communications that are:

(A) Attorney-client privileged communications so long as they have been disclosed to no one other than the mediator in the course of the mediation or to persons as to whom disclosure of the communication would not waive the privilege; or

(B) Attorney work product prepared in anticipation of litigation or for trial; or

(C) Prepared exclusively for the mediator or in a caucus session and not given to another party in the mediation other than a state agency; or

(D) Prepared in response to the written request of the mediator for specific documents or information and given to another party in the mediation; or

(E) Settlement concepts or proposals, shared with the mediator or other parties.

(n) A mediation communication made to the agency may be disclosed and may be admitted into evidence to the extent the Agency Director, 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 30.402 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 reviewing 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 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. & c ert. 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. & c ert. 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. & c ert. 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. & c ert. 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. & c ert. 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. & c ert. 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. & c ert. 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. & c ert. 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. & c ert. 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. & c ert. 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. & c ert. ef. 6-1-06

Abuse Reporting and Protective Services in Community Programs and Community Facilities

407-045-0250
Statement of Purpose

Purpose. These rules prescribe standards and procedures for the investigation, 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
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

407-045-0260
Definitions

As used in these rules the following definitions apply:

(1) "Abuse" means one or more of the following:

(a) Any death caused by other than accidental or natural means or occurring in unusual circumstances;

(b) Any physical injury by other than accidental means, or that appears to be at variance with the explanation given of the injury;

(c) Willful infliction of physical pain or injury;

(d) Sexual harassment or exploitation including, but not limited to, any sexual contact between an employee of a community facility or community program, or provider, or other caregiver and the adult. For situations other than those involving an employee, provider, or other caregiver and an adult, sexual harassment or exploitation means unwelcome verbal or physical sexual contact including requests for sexual favors and other verbal or physical conduct directed toward the adult;

(e) Neglect that leads to physical harm or significant mental injury through withholding of services necessary to maintain health and well-being;

(f) Abuse does not include spiritual treatments by a duly accredited practitioner of a recognized church or religious denomination when voluntarily consented to by the adult.

(2) "Abuse investigation and protective services report" means the completed report.

(3) "Adult" means a person who:

(a) Is mentally ill or developmentally disabled;

(b) Is 18 years of age or older;

(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.

(4) "Adult Protective Services" means the necessary actions taken to prevent abuse or exploitation of the adult, to prevent self-destructive acts and to safeguard an allegedly abused adult's person, property and funds.

(5) "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) through (g) associated with planning and implementation of Support Services for adults with developmental disabilities.

(6) "Care Provider" 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.

(7) "Community facility" means a community residential treatment home or facility, community residential facility, adult foster home, community residential training home or facility, regional acute crisis facility or crisis respite facility.

(8) "Community program" means the community mental health and developmental disabilities program as established in ORS 430.610 through 430.700.

(9) "Designee" means the community program.

(10) "Department" means Seniors and People with Disabilities (SPD) and Health Services organizational units within the Department of Human Services.

(11) "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.

(12) "Law enforcement agency" means:

(a) Any city or municipal police department;

(b) Any county sheriff's office;

(c) The Oregon State Police; or

(d) Any district attorney.

(13) "Mandatory reporter" means any public or private official who, while acting in an official capacity, comes in contact with and has reasonable cause to believe that the adult has suffered abuse, or that any person with whom the official comes in contact while acting in an official capacity, has abused the adult. Pursuant to ORS 430.765(2) psychiatrists, psychologists, clergy and attorneys are not mandatory reporters with regard to information received through communications that are privileged under ORS 40.225 to 20.295

(14) "Not substantiated" means that the evidence does not support a conclusion that there is reasonable cause to believe that abuse occurred.

(15) "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;

(c) Employee of the Department of Human Services, county health department, community mental health and 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; or

(j) Any public official who comes in contact with adults in the performance of the official's duties.

(16) "Substantiated" means that the evidence supports a conclusion that there is reasonable cause to believe that abuse occurred.

(17) "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
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

407-045-0270
General Duties of the Community Program

(1) For the purpose of carrying out these rules, community programs are the designee of the Department.

(2) 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 protective services report when completed.

(3) If the Department or community program has reasonable cause to believe that a person licensed by any state agency to provide care has committed abuse, it must immediately notify the appropriate state agency provide that agency with a copy of the abuse investigation and protective services report when completed.

(4) Nothing in this rule prohibits sharing of information by the Department or community program prior to the completion of the abuse investigation and protective services report if this information is necessary for:

(a) The provision of protective services; or

(b) The function of licensing and certifying agencies or law enforcement agencies.

Stat. Authority: ORS 179.040
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 309-040-0220, OMAP 87-2004, f. 11-10-04, cert. ef. 12-1-04; Renumbered from 410-009-0070, DHSD 5-2007, f. 6-29-07, cert. ef. 7-1-07

407-045-0280
Training for Persons Investigating Reports of Alleged Abuse

(1) Sufficient training and consultation will be provided to community programs by the Department such that the community program is able to conduct a thorough and unbiased investigation and reach a conclusion about the abuse.

(2) The training will address the cultural and social diversity of the State.

Stat. Authority: ORS 179.040
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

407-045-0290
Initial Action on Report of Alleged Abuse

(1) The community program receiving a report alleging abuse will document the information required by ORS 430.743(1) and any additional information reported. The community program will attempt to elicit the following information from the person making a report:

(a) The name, age and present location of the adult;

(b) The names and addresses of persons, 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 by the alleged perpetrator;

(d) Any information that led the person making the report to suspect abuse had occurred;

(e) Any information that the person believes might be helpful in establishing the cause of the abuse and the identity of the alleged perpetrator; and

(f) The date of the incident.

(2) If there is reason to believe a crime has been committed, the designee must notify the law enforcement agency with jurisdiction in the county where the report is made.

(3) If there is reasonable cause to believe that abuse has occurred, the community program must promptly determine if the adult is in danger or in need of immediate protective services and respond accordingly.

(4) The community program will immediately notify the Department upon receipt of a report of abuse in the format provided by the Department.

(5) Each community program must establish an after hours reporting system. Upon receipt of any report of alleged abuse, 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;

(b) Assessment of the need for protective services; and

(c) Provision of protective services, if protective services are needed.

(6) The appropriate medical examiner shall be notified in cases in which 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.

(7) Mandatory reporters must report instances, when the reporter has reasonable cause to believe abuse has occurred, to the community program or a local law enforcement agency.

Stat. Authority: ORS 179.040

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

407-045-0300
Investigation of Alleged Abuse

(1) Investigation of abuse will be thorough and unbiased. Accordingly, community programs will not investigate allegations of abuse made against employees of the community program. Investigations of community program staff will be conducted by the Department or other community program not subject to the actual or potential conflict of interest.

(2) In conducting abuse investigation, the investigator:

(a) Must make in person contact with the adult;

(b) Must interview the adult, witnesses, the alleged perpetrator and other individuals who may have knowledge of the facts of the abuse allegation or related circumstances;

(c) Must review all evidence relevant and material to the complaint; and

(d) Should take a photograph of the adult, 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 will be available to the community program for inspection and copying. A community facility will 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 will also perform 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 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
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

407-045-0310
Assessment for and Provision of Protective Services to the Adult

Appropriate protective services will be provided to the adult as necessary 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 and 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 an 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
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

407-045-0320
Abuse Investigation and Protective Services Report

(1) Upon completion of the investigation, and within 45 calendar days of the date of a report alleging abuse, the community programs will prepare an abuse investigation and protective services report which includes:

(a) A statement of the alleged incident being investigated, including the date(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 list of protective services provided to the adult to the date of the abuse investigation and protective services report;

(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 the completion of these action;

(h) A list of any notices made to licensing or certifying agencies;

(i) The name and title of the person completing the report; and

(j) The date it is written.

(2) Abuse investigation and protective services report formats will be provided by the Department.

(3) A copy of the abuse investigation and protective services report will be provided to the Department within five working days of the report's completion.

(4) A centralized record of all abuse investigation and protective services reports will be maintained by the 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
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

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 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 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 HIPAA privacy rules, 45 CFR Part 160 and 164, and ORS 192.520 and 179.505 to 509.

(2) Notwithstanding subsection (1) of this rule, the Department 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 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 Section 192.517(1).

(3) Persons or entities receiving confidential information pursuant to this rule shall 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.

(4) 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.

(5) 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

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

407-045-0340
Prohibition Against Retaliation

(1) A community facility, community program or person will not retaliate against any person who reports suspected abuse in good faith, including the adult.

(2) Any community facility, community program or person that 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, a 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 person involved in a report against the person making the report or against the adult because of the report and includes but is not limited to:

(a) Discharge or transfer from the community facility, except for clinical reasons;

(b) Discharge from or termination of employment;

(c) Demotion or reduction in remuneration for services; or

(d) Restriction or prohibition of access to the community facility or its residents.

(4) Adverse action may also be evidence of retaliation after 90 days even though the presumption no longer applies.

Stat. Authority: ORS 179.040
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

407-045-0350
Immunity of Persons Making Reports in Good Faith

(1) Anyone who makes a good faith report and who had reasonable grounds for making the report, will have immunity from civil liability with respect to having made the report.

(2) The reporter will have the same immunity in any judicial proceeding resulting from the report.

Stat. Authority: ORS 179.040
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

407-045-0360
Department Investigation of Alleged Abuse

(1) If determined necessary or appropriate, the Department may conduct an investigation itself 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 received authorization from the Department before conducting any separate investigation.

(2) All records necessary for the investigation will be 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
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

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 protective 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 investi-

gation, 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 through 407-045-0980) prescribe standards and procedures for investigating, assessing, and providing protective services in certain therapeutic or treatment program, 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 and the protective services report and set forth review rights and procedure.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 419B.005 - 419B.050, 418.205 - 418.327, 409.185, & 418.015
Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08; DHSD 4-2008, f. & cert. ef. 5-30-08

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) Each case shall be evaluated based upon the facts available, and upon the individual circumstances of the child, including the child's particular vulnerabilities and needs.

(4) 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's Office of Investigations and Training (OIT).

(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 will continue to be investigated by the Department's Children, Adults and Families Division (CAF) or by law enforcement.

Stat. Auth: ORS 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

407-045-0820
Definitions

The following definitions apply to OAR 407-045-0800 through 407-045-0980:

(1) "Abuse" under these rules 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 those acts are 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 167.002 or described in 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 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. Negligent treatment also includes, but is not limited to failure to supervise a child, or failure to intervene when a child needs assistance or care, that is likely to endanger the child's health or welfare.

(g) 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. Maltreatment also includes but is not limited to the willful infliction of pain or injury, hitting, kicking, scratching, pinching, choking, spanking, pushing, slapping, twisting of head, arms, or legs, tripping, exposure to domestic violence, the use of unnecessary or excessive physical force, or other physical contact with a child inconsistent with prescribed treatment or care, the use of derogatory names, phrases or profanity, ridicule, harassment, coercion, or intimidation, that is likely to endanger the child's health or welfare.

(h) Threatened harm to a child, which means subjecting a child to a substantial risk of harm to the child's health or welfare.

(i) Buying or selling an individual under 18 years of age as described in ORS 163.537.

(j) Permitting an individual under 18 years of age to enter or remain in or upon premises where methamphetamines are being manufactured.

(k) 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 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 the investigator is unable to determine whether there is reasonable cause to believe abuse did or did not occur, based upon the available evidence.

(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) "Mandatory Reporter" means an individual or entity having a duty to report as defined in ORS 419B.005 through 419B.050.

(12) "Not Substantiated" means the allegation is unfounded because the investigator concludes there is no reasonable cause to believe abuse occurred, based on the available evidence.

(13) "OIT" means the Department's Office of Investigations and Training.

(14) "OIT Investigator" means an employee of OIT who is authorized and trained to investigate reports of child abuse or neglect under these rules.

(15) "OIT Substantiation Review Committee (OSRC)" means a group of three Department employees selected by the Deputy Director of the Department, or designee, none of whom was involved in any part of the investigation that resulted in the OIT substantiation under review. The committee must include the following members:

(a) A Department employee from the Children, Adults and Families Division (CAF) with knowledge about the dynamics of child abuse and neglect, and with knowledge of the screening, assessment, or investigation of child abuse and neglect. This committee member may be a CAF employee from the Division's central office or from a CAF field office;

(b) A CAF child protective services consultant;

(c) A Department employee with knowledge of protective service investigations, particularly investigations of alleged abuse and neglect of vulnerable populations receiving services in out-of-home settings.

(16) "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 problems, 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 authority of the Department. 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.

(17) "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.

(18) "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.

(19) "Residential Care Agency" means a licensed child-caring agency that provides services to children 24 hours a day.

(20) "Substantiated" means the allegation is founded, because available evidence supports a conclusion that there is reasonable cause to believe that abuse or neglect occurred.

(21) "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.

(22) "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 assuring that children receive therapeutic services.

Stat. Auth.: ORS 418.005 & 409.050
Stats. Implemented: ORS 409.185, 418.005, 418.189, 419B.005 - 419B.050, 418.205 - 418.327, 419B.328 & 418.747
Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08; DHSD 4-2008, f. & cert. ef. 5-30-08

407-045-0830
Training of CCPs

(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 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

407-045-0850
Responsibilities of the CCP

(1) Mandatory Reporting. CCPs and their staff are mandatory reporters governed by ORS 419B.005 through 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, the belief need not 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) Protective Action and Safety Planning. 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.

(3) Documentation. 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) Cooperation with OIT screening and investigation. 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.

(5) Prohibition against internal investigation. When abuse of a child is reported and law enforcement or OIT is screening or investigating the report, the CCP must not conduct an internal investigation without prior authorization from OIT, except for those initial activities necessary for protection and safety planning, as described in section (2) above. CCPs shall not:

(a) Conduct 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;

(b) Review relevant evidence, other than the initial report; or

(c) Take any other actions beyond those required to protect the child and plan for safety, as described in section (2) above.

Stat. Auth.: ORS 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

407-045-0860
Responsibilities of the OIT

(1) Cross-Reporting to Law Enforcement. 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) Same Day Reporting. 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 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) Ten Day Reporting. 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) Notices. 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 will 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 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

407-045-0870
OIT Screening Decision Time Frames

(1) Child Reported to be Unsafe. 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 could compromise the child's safety or a criminal investigation.

(2) Child Not Reported to be Unsafe. When it has not been reported that the child is unsafe, and there are no other indicators the child is unsafe, OIT will 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) Investigatory Screening Process. All reports shall be screened 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 services provided as needed, 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);

(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) Closed at Screening. If OIT decides the information received does not constitute a report of child abuse or neglect as defined in these rules, the report will 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 will 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 will notify OYA. OIT will 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) Opening a Case for Investigation after Screening. 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, it shall immediately notify the child's legal guardian, unless notification is specifically 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 will notify OYA or the child's tribe, as applicable.

(6) Coordination with CAF when Children are in Department Custody. 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 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

407-045-0880
OIT Investigative Process in Cases Opened for Investigation

(1) OIT will 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. Any individual providing peer support or consultation to a foster parent who is the subject of any interview shall be obligated to maintain the confidentiality of information declared to be confidential under State or Federal laws;

(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 will 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) 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.

(4) During the investigation, if the investigator knows or has reason to know 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 418.005
Stats. Implemented: ORS 409.185, 418.005, 419B.005 - 419B.050, 418.747 & 419B.045
Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08; DHSD 4-2008, f. & cert. ef. 5-30-08

407-045-0890
Abuse Investigation and Protective Services Report

(1) When the investigation is complete, OIT will issue a final decision stating whether the allegation is substantiated, not substantiated, or inconclusive, and will 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 to 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 days from the date the case was opened for investigation. The OIT Director or designee may authorize an extension of time for completion of the report 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 419B.035(1)(h) and (2)(a) apply. The names and identifying information about a reporter are confidential and shall not be disclosed. Investigatory documents, including portions of the abuse investigation and protective services report that contains "individually identifiable health information," as that term is defined in 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. 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 available the confidential information, including any photographs, 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 shall 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 shall not re-disclose the confidential information to unauthorized individuals or entities, if disclosure is prohibited by state or federal law.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 409.185, 418.015, 419B.005 -419B.050, 419B.035 & 409.225
Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08; DHSD 4-2008, f. & cert. ef. 5-30-08

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 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 person's right to request an administrative review.

Stat. Auth.: ORS 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

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. The notice must be delivered:

(1) By certified mail, restricted delivery, return receipt requested to the last known address of the person; or

(2) By hand delivery to the person. If hand delivered, the notice must be addressed to the person and a copy of the notice must be signed and dated by the person acknowledging receipt and also signed by the person delivering the notice.

Stat. Auth.: ORS 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

407-045-0920
Claim of Lack of Notice

(1) If a person believes he or she is entitled to a notice of OIT substantiation but has not received one, the person 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 the person refused delivery of the notice, as evidenced by the returned receipt.

(3) If a notice was delivered to the person or the person 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 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 make a second attempt to deliver a notice of OIT substantiation as provided in these rules.

Stat. Auth.: ORS 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

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 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 has a right to request a review;

(6) Instructions for making a request for review, including the requirement that the person provide a full explanation why the person believes the OIT substantiation is wrong;

(7) A statement that the Department will not review an OIT substantiation if a legal proceeding is pending and that the person 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 will consider relevant documentary information, including the OIT report and accompanying exhibits, and information submitted with the request for review by the person requesting review.

(10) A statement that the OSRC will not re-interview the victim; interview or meet with the person, with others associated with the person, or with others mentioned in the report; or conduct a field assessment of the allegation of child abuse; and

(11) A statement that OIT will send the person a notice of OSRC decision within 60 calendar days of receiving a request for review.

Stat. Auth.: ORS 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

407-045-0940
Requesting Review of an OIT Substantiation

A person requesting a review must use information contained on 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;

(4) The person's current name (if it has changed from the name noted in section (3) of this section);

(5) A full explanation, responsive to the information provided in the Department's notice, explaining why the person believes the OIT substantiation is wrong and any additional information and documents the person wants considered during the review;

(6) The person's current street address and telephone number; and

(7) The person's signature.

Stat. Auth.: ORS 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

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 will 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 that the Department will not review the substantiation until the legal proceeding is completed and will take no 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 will provide a notice of legal finding to the person.

(4) If the completed legal proceeding results in a legal finding which is not consistent with the OIT substantiation, the person 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 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

407-045-0960
OIT Responsibilities Related to Notices and Reviews

(1) If a person asks to review Department records for the purpose of reviewing an OIT substantiation, state and federal confidentiality laws, including OAR 413-010-0000 through 413-010-0075 and 413-350-0000 through 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 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

407-045-0970
OSRC Review

(1) The OSRC will 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 operates as follows:

(a) The OSRC considers relevant documentary information contained in the OIT investigation file, investigative report and exhibits, and information provided by the person.

(b) The OSRC will not re-interview the victim; interview or meet with the person, with others associated with the person, 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 is responsible for the child abuse or neglect.

(e) The OSRC will 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 will 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 information:

(a) Whether there is reasonable cause to believe that child abuse occurred;

(b) Whether there is reasonable cause to believe that the person 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 will be 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, CAF, the OIT investigator who conducted the investigation, applicable public agencies licensing or certifying facilities or the person practicing therein, and the OIT Director.

Stat. Auth.: ORS 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

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 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

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 planning 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, 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

DIVISION 120

PROVIDER RULES

Electronic Data Transactions

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 agree-

ment 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 disposition 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 the 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 authoriza-

tion 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

Provider Enrollment and Claiming

407-120-0300
Definitions

The following definitions apply to OAR 407-120-0300 to 407-120-0380:

(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 who have 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 eighteen 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 who are children with medical eligibility determined by CAF or Oregon Youth Authority (OYA) receiving OHP under ORS 414.025, 418.034, and 418.187 through 418.970. These individuals are generally in the care or custody of CAF or OYA who are in placement outside of their homes.

(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 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's) 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's) 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 the 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, excluded services and limitations for OHP clients; 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 407-120-0380.

(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 will 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 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 407-120-0380 in order 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 increases the likelihood of desired health outcomes and are consistent with current professional knowledge."

(42) "Quality Improvement Organization (QIO)" means an entity that has a contract with CMS under Part B of Title XI to perform utilization and quality control review of the health care furnished, or to be furnished, to Medicare and Medicaid clients; formerly known as a "Peer Review Organization."

(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.

(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 are to 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. & ert. ef. 7-1-08 thru 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 407-120-0380, 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.

(a) Some programs require providers to document visit data in connection with service delivery.

(A) Department programs use visit data to monitor service delivery, planning, and quality improvement activities.

(B) 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 as a material term of provider participation in the applicable Department program.

(b) 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 will construe them as much as possible in a manner that will 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 will 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 will 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) Required State and Federal Statutes. When a provider submits a claim for services or supplies provided to a client or a PHP encounter, it is a representation by the provider that the provider has complied with all the requirements of these rules, and if applicable, program-specific rules or contracts.

(5) 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 people 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 will 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. & ert. ef. 7-1-08 thru 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 will 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 promise that the enrolled provider will 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 that:

(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 in accordance 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 will 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 will 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 statemente. Payment cannot be made 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. Information that must be disclosed includes the name, address, and 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 taxpayer identification number will be used 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. Signing the provider enrollment agreement constitutes agreement by a provider to comply with all applicable Department provider and program rules, and applicable federal and state laws and regulations in effect on the date of service.

(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 will be enrolled, assigned, and issued a provider number for use in specific payment or business operations upon the following criteria:

(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 to attest and certify to the accuracy and completeness of the information submitted;

(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 information on the claim or encounter, regardless of the format or other reimbursement document is true, accurate and complete; and

(d) The provider understands that payment of the claim or encounter or other reimbursement document will be from federal or state funds, or a combination of federal and state funds, and that any falsification, or concealment of a material fact, may result in prosecution under federal and state laws.

(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 will 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 will 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 on the retroactive effective date the provider has met all applicable requirements.

(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) Provides must provide the following updates:

(a) An enrolled provider must 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 of changes in any of this information in writing within 30 calendar days of any of the following 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.

(b) These changes may require the submission of a provider enrollment form, provider enrollment agreement, provider certification, or other related documentation.

(c) 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.

(d) 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 the SSN or EIN of all performing providers in connection with claims or payments made to or on behalf of the performing provider, in addition to the billing provider's SSN or EIN. 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 is responsible for timely complying with the notice and providing the Department with accurate information. The Department will comply with IRS requirements for backup withholding.

(d) Failure to notify the Department of a change in federal tax identification number (SSN or EIN) 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 will 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 will 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 will assign the provider number a termination status and the 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 will 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 is responsible for its employees, and for providing employment-related benefits and deductions 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. & ert. ef. 7-1-08 thru 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 will 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 whistleblowing 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 section 1128B(f)); Providers must:

(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 DHS 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 to the best of the provider's knowledge and belief, that:

(i) No federal appropriated funds have been paid or will 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 will 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 will 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 the HIPAA or the federal regulations implementing the Act , the provider agrees to deliver the goods and services in compliance with HIPAA. Without limiting the generality of the foregoing, items and services funded in whole or in part with financial assistance provided under these rules are covered by 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. However, 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) If the provider intends to engage in EDI transactions with the Department in connection with claims or encounter data, eligibility or enrollment information, authorizations or other electronic transactions, the provider 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 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) The provider certifies that it will 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 will 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 mentioned 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 will 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 so 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) Neither the provider, nor any of the provider's employees, officers, agents or subcontractors shall 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 records as necessary 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 will 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 will 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 should 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 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
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Hist.: DHSD 6-2008(Temp), f. & ert. ef. 7-1-08 thru 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 will be considered authorized by the provider and the Department will 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) The provider may seek payment 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 will 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, if the client is a member of a 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 reimbursable rate or PHP rate, if the client is a member of a PHP;

(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; client 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. A 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 managed care plan 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.

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Stats. Implemented: ORS 414.115, 414.125, 414.135, 414.145
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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 an alleged variation between a Department-listed code and a national code, the provider should seek clarification from the Department program. The Department will 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:

(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); and

(vi) HIPAA related codes, DHHS, claims adjustment reason, claim status, taxonomy codes, and decision reason as 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 CPT, CDT, and HCPCS 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 will 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 that are 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 will 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. & ert. ef. 7-1-08 thru 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 will be made. Providers are responsible for checking 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 or 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 will authorize the covered level of care or 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 supplied. The authorizing program may request additional information from the provider to determine the appropriateness of authorizing the service or item or level of care within the scope of program coverage.

(d) Authorizing programs are not required to authorize services or to make payment for authorized services under the following circumstances:

(A) The client was not eligible at the time services were provided. The provider is responsible for checking the client's eligibility each time services are provided;

(B) The provider cannot produce appropriate documentation to support 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 will 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 conditions set forth in (A)(i) through (iv) of this section 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 Department 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 that 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 not to 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 will 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 will not make payments for duplicate services or items. The Department will 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 will 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, agreement of contract, or does not meet the criteria for quality of care, or appropriateness of the care or payment. Related provider billings will 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, as is 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 grounds:

(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 untrue encounter data to the Department.

(d) Prior to identifying an overpayment, the Department may contact the provider for the purpose of providing preliminary information and requesting additional documentation. The provider must provide the requested documentation within the time frame requested.

(e) When an overpayment is identified, the Department will 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 will 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 will suffer irreparable injury if the overpayment notice is not delayed;

(ii) There is a plausible reason to believe that the overpayment is not correct 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 will 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. & ert. ef. 7-1-08 thru 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 will 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 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 will 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) Will 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;

(x) Failed to comply with the terms of the provider certifications on the claim form;

(y) 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;

(z) Submitted false or fraudulent information when applying for a Department-assigned provider number, or failed to disclose information requested on the provider enrollment form;

(aa) Failed to correct deficiencies in operations after receiving written notice of the deficiencies from the Department;

(bb) 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;

(cc) 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;

(dd) 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;

(ee) Provided or billed for services provided by ineligible or unsupervised staff;

(ff) Participated in collusion that resulted in an inappropriate money flow between the parties involved;

(gg) Refused or failed to repay, in accordance with an accepted schedule, an overpayment established by the Department;

(hh) Failed to report to Department payments received from any other source after the Department has made payment for the service; or

(ii) Collected or made repeated attempts to collect payment from clients for services covered by the Department, pursuant to 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) Type and Conditions of Sanction.

(a) A mandatory sanction imposed by the Department pursuant to section (3) may result in any of the following:

(A) The provider will either be terminated or suspended from participation in Department's programs. No payments of Title XIX, Title XXI or other federal or state funds will be made for services provided after the date of termination. Termination is permanent unless:

(i) The exceptions cited in 42CFR 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 will be made for services provided during the suspension. The number will 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 will be determined by the DHHS secretary, under the provisions of 42 CFR Parts 420, 455, 1001, or 1002. The state 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 will be made for services provided after the date of termination. Termination is permanent unless:

(i) The exceptions cited in 42 CFR 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 will be made for services provided during the suspension. The number will 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 will 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 407-120-0380, 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 as outlined in ORS 183 to determine whether the provider's Department assigned number and electronic system access code will 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 will notify the provider by certified mail or personal delivery service of the intent to sanction. The notice of immediate or proposed sanction will 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 is to be held, with a 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 will 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; and

(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 (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
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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. Payment will be made only for services that are 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 their 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 elapsed 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. & ert. ef. 7-1-08 thru 12-27-08

407-120-0380
Fraud and Abuse

(1) Providers are required to 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. & ert. ef. 7-1-08 thru 12-27-08